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MISSION WEST PROPERTIES INC  
Form 10-K  
March 27, 2003

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For 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 No. 1-8383

MISSION WEST PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Maryland

95-2635431

-----  
(State or other jurisdiction of  
Incorporation or organization)

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

10050 Bandley Drive, Cupertino CA  
(Address of principal  
executive offices)

95014  
(Zip Code)

Registrant's telephone number, including area code: (408) 725-0700  
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Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class -----	Name of each exchange on which registered -----
Common Stock, par value \$.001 per share	American Stock Exchange Pacific Exchange, Inc.

Securities Registered Pursuant to Section 12(g) of the Act:

NONE

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.

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Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes [X] No [ ]

The aggregate market value of the voting stock held by non-affiliates of the registrant, based upon the closing sale price of the Common Stock on June 30, 2002, as reported on the American Stock Exchange, was approximately \$212,926,741. As of March 25, 2003 there were 17,653,691 shares of the Registrant's Common Stock outstanding.

### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for the 2003 Annual Meeting of Stockholders to be held May 21, 2003, and to be filed pursuant to Regulation 14A are incorporated by reference in Part III of this Form 10-K to the extent stated herein.

### Forward Looking Information

This annual report contains forward-looking statements within the meaning of the federal securities laws. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and are including in this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe future plans, strategies and expectations of us, are generally identifiable by use of the words "believe," "expect," "intend," "anticipate," "estimate," "project" or similar expressions. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Factors which could have a material adverse effect on the operations and future prospects of the Company include, but are not limited to, changes in: economic conditions generally and the real estate market specifically, legislative or regulatory provisions affecting the Company (including changes to laws governing the taxation of Real Estate Investment Trusts ("REITs")), availability of capital, interest rates, competition, supply of and demand for office and industrial properties in our current and proposed market areas, tenant defaults and bankruptcies, and general accounting principles, policies and guidelines applicable to REITs. In addition, the actual timing of development, construction, and leasing on the projects that the Company believes it may acquire in the future under the Berg Land Holdings Option Agreement is unknown presently. These risks and uncertainties, together with the other risks described from time to time in our reports and documents filed with the Securities and Exchange Commission, should be considered in evaluating forward-looking statements and undue reliance should not be placed on such statements. See Part I, Item 1, "Risk Factors."

- i -

MISSION WEST PROPERTIES, INC.

2002 FORM 10-K ANNUAL REPORT

Table of Contents

# Edgar Filing: MISSION WEST PROPERTIES INC - Form 10-K

## PART I

- Item 1. Business
- Item 2. Properties
- Item 3. Legal Proceedings
- Item 4. Submission of Matters to a Vote of Security Holders

## PART II

- Item 5. Market for the Registrant's Common Equity and Related Stockholder Matters
- Item 6. Selected Financial Data
- Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations
- Item 7A. Quantitative and Qualitative Disclosures about Market Risk
- Item 8. Financial Statements and Supplementary Data
- Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

## PART III

- Item 10. Directors and Executive Officers of the Registrant
- Item 11. Executive Compensation
- Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters
- Item 13. Certain Relationships and Related Transactions
- Item 14. Controls and Procedures

## PART IV

- Item 15. Exhibits, Financial Statements, Schedules and Reports on Form 8-K  
Signatures  
Rule 13a-14 Certifications

- ii -

## PART I

### ITEM 1. BUSINESS

#### ORGANIZATION AND GENERAL BUSINESS DESCRIPTION

Mission West Properties, Inc. (the "Company") acquires, markets, leases, and manages Research and Development ("R&D") properties, primarily located in the Silicon Valley portion of the San Francisco Bay Area. As of December 31, 2002, we owned and managed 101 properties totaling approximately 7.2 million rentable square feet of R&D properties through four limited partnerships, or operating partnerships, for which we are the sole general partner. R&D property is designed for research and development and office uses and, in some cases, includes space for light manufacturing operations with loading docks. We believe that we have one of the largest portfolios of R&D properties in the Silicon Valley. The four tenants who lease the most square footage from us are Microsoft Corporation, JDS Uniphase Corporation, Amdahl Corporation (a subsidiary of Fujitsu Limited), and Apple Computer, Inc. For federal income tax purposes we have operated as a self-managed, self-administered and fully integrated Real Estate Investment

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Trust ("REIT") since fiscal 1999.

Prior to July 1, 1998, most of our properties were under the ownership or control of Carl E. Berg, his brother Clyde J. Berg, the members of their respective immediate families, and certain entities in which Carl E. Berg and/or Clyde J. Berg held controlling or other ownership interests (the "Berg Group"). We acquired these properties as of July 1, 1998 by becoming the general partner of each of the four operating partnerships in an UPREIT transaction. At that time, we also acquired ten properties comprising approximately 560,000 rentable square feet from entities controlled by third parties in which the Berg Group members were significant owners.

Through various property acquisition agreements with the Berg Group, we have the right to purchase, on pre-negotiated terms, R&D and other types of office and light industrial properties that the Berg Group develops in the future. With in-house development, architectural and construction personnel, the Berg Group continues to focus on a full range of land acquisition, development and construction activities for R&D properties, often built-to-suit, to meet the demands of Silicon Valley information technology companies. As the developer, the Berg Group takes on the risks of purchasing the land, obtaining regulatory approvals and permits, financing construction and leasing the properties. Since September 1998, we have acquired approximately 2,879,000 additional rentable square feet of R&D properties from the Berg Group under these agreements.

### OUR RELATIONSHIP WITH THE BERG GROUP

Through a series of transactions occurring between May 1997 and December 1998, we have become the vehicle for substantially all of the Silicon Valley R&D property operating activities of the Berg Group. We are the general partner pursuant to the partnership agreements of the operating partnerships and, along with members of the Berg Group and other individuals, are party to an Exchange Rights Agreement and the Berg Land Holdings Option Agreement. Each agreement defines the material rights and obligations among us, the Berg Group members, and other parties to those agreements. Among other things, these agreements give us rights to:

- control the operating partnerships;
- acquire, on pre-negotiated terms, all future R&D properties developed by the Berg Group on land currently owned or acquired in the future; and
- acquire R&D, office and industrial properties identified by the Berg Group in California, Oregon and Washington.

Under these agreements, our charter or our bylaws, the Berg Group has the right to:

- designate two of five nominees for director to be elected by our stockholders, subject to the Berg Group's maintenance of certain ownership interests;
- participate in our securities offerings;
- exchange their operating partnership interests ("O.P. Units") for our common stock;
- vote on major transactions, subject to its maintenance of certain ownership interests; and
- prevent us from selling properties when the sale will have adverse tax

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consequences to the Berg Group members.

- 1 -

To comply with REIT requirements that restrict the percentage of the total value of our stock that may be owned by five or fewer individuals to 50% or less, our charter generally prohibits the direct or indirect ownership of more than 9% of our common stock by any stockholder. This limit excludes the Berg Group, which has an aggregate ownership limit of 20%. Currently, the Berg Group members collectively own less than 1% of the outstanding shares of our common stock.

Carl E. Berg, the Company's Chairman of the Board of Directors and Chief Executive Officer and the controlling member of the Berg Group, has been engaged in the development and long-term ownership of Silicon Valley real estate for approximately 30 years, most recently through Berg & Berg Developers ("Berg & Berg"), a general partnership of Carl E. Berg and Clyde J. Berg. In 1969, Mr. Berg foresaw the rising demand for efficient, multi-purpose facilities for the rapidly growing information technology industry in the Silicon Valley. Since 1972, in addition to his real estate activities, Mr. Berg also has been actively involved in venture capital investments in many information technology companies in the Silicon Valley, including such companies as Amdahl Corporation, Sun Microsystems, Inc., and Integrated Device Technologies, Inc. He serves on the boards of directors of numerous information technology companies. These activities have helped Mr. Berg develop a detailed understanding of the real estate requirements of information technology companies, acquire valuable market information and increase his name recognition within the venture capital and entrepreneurial communities. These activities also manifest his commitment to the growth and success of Silicon Valley companies. We believe that Mr. Berg's substantial knowledge of and contacts in the information technology industry provide a significant benefit to the Company.

### BUSINESS STRATEGY

Our acquisition, growth and operating strategy incorporates the following elements:

- working with the Berg Group to take advantage of their abilities and resources to pursue development opportunities which we have an option to acquire, on pre-negotiated terms, upon completion and leasing;
- capitalizing on opportunistic acquisitions from third parties of high-quality R&D properties that provide attractive initial yields and significant potential for growth in cash-flow;
- focusing on general purpose, single-tenant Silicon Valley R&D properties for information technology companies in order to maintain low operating costs, reduce tenant turnover and capitalize on our relationships with these companies and our extensive knowledge of their real estate needs; and
- maintaining prudent financial management principles that emphasize current cash flow while building long-term value, the acquisition of pre-leased properties to reduce development and leasing risks and the maintenance of sufficient liquidity to acquire and finance properties on desirable terms.

### ACQUIRING PROPERTIES DEVELOPED BY THE BERG GROUP

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We anticipate that most of our growth, if any, in rentable square footage in the foreseeable future will come from the acquisition of new R&D properties that are either currently under development or to be developed in the future by the Berg Group. For example, in early 2003 we acquired an approximate 50% interest in a joint venture, TBI-Mission West, LLC, which consists of four R&D properties totaling approximately 593,000 rentable square feet from the Berg Group. In addition to this project, the Berg Land Holdings Option Agreement gives us the right to acquire future R&D property developments by the Berg Group on up to 250 additional acres of land currently controlled by the Berg Group, which could support approximately 3.93 million square feet of new developments. Nevertheless, at this time we do not anticipate acquiring any additional newly constructed R&D properties from the Berg Group for several years because of current market conditions in the Silicon Valley.

We also have an option under the Berg Land Holdings Option Agreement to purchase all land acquired, directly or indirectly, by Carl E. Berg or Clyde J. Berg that has not been approved with completed buildings and which is zoned for, intended for or appropriate for R&D, office and/or industrial development or use in the states of California, Oregon and Washington. In addition, Carl E. Berg has agreed not to directly or indirectly acquire or develop any real property zoned for office, industrial or R&D use in the states of California, Oregon and Washington without first disclosing and making the acquisition opportunity available to us. Our independent directors committee will decide whether we will pursue the opportunity presented to us by Mr. Berg. This restriction will expire when there is no Berg Group nominee on our board of directors and the Berg Group's fully diluted ownership percentage, which is calculated based on all outstanding shares of common stock and all shares of common stock that could be acquired upon the exercise of all outstanding options to acquire our voting stock, as well as all shares of common stock issuable upon exchange of all O.P. Units ("Fully Diluted"), falls below 25%.

- 2 -

BERG LAND HOLDINGS OPTION AGREEMENT. We believe that control of high quality, developable land is an important strategic factor for continued success in the Silicon Valley market. In December 1998, we entered into the Berg Land Holdings Option Agreement under which we have the option to acquire any future R&D, office and industrial property developed by the Berg Group on land currently owned, optioned, or acquired for these purposes in the future, directly or indirectly, by Carl E. Berg or Clyde J. Berg. As of December 31, 2002, we had acquired 18 leased R&D properties totaling approximately 1,864,000 rentable square feet under this agreement at a cost of approximately \$192.2 million, for which we issued 7,583,686 O.P. Units and assumed debt of approximately \$109 million. The principal terms of the agreement include the following:

- So long as the Berg Group members and their affiliates own or have the right to acquire shares representing at least 65% of our common stock on a Fully Diluted basis, we will have the option to acquire any building developed by any member of the Berg Group on the land subject to the Berg Land Holdings Option Agreement at such time as the building has been leased. Upon our exercise of the option, the option price will equal the sum of the following or a lesser amount as approved by the independent directors committee:

1. the full construction cost of the building; plus
2. 10% of the full construction cost of the building; plus

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3. interest at LIBOR plus 1.65%, on the amount of the full construction cost of the building for the period from the date funds were disbursed by the developer to the close of escrow; plus
  4. the original acquisition cost of the parcel on which the improvements will be constructed, which range from \$8.50 to \$20.00 per square foot for land currently owned or under option; plus
  5. 10% per annum of the amount of the original acquisition cost of the parcel from the later of January 1, 1998 and the seller's acquisition date, to the close of escrow; minus
  6. the aggregate principal amount of all debt encumbering the acquired property.
- The acquisition cost, net of any debt, will be payable in cash, or O.P. Units valued at the average closing price of our common stock over the 30-trading-day period preceding the acquisition or, in cash, at the option of the Berg Group.
  - We also must assume all property tax assessments.
  - If we elect not to exercise the option with respect to any property, the Berg Group may hold and lease the property for its own account, or may sell it to a third party.
  - All action taken by us under the Berg Land Holdings Option Agreement, including any variations from stated terms outlined above, must be approved by a majority of the members of the independent directors committee of our board of directors.

The following table presents certain information concerning currently identified land, projects, and joint venture interests projected for R&D property development that we have the right to acquire under the Berg Land Holdings Option Agreement.

Property	Net Acres	Approximate Rentable Area (Square Feet)	Anticipated Acquisition Da
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Under Development:			
TBI-Mission West JV (2)	37	593,000	Q1 2003

Property	Net Acres	Approximate Rentable Area (Square Feet)
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Available Land:

Piercy & Hellyer	30	490,000
Morgan Hill (2)	24	368,025
King Ranch	12	207,000
Fremont & Cushing	24	387,000
Evergreen (3)	160	2,480,000
-----		
Subtotal	250	3,932.025
-----		
TOTAL	287	4,525,025
=====		

- 3 -

- (1) The estimated acquisition value represents the estimated cash price for acquiring the projects under the terms of the Berg Land Holdings Option Agreement, which may differ from the actual acquisition cost as determined under accounting principles generally accepted in the United States of America ("GAAP"), if O.P. Units or any other securities based on the market value of our common stock are issued in the transaction.
- (2) We expect to own an approximate 50% interest in the partnership through one of our operating partnerships. The property will be operated and managed by the other joint venture partner in the entity. The rentable area shown above reflects both the Company's and the other partner's combined interest in this joint venture. Our net investment in this joint venture will be shown as investments on the 2003 consolidated balance sheets.
- (3) The Berg Group is attempting to rezone all or part of this land for residential use and if successful, it would no longer be available to the Company for purchase.

The time required to complete the leasing of developments varies from property to property. The acquisition dates and acquisition costs set forth in the table are only estimates by management. Generally, we will not acquire any of the above projects until they are fully completed and leased. There can be no assurance that the acquisition date and final cost to the Company as indicated above will be realized. No estimate can be given at this time as to our total cost to acquire projects under the Berg Land Holdings Option Agreement, nor can we be certain of the period in which we will acquire any of the projects.

The Berg Group currently is seeking government approval of a proposed rezoning of the 250-acre Evergreen site to permit residential development on a substantial portion of the site. If the Berg Group obtains the requested rezoning, it will ask the independent directors committee to approve the removal of the rezoned portions of this property from the Berg Land Holdings Option Agreement.

Although we expect to acquire the new properties or joint ventures available to us under the terms of the Berg Land Holdings Option Agreement, subsequent to the approval by the independent directors committee, there can be no assurance that we actually will consummate any of the intended transactions, including those discussed above. Furthermore, we have not yet determined the means by which we would acquire and pay for any such properties or the impact of any of the acquisitions on our business, results of operations, financial condition, Funds From Operation ("FFO") or available cash for distribution. See Item 1., "Risk Factors - Our contractual business relationships with the Berg Group present additional conflicts of interest which may result in the realization of economic benefits or the deferral of tax liabilities by the Berg Group without equivalent benefits to our stockholders."

Given the recent economic downturn in the Silicon Valley, we may not be able to maintain historical levels of growth from acquisitions of new developments in the future.

#### OPPORTUNISTIC ACQUISITIONS

In addition to our principal opportunities under the Berg Land Holdings Option Agreement, we believe our acquisitions experience, established network of real estate and information technology professionals, and



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overall financial condition will continue to provide opportunities for external growth. In general, we will seek opportunistic acquisitions of high quality, well located Silicon Valley R&D properties in situations where illiquidity or inadequate management permit their acquisition at favorable prices, and where our management skills and knowledge of Silicon Valley submarkets may facilitate increases in cash flow and asset value. Furthermore, our use of the operating partnership structure allows us to offer prospective sellers the opportunity to contribute properties on a tax-deferred basis in exchange for O.P. Units. Although we have not consummated any transactions like this since our July 1, 1998 acquisition of the Berg Group properties, this capacity to complete tax-deferred transactions with sellers of real property further enhances our ability to acquire additional properties.

### FOCUS ON SINGLE TENANT SILICON VALLEY R&D PROPERTIES

We intend to continue to emphasize the acquisition of single-tenant rather than multi-tenant properties, a practice that has contributed to the relatively low turnover and high occupancy rates on our properties. We believe that the relatively small number of tenants (84) occupying our 101 properties, mostly under the triple net lease structure, allows us to efficiently manage the properties and to serve our tenants' needs without extensive in-house staff or the assistance of a third-party property management organization. In addition, this emphasis allows us to incur less expense for tenant improvements and leasing commissions than multi-tenant, high turnover property owners. This strategy also reduces the time and expense associated with obtaining building permits and other governmental approvals. We believe that the relatively stable, extended relationships that we have developed with our key tenants are valuable in the expansion of our business.

- 4 -

### RECENT RENTAL MARKET DEVELOPMENTS

All of the Company's properties are located in the Northern California area known as Silicon Valley, which generally consists of portions of Santa Clara County, Southwestern Alameda County, Southeastern San Mateo County and Eastern Santa Cruz County. The Silicon Valley economy and business activity have slowed markedly during 2001 and 2002 after fast-paced growth in 1999 and 2000. In the past several years, the Silicon Valley R&D property market has fluctuated with the local economy. According to a recent report by BT Commercial Real Estate, vacancy rates for Silicon Valley R&D property increased from approximately 14.8% in late 2001 to 21.9% at the end of 2002. Total vacant R&D square footage in Silicon Valley at the end of the fourth quarter of 2002 amounted to 33.6 million square feet, of which 38.7%, or 13 million square feet, was sublease space. Total negative net absorption in 2001 amounted to approximately (15.6) million square feet. For the year 2002, there was a total negative net absorption of approximately (10.9) million square feet. The impact of this decline has not been uniform throughout the area, however. The Silicon Valley R&D property market has been characterized by a substantial number of submarkets, with rent and vacancy rates varying by submarket and location within each submarket. For the years ended December 31, 2002 and 2001, average occupancy in the Company's stabilized portfolio was 90% and 98%, respectively. Prior to the first quarter of 2002, we had achieved historical average occupancy levels of above 98% since 1999. We believe that maintaining average occupancy levels above 98% will not be sustainable given the current economic environment, as evidenced by our occupancy level

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of 84% at December 31, 2002. Although we have stringent lease underwriting standards and continually evaluate the financial capacity of both our prospective and existing tenants to proactively manage portfolio credit risk, a downturn in tenants' businesses may weaken tenants' financial conditions and could result in defaults under their lease obligations. We believe that the average 2003 renewal rental rates for our properties will be approximately equal to, or perhaps, below current rents. In addition, leasing activity for new build-to-suit and vacated R&D properties has slowed considerably during the past year. Leases representing approximately 527,000 square feet, or 6.3% of the Company's 2003 annualized base rent, are scheduled to expire during 2003. If we are unable to lease a significant portion of any vacant space or space scheduled to expire; if we experience significant tenant defaults as a result of the current economic downturn; or if we are not able to lease space at or above current market rates, our results of operations and cash flows will be adversely affected.

### OPERATIONS

We operate as a self-administered, self-advised and self-managed REIT with our own employees. Generally, as the sole general partner of the operating partnerships, we control the business and assets of the operating partnerships and have full and complete authority, discretion and responsibility with respect to the operating partnerships' operations and transactions, including, without limitation, acquiring additional properties, borrowing funds, raising new capital, leasing buildings and selecting and supervising all agents of the operating partnerships.

Although most of our leases are triple net and building maintenance and tenant improvements are the responsibility of the tenants, from time to time we may be required to undertake construction and repair work at our properties. We will bid all major work competitively to subcontractors. Members of the Berg Group may participate in the competitive bidding for the work.

We generally will market the properties and negotiate leases with tenants ourselves. We make the availability of our properties known to the brokerage community to garner their assistance in locating prospective tenants. As a result, we expect to retain our policy of paying fixed commissions to tenants' brokers.

We believe that our business practices provide us with competitive advantages, including -

- EXTERNAL DEVELOPMENT AFFILIATE. We have the option to purchase all future R&D, office, industrial property developments of the Berg Group under the Berg Land Holdings Option Agreement on land currently held or acquired directly or indirectly by Carl E. Berg or Clyde J. Berg that is zoned for those purposes and located in California, Oregon and Washington following completion and lease-up of the property. Our option will terminate when the Berg Group's ownership percentage falls below 65% of our common stock calculated on a Fully Diluted basis. Carl E. Berg has agreed to refer to us, and not acquire through the Berg Group, all opportunities to acquire the same kinds of real property in these states that he identifies in the future, until such time as the Berg Group's Fully Diluted ownership percentage falls below 25% and there is no Berg Group nominee on our board of directors. The acquisition terms and conditions for the existing and identified projects have been pre-negotiated and are documented under the Berg Land Holdings Option Agreement. This relationship provides us with the economic benefits of development while eliminating development and initial lease-up risks. It also provides us with access to one of the most experienced development teams in the Silicon

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Valley without the expense of maintaining development personnel.

- 5 -

- LEAN ORGANIZATION, EXPERIENCED TEAM. In part because of our primary focus on Silicon Valley, our experience with the special real estate requirements of information technology tenants and the long-term triple-net structure of our leases, we are able to conduct and expand our business with a small management team comprised of highly qualified and experienced professionals working within a relatively flat organizational structure. We believe that the leanness of our organization and our experience will enable us to rapidly assess and respond to market opportunities and tenant needs, control operating expenses and develop and maintain excellent relationships with tenants. We further believe that these advantages translate into significantly lower costs for operations and give us the ability, along with the Berg Group, to compete favorably with other R&D property developers in Silicon Valley, especially for build-to-suit projects subject to competitive bidding. Furthermore, we believe this lower cost structure allows us to generate better returns from properties whose value can be increased through appropriate remodeling and efficient property management.
  
- SOUND PROPERTY MANAGEMENT PRACTICES. For each property, the management team, along with the Berg Group staff, develops a specific marketing and property management program. We select vendors and subcontractors on a competitive bid basis from a select group of highly qualified firms with whom we maintain ongoing relationships and carefully supervise their work.

### OPERATING PARTNERSHIP AGREEMENTS

#### MANAGEMENT

The operating partnerships consist of four separate limited partnerships engaged in the combined operation and ownership of all our properties. The operating partnership agreements are identical in all material respects for all four of the limited partnerships. Pursuant to operating partnership agreements, we act as the sole general partner of the operating partnerships, in which capacity we have exclusive control of the business and assets of the operating partnerships and generally have full and complete authority, discretion and responsibility with respect to the operating partnerships' operations and transactions, including, without limitation, acquisitions of additional properties, borrowing funds, raising new capital, leasing buildings, as well as selecting and supervising all employees and agents of the operating partnerships. Through our authority to manage our business and affairs, our board of directors directs the business of the operating partnerships.

Notwithstanding our effective control of the operating partnerships, the Berg Group holds a substantial majority of the outstanding O.P. Units and the consent of the limited partners holding a majority of the outstanding O.P. Units is required with respect to certain extraordinary actions involving the operating partnerships, including:

- the amendment, modification or termination of the operating partnership agreements;
  
- a general assignment for the benefit of creditors or the appointment of a custodian, receiver or trustee for any of the assets of the operating partnerships;

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- the institution of any proceeding for bankruptcy of the operating partnerships;
- the transfer of any general partnership interests in the operating partnerships, including, with certain exceptions, transfers attendant to any merger, consolidation or liquidation of our corporation;
- the admission of any additional or substitute general partner in the operating partnerships; and
- a change of control of the operating partnerships.

In addition, until the ownership interest of the Berg Group and its affiliates is less than 15% of the common stock on a Fully Diluted basis, the consent of the limited partners holding a majority of the outstanding O.P. Units is also required with respect to:

- the liquidation of the operating partnerships;
- the sale or other transfer of all or substantially all of the assets of the operating partnerships and certain mergers and business combinations resulting in the complete disposition of all O.P. Units; and
- the issuance of limited partnership interests having seniority as to distributions, assets and voting over the O.P. Units.

- 6 -

### TRANSFERABILITY OF O.P. UNITS

The operating partnership agreements provide that the limited partners may transfer their O.P. Units, subject to certain limitations. Except for certain transfers by the limited partners to or from certain of their affiliates, however, all transfers may be made only with our prior written consent as the sole general partner of the operating partnerships.

In addition, no transfer of O.P. Units by the limited partners may be made in violation of certain regulatory and other restrictions set forth in the operating partnership agreements. Except in the case of certain permitted transfers to or from certain affiliates of the limited partners, the exchange rights, the put rights, rights to participate in future equity financings and provisions requiring the approval of certain limited partners for certain matters will no longer be applicable to O.P. Units so transferred, and the transferee will not have any rights to nominate persons to our board of directors.

### ADDITIONAL CAPITAL CONTRIBUTIONS AND LOANS

Each operating partnership agreement provides that, if the operating partnership requires additional funds to pursue its investment objectives, we may fund such investments by raising additional equity capital and making a capital contribution to the operating partnerships or by borrowing such funds and lending the net proceeds of such loans to the operating partnerships. If we intend to provide additional funds through a contribution to capital and purchase of units of general partnership interest, the limited partners will have the right to participate in such funding on a pro rata, pari passu basis and to acquire additional O.P. Units. If the limited partners do not participate in such financing, we

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will acquire additional units of general partnership interest. In either case, the number of additional units of partnership interest will be increased based upon the amount of the additional capital contributions and the value of the operating partnerships as of the date such contributions are made.

In addition, as general partner of the operating partnerships, we have the ability to cause the operating partnerships to issue additional O.P. Units. In the event that the operating partnerships issue new O.P. Units for cash but not property, the limited partners will have the right to purchase new O.P. Units at the price we offer in the transaction giving rise to such participation right in order, and to the extent necessary, to maintain their respective percentage interests in the operating partnerships.

### EXCHANGE RIGHTS, PUT RIGHTS AND REGISTRATION RIGHTS

Under the Exchange Rights Agreement between us and the limited partners, the limited partners have exchange rights that generally became exercisable on December 29, 1999. The Exchange Rights Agreement permits every limited partner to tender O.P. Units to us, and, at our election, to receive common stock on a one-for-one basis at then-current market value, an equivalent amount of cash, or a combination of cash and common stock in exchange for the O.P. Units tendered, subject to the 9% overall ownership limit imposed on non-Berg Group stockholders under our charter document, or the overall 20% Berg Group ownership limit, as the case may be. For more information, please refer to this Item 1., "Risk Factors - Failure to satisfy federal income tax requirements for REITs could reduce our distributions, reduce our income and cause our stock price to fall." This exchange ratio is subject to adjustment for stock splits, stock dividends, recapitalizations of our common stock and similar types of corporate actions. In addition, once in each 12-month period beginning each December 29, the limited partners, other than Carl E. Berg and Clyde J. Berg, may exercise a put right to sell their O.P. Units to the operating partnerships at a price equal to the average market price of the common stock for the 10-trading day period immediately preceding the date of tender. Upon any exercise of the put rights, we will have the opportunity for a period of 15 days to elect to fund the purchase of the O.P. Units and purchase additional general partner interests in the operating partnerships for cash, unless the purchase price exceeds \$1 million in the aggregate for all tendering limited partners, in which case, the operating partnerships or we will be entitled to reduce proportionally the number of O.P. Units to be acquired from each tendering limited partner so that the total purchase price is not more than \$1 million.

The shares of our common stock issuable in exchange for the O.P. Units outstanding at July 1, 1998 and the O.P. Units issued pursuant to the Pending Projects Acquisition Agreement were registered under the Securities Act and generally may be sold without restriction if they are acquired by limited partners that are not affiliates, as defined under SEC Rule 144. For more information please refer to this Item 1., "Risk Factors - Shares eligible for future sale could affect the market price of our stock." The Exchange Rights Agreement gives the holders of O.P. Units the right to participate in any registered public offering of the common stock initiated by us to the extent of 25% of the total shares sold in the offering upon converting O.P. Units to shares of common stock, but subject to the underwriters' unlimited right to reduce the participation of all selling stockholders. The holders of O.P. Units will be able to request resale registrations of shares of common stock acquired on exchange of O.P. Units on a Form S-3, or any equivalent form of registration statement. We are obligated to effect no more than two such registrations in any 12-month period. We are obligated to assist the O.P. Unit holders in obtaining a firm commitment underwriting agreement for such resale from a qualified

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investment-banking firm. If registration on Form S-3, or an equivalent form, is not available for any reason, we will be obligated to effect a registration of the shares to be acquired on exercise of the exchange rights on Form S-11, or an equivalent form, in an underwritten public offering, upon demand by the holders of no fewer than 500,000 O.P. Units. All holders of O.P. Units will be entitled to participate in such registration. We

- 7 -

will bear all costs of such registrations other than selling expenses, including commissions and separate counsels' fees of the O.P. Unit holders. We will not be required to effect any registration for resale on Form S-3, or equivalent form of common stock shares issuable to the holder of O.P. Units if the request is for less than 250,000 shares.

### OTHER MATTERS

The operating partnership agreements require that the operating partnerships be operated in a manner that will enable us to satisfy the requirements for being classified as a REIT and to avoid any federal income or excise tax liability.

The operating partnership agreements provide that the combined net operating cash flow from all the operating partnerships, as well as net sales and refinancing proceeds, will be distributed from time to time as determined by our board of directors, but not less frequently than quarterly, pro rata in accordance with the partners' percentage interests in the operating partnerships, taken as a whole. This provision is intended to cause the periodic distributions per O.P. Unit and per share of our common stock to be equal. As a consequence of this provision, the capital interest of a partner in each of the operating partnerships, including our capital interests, might at times differ significantly from the partner's percentage interest in the net income and cash flow of that operating partnership. We do not believe that such differences would have a material impact on our business, financial condition or Funds Available for Distributions ("FAD"), however.

Pursuant to the operating partnership agreements, the operating partnerships will also assume and pay when due, or reimburse us for payment of, certain costs and expenses relating to our continuity of existence and operations.

The operating partnership agreements provide that, upon the exercise of an outstanding option under the 1997 Stock Option Plan, we may purchase additional general partner interests in the operating partnerships by contributing the exercise proceeds to the operating partnerships. Our increased interest shall be equal to the percentage of outstanding shares of common stock and O.P. Units on an as-converted basis represented by the shares acquired upon exercise of the option.

### TERM

The operating partnerships will continue in full force and effect until December 31, 2048 or until sooner dissolved pursuant to the terms of the operating partnership agreements.

### EMPLOYEES

As of March 25, 2003, we employed five people, all of whom work at our

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executive offices at 10050 Bandley Drive, Cupertino, California, 95014.

### FACILITIES

We sublease office space at 10050 Bandley Drive, Cupertino, California from Berg & Berg Enterprises, Inc. and share clerical staff and other overhead on what we consider to be very favorable terms. The total monthly rent payable by us to Berg & Berg Enterprises, Inc. is \$7,520.

### RISK FACTORS

You should carefully consider the following risks, together with the other information contained elsewhere in this Form 10-K. The following risks relate principally to our business and the industry in which we operate. The risks and uncertainties classified below are not the only ones we face.

WE ARE DEPENDENT ON CARL E. BERG, AND IF WE LOSE HIS SERVICES OUR BUSINESS MAY BE HARMED AND OUR STOCK PRICE COULD FALL.

We are substantially dependent upon the leadership of Carl E. Berg, our Chairman and Chief Executive Officer. Losing Mr. Berg's knowledge and abilities could have a material adverse effect on our business and the value of our common stock. Mr. Berg manages our day-to-day operations and devotes a significant portion of his time to our affairs, but he has a number of other business interests as well. These other activities reduce Mr. Berg's attention to our business.

MR. BERG AND HIS AFFILIATES EFFECTIVELY CONTROL OUR CORPORATION AND THE OPERATING PARTNERSHIPS AND MAY ACT IN WAYS THAT ARE DISADVANTAGEOUS TO OTHER STOCKHOLDERS.

SPECIAL BOARD VOTING PROVISIONS. Our governing corporate documents, which are our articles of amendment and restatement, or charter, and our bylaws, provide substantial control rights for the Berg Group. The Berg Group's control of our corporation

- 8 -

means that the value and returns from an investment in the Company's common stock are subject to the Berg Group's exercise of its rights. These rights include a requirement that Mr. Berg or his designee as director approve certain fundamental corporate actions, including amendments to our charter and bylaws and any merger, consolidation or sale of all or substantially all of our assets. In addition, our bylaws provide that a quorum necessary to hold a valid meeting of the board of directors must include Mr. Berg or his designee. The rights described in the two preceding sentences apply only as long as the Berg Group members and their affiliates, other than us and the operating partnerships, beneficially own, in the aggregate, at least 15% of our outstanding shares of common stock on a Fully Diluted basis. Also, directors representing more than 75% of the entire board of directors must approve other significant transactions, such as incurring debt above certain amounts and conducting business other than through the operating partnerships. Without the approval of Mr. Berg or his designee, board of directors approval that we may need for actions that might result in a sale of your stock at a premium or raising additional capital when needed could be difficult or impossible to obtain.

BOARD OF DIRECTORS REPRESENTATION. The Berg Group members have the right to designate two of the director nominees submitted by our board of directors to stockholders for election, as long as the Berg Group members and their

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affiliates, other than us and the operating partnerships, beneficially own, in the aggregate, at least 15% of our outstanding shares of common stock calculated on a Fully Diluted basis. If the Fully Diluted ownership of the Berg Group members and their affiliates, other than us and the operating partnerships, is less than 15% but is at least 10% of the common stock, the Berg Group members have the right to designate one of the director nominees submitted by our board of directors to stockholders for election. Its right to designate director nominees affords the Berg Group substantial control and influence over the management and direction of our corporation. The Berg Group's interests could conflict with the interests of our stockholders, and could adversely affect the price of our common stock.

**SUBSTANTIAL OWNERSHIP INTEREST.** The Berg Group currently owns O.P. Units representing approximately 75.4% of the equity interests in the operating partnerships and approximately 75.2% of our equity interests on a Fully Diluted basis. The O.P. Units may be converted into shares of common stock, subject to limitations set forth in our charter and other agreements with the Berg Group, and upon conversion would represent voting control of our corporation. The Berg Group's ability to exchange its O.P. Units for common stock permits it to exert substantial influence over the management and direction of our corporation. This influence increases our dependence on the Berg Group.

**LIMITED PARTNER APPROVAL RIGHTS.** Mr. Berg and other limited partners, including other members of the Berg Group, may restrict our operations and activities through rights provided under the terms of the amended and restated agreement of limited partnership which governs each of the operating partnerships and our legal relationship to each operating partnership as its general partner. Matters requiring approval of the holders of a majority of the O.P. Units, which necessarily would include the Berg Group, include the following:

- the amendment, modification or termination of any of the operating partnership agreements;
- the transfer of any general partnership interest in the operating partnerships, including, with certain exceptions, transfers attendant to any merger, consolidation or liquidation of our corporation;
- the admission of any additional or substitute general partners in the operating partnerships;
- any other change of control of the operating partnerships;
- a general assignment for the benefit of creditors or the appointment of a custodian, receiver or trustee for any of the assets of the operating partnerships; and
- the institution of any bankruptcy proceeding for any operating partnership.

In addition, as long as the Berg Group members and their affiliates, other than us and the operating partnerships, beneficially own, in the aggregate, at least 15% of the outstanding shares of common stock on a Fully Diluted basis, the consent of the limited partners holding the right to vote a majority of the total number of O.P. Units outstanding is also required with respect to:

- the sale or other transfer of all or substantially all of the assets of the operating partnerships and certain mergers and business combinations resulting in the complete disposition of all O.P. Units;



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- the issuance of limited partnership interests senior to the O.P. Units as to distributions, assets and voting; and
- the liquidation of the operating partnerships.

- 9 -

The liquidity of an investment in the Company's common stock, including our ability to respond to acquisition offers, will be subject to the exercise of these rights.

OUR CONTRACTUAL BUSINESS RELATIONSHIPS WITH THE BERG GROUP PRESENT ADDITIONAL CONFLICTS OF INTEREST, WHICH MAY RESULT IN THE REALIZATION OF ECONOMIC BENEFITS OR THE DEFERRAL OF TAX LIABILITIES BY THE BERG GROUP WITHOUT EQUIVALENT BENEFITS TO OUR STOCKHOLDERS.

Our contracts with the Berg Group provide it with interests that could conflict with those of our other stockholders, including the following:

- our headquarters are leased from an entity owned by the Berg Group, to whom we pay rent of \$7,520 per month;
- the Berg Group is permitted to conduct real estate and business activities other than our business;
- if we decline an opportunity that has been offered to us, the Berg Group may pursue it, which would reduce the amount of time that Mr. Berg could devote to our affairs and could result in the Berg Group's development of properties that compete with our properties for tenants;
- in general, we have agreed to limit the liability of the Berg Group to our corporation and our stockholders arising from the Berg Group's pursuit of these other opportunities;
- we acquired most of our properties from the Berg Group on terms that were not negotiated at arm's length and without many customary representations and warranties that we would have sought in an acquisition from an unrelated party; and
- we have assumed liability for debt to the Berg Group and debt for which the Berg Group was liable.

The Berg Group has agreed that the independent directors committee of our board of directors must approve all new transactions between us and any of its members, or between us and any entity in which it directly or indirectly owns 5% or more of the equity interests, including the operating partnerships for this purpose. This committee currently consists of three directors who are independent of the Berg Group.

EXCLUDED PROPERTIES. With our prior knowledge, the Berg Group retained two R&D properties in Scotts Valley, Santa Cruz County, California, in which the operating partnerships and we have no ownership interest. Efforts of the Berg Group to lease these other properties could interfere with similar efforts on our behalf.

BERG LAND HOLDINGS. The Berg Group owns several parcels of unimproved land in the Silicon Valley that the operating partnerships and we have the right to acquire under the terms of the Berg Land Holdings Option Agreement. We have agreed to pay an amount based on pre-negotiated terms for any of the properties that we do acquire. We must pay the acquisition price in cash

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unless the Berg Group elects, in its discretion, to receive O.P. Units valued at the average market price of a share of common stock during the 30-trading-day period preceding the acquisition date. At the time of acquisition, which is subject to the approval of the independent directors committee of our board of directors, these properties may be encumbered by debt that we or the operating partnerships will be required to assume or repay. The use of our cash or an increase in our indebtedness to acquire these properties could have a material adverse effect on our financial condition, results of operations and ability to make cash distributions to our stockholders.

**TAX CONSEQUENCES OF SALE OF PROPERTIES.** Because many of our properties have unrealized taxable gain, a sale of those properties could create adverse income tax consequences for limited partners of the operating partnerships. We have agreed with Carl E. Berg, Clyde J. Berg and John Kontrabecki, a limited partner in two of the operating partnerships, that prior to December 29, 2008, each of them may prevent us and the operating partnerships from selling or transferring any of the properties that were acquired from them in our July 1998 UPREIT acquisition if the proposed sale or other transfer will be a taxable transaction. As a result, our opportunities to sell these properties may be limited. If we need to sell any of these properties to raise cash to service our debt, acquire new properties, pay cash distributions to stockholders or for other working capital purposes, we may be unable to do so. These restrictions could harm our business and cause our stock price to fall.

**TERMS OF TRANSFERS: ENFORCEMENT OF AGREEMENT OF LIMITED PARTNERSHIP.** The terms of the Pending Projects Acquisition Agreement, the Berg Land Holdings Option Agreement, the partnership agreement of each operating partnership and other material agreements through which we have acquired our interests in the operating partnerships and the properties formerly controlled by the Berg Group were not determined through arm's-length negotiations and could be less favorable to us than

- 10 -

those obtained from an unrelated party. In addition, Mr. Berg and representatives of the Berg Group sitting on our board of directors may be subject to conflicts of interests with respect to their obligations as our directors to enforce the terms of the partnership agreement of each operating partnership when such terms conflict with their personal interests. The terms of our charter and bylaws also were not determined through arm's-length negotiations. Some of these terms, including representations and warranties applicable to acquired properties, are not as favorable as those that we would have sought through arm's-length negotiations with unrelated parties. As a result, an investment in our common stock may involve risks not found in businesses in which the terms of material agreements have been negotiated at arm's length.

**RELATED PARTY DEBT.** As of December 31, 2002, we had borrowed approximately \$58.8 million under our \$100 million line of credit with the Berg Group, which is collateralized by ten of our properties and expires March 2004. Currently, there is no debt outstanding under this line of credit, but we have the right to draw on the line of credit and are liable for repayment of all amounts owing under the line of credit. The line of credit bears interest at an annual rate of LIBOR plus 1.30%. The Berg Group has no obligation to renew this line of credit when it expires in 2004, and we may be unable to obtain a similar credit facility on comparable terms. We are also liable for a mortgage loan of \$11.1 million that we assumed in connection with our acquisition of a property that we acquired in May 2000 under the Berg Land Holdings Option Agreement. If we are unable to repay

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our debts to the Berg Group when due, the Berg Group could take action to enforce our payment obligations. They could result in a reduction in the amount of cash distributions to our stockholders. In turn, if we fail to meet the minimum distributions test because of a loan default or another reason, we could lose our REIT classification for federal income tax purposes. For more information please refer to Item 1., "Risk Factors - Failure to satisfy federal income tax requirements for REITs could reduce our distributions, reduce our income and cause our stock price to fall."

OUR OPTION TO ACQUIRE R&D PROPERTIES DEVELOPED ON EXISTING LAND AND LAND ACQUIRED IN THE FUTURE BY THE BERG GROUP WILL TERMINATE WHEN THE BERG GROUP'S OWNERSHIP INTEREST HAS BEEN REDUCED.

The Berg Land Holdings Option Agreement, as amended, which provides us with significant benefits and opportunities to acquire additional R&D properties from the Berg Group, will expire when the Berg Group and their affiliates (excluding us and the operating partnerships) own less than 65% of our common stock on a Fully Diluted basis. Termination of the Berg Land Holdings Option Agreement could result in limitation of our growth, which could cause our stock price to fall.

WE MAY CHANGE OUR INVESTMENT AND FINANCING POLICIES AND INCREASE YOUR RISK WITHOUT STOCKHOLDER APPROVAL.

Our board of directors determines the investment and financing policies of the operating partnerships and our policies with respect to certain other activities, including our business growth, debt capitalization, distribution and operating policies. Our board of directors may amend these policies at any time without a vote of the stockholders. Changes in these policies could materially adversely affect our financial condition, results of operations and ability to make cash distributions to our stockholders, which could harm our business and cause our stock price to fall. For more information please refer to Item 7., "Management's Discussion and Analysis of Financial Condition and Results of Operations - Policies with Respect to Certain Activities."

ANTI-TAKEOVER PROVISIONS IN OUR CHARTER COULD PREVENT ACQUISITIONS OF OUR STOCK AT A SUBSTANTIAL PREMIUM.

Provisions of our charter and our bylaws could delay, defer or prevent a transaction or a change in control of our corporation, or a similar transaction, that might involve a premium price for our shares of common stock or otherwise be in the best interests of our stockholders. Provisions of the Maryland general corporation law, which would apply to potential business combinations with acquirers other than the Berg Group or stockholders who invested in us in December 1998, also could prevent the acquisition of our stock for a premium, as discussed in "Certain Provisions of Maryland Law and of our Charter and Bylaws."

AN INVESTMENT IN OUR STOCK INVOLVES RISKS RELATED TO REAL ESTATE INVESTMENTS THAT COULD HARM OUR BUSINESS AND CAUSE OUR STOCK PRICE TO FALL.

RENTAL INCOME VARIES. Real property investments are subject to varying degrees of risk. Investment returns available from equity investments in real estate depend in large part on the amount of income earned and capital appreciation, which our properties generate, as well as our related expenses incurred. If our properties do not generate revenues sufficient to meet operating expenses, debt service and capital expenditures, our income and ability to make distributions to our stockholders will be adversely affected. Income from our properties may also be adversely affected by general economic conditions, local economic conditions such as oversupply of commercial real estate, the attractiveness of our properties to tenants

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and prospective tenants, competition from other available rental property, our ability to provide adequate maintenance and insurance, the cost of tenant improvements, leasing commissions and tenant inducements and the potential of increased operating costs, including real estate taxes.

- 11 -

EXPENDITURES FOR PROPERTY OWNERSHIP ARE FIXED. Income from properties and real estate values are also affected by a variety of other factors, such as governmental regulations and applicable laws, including real estate, zoning and tax laws, interest rate levels and the availability of financing. Various significant expenditures associated with an investment in real estate, such as mortgage payments, real estate taxes and maintenance expenses, generally are not reduced when circumstances cause a reduction in revenue from the investment. Thus, our operating results and our cash flow may decline materially if our rental income is reduced.

ILLIQUIDITY. Real estate investments are relatively illiquid, which limits our ability to restructure our portfolio in response to changes in economic or other conditions.

GEOGRAPHIC CONCENTRATION. All of our properties are located in the southern portion of the San Francisco Bay Area commonly referred to as the "Silicon Valley." The Silicon Valley economy has been weakening for the past two years, and future increases in values and rents for our properties depend to a significant extent on the recovery of this region's economy.

LOSS OF KEY TENANTS. Single tenants, many of whom are large, publicly traded information technology companies, occupy most of our properties. For example, we may lose tenants when existing leases expire because it may be difficult to re-lease the same property due to substantial overcapacity of R&D properties in the Silicon Valley at present. Losing a key tenant could adversely affect our operating results and our ability to make distributions to stockholders if we are unable to obtain replacement tenants promptly. Moreover, to retain key tenants upon the expiration of existing leases we may need to reduce rents, which also could adversely affect our operating results and ability to make distributions.

TENANT BANKRUPTCIES. Key tenants could seek the protection of the bankruptcy laws, which could result in the rejection and termination of their leases, thereby causing a reduction in our rental income. Under the bankruptcy laws, these tenants may have the right to reject their leases with us and our claim for rent will be limited to the greater of one year or 15% of the total amount giving under the leases upon default, but not to exceed three years of the remaining term of the lease following the earlier of the petition filing date or the date on which we gained repossession of the property, as well as any rent that was unpaid on the earlier of those dates.

OUR SUBSTANTIAL INDEBTEDNESS. Our properties are subject to substantial indebtedness. If we are unable to make required mortgage payments, we could sustain a loss as a result of foreclosure on our properties by the mortgagor. When the Berg Group line of credit expires in March 2004, we cannot assure you that we will be able to obtain a replacement line of credit with terms similar to the Berg Group line of credit, or at all. Our cost of borrowing funds could increase substantially after the Berg Group line of credit expires. Under our mortgage loan agreements with Northwestern Mutual Life Insurance Company, the payments of all \$100 million outstanding could be accelerated upon the sale or certain other transfers of more than 51% of the total number of O.P. Units and common stocks of the Company held by the members of the Berg Group. We have no

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reason to expect such a sale or transfer in the foreseeable future, but the members of the Berg Group have no obligation to us to refrain from any such sale or other transfer. We have adopted a policy of maintaining a consolidated ratio of debt to total market capitalization, which includes for this purpose the market value of all shares of common stock for which outstanding O.P. Units are exchangeable, of less than 50%. This ratio may not be exceeded without the approval of more than 75% of our entire board of directors. Our board of directors may vote to change this policy, however, and we could become more highly leveraged, resulting in an increased risk of default on our obligations and an increase in debt service requirements that could adversely affect our financial condition, our operating results and our ability to make distributions to our stockholders.

ENVIRONMENTAL CLEAN-UP LIABILITIES. Our properties may expose us to liabilities under applicable environmental and health and safety laws. If these liabilities are material, our financial condition and ability to pay cash distributions may be affected adversely, which would cause our stock price to fall.

UNINSURED LOSSES. We may sustain uninsured losses with respect to some of our properties. If these losses are material, our financial condition, our operating results and our ability to make distributions to our stockholders may be affected adversely.

EARTHQUAKE DAMAGES ARE UNINSURED. All of our properties are located in areas that are subject to earthquake activity. Our insurance policies do not cover damage caused by seismic activity, although they do cover losses from fires after an earthquake. We generally do not consider such insurance coverage to be economical. If an earthquake occurs and results in substantial damage to our properties, we could lose our investment in those properties, which loss would have a material adverse effect on our financial condition, our operating results and our ability to make distributions to our stockholders.

FAILURE TO SATISFY FEDERAL INCOME TAX REQUIREMENTS FOR REITS COULD REDUCE OUR DISTRIBUTIONS, REDUCE OUR INCOME AND CAUSE OUR STOCK PRICE TO FALL.

- 12 -

FAILURE TO QUALIFY AS A REIT. Although we currently operate in a manner designed to enable us to qualify and maintain our REIT status, it is possible that economic, market, legal, tax or other considerations may cause us to fail to qualify as a REIT or may cause our board of directors either to refrain from making the REIT election or to revoke that election once made. To maintain REIT status, we must meet certain tests for income, assets, distributions to stockholders, ownership interests, and other significant conditions. If we fail to qualify as a REIT in any taxable year, we will not be allowed a deduction for distributions to our stockholders in computing our taxable income and would be subject to federal income tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. Moreover, unless we were entitled to relief under certain provisions of the tax laws, we would be disqualified from treatment as a REIT for the four taxable years following the year in which our qualification was lost. As a result, fund available for distribution, or FAD, to our stockholders would be reduced for each of the years involved and, in addition, we would no longer be required to make distributions to our stockholders.

REIT DISTRIBUTION REQUIREMENTS. To maintain REIT status, we must distribute as a dividend to our stockholders at least 90% of our otherwise taxable

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income, after certain adjustments, with respect to each tax year. We may also be subject to a 4% non-deductible excise tax in the event our distributions to stockholders fail to meet certain other requirements. Failure to comply with these requirements could result in our income being subject to tax at regular corporate rates and could cause us to be liable for the excise tax.

**OWNERSHIP LIMIT NECESSARY TO MAINTAIN REIT QUALIFICATION.** As a REIT, the federal tax laws restrict the percentage of the total value of our stock that may be owned by five or fewer individuals to 50% or less. Our charter generally prohibits the direct or indirect ownership of more than 9% of our common stock by any stockholder. This limit excludes the Berg Group, which has an aggregate ownership limit of 20%. In addition, as permitted by our charter, our board of directors has authorized an exception to two other stockholders that permits them to collectively own, directly or indirectly, up to 18.5% of our common stock on an aggregate basis, subject to the terms of an ownership limit exemption agreement. In general, our charter prohibits the transfer of shares that result in a loss of our REIT qualification and provides that any such transfer or any other transfer that causes a stockholder to exceed the ownership limit will result in the shares being automatically transferred to a trust for the benefit of a charitable beneficiary. Accordingly, in the event that either the Berg Group or the two stockholders increase their stock ownership in our corporation, a stockholder who acquires shares of our common stock, even though his, her or its aggregate ownership may be less than 9%, may be required to transfer a portion of that stockholder's shares to such a trust in order to preserve our status as a REIT.

**STOCKHOLDERS ARE NOT ASSURED OF RECEIVING CASH DISTRIBUTIONS FROM US.**

Our income will consist primarily of our share of the income of the operating partnerships, and our cash flow will consist primarily of our share of distributions from the operating partnerships. Differences in timing between the receipt of income and the payment of expenses in arriving at our taxable income or the taxable income of the operating partnerships and the effect of required debt amortization payments could require us to borrow funds, directly or through the operating partnerships, on a short-term basis to meet our intended distribution policy.

Our board of directors will determine the amount and timing of distributions by the operating partnerships and of distributions to our stockholders. Our board of directors will consider many factors prior to making any distributions, including the following:

- the amount of cash available for distribution;
- the operating partnerships' financial condition;
- whether to reinvest funds rather than to distribute such funds;
- the operating partnerships' capital expenditures;
- the effects of new property acquisitions, including acquisitions under our existing agreements with the Berg Group;
- the annual distribution requirements under the REIT provisions of the federal income tax laws; and
- such other factors as our board of directors deems relevant.

We cannot assure you that we will be able to meet or maintain our cash distribution objectives.

OUR PROPERTIES COULD BE SUBJECT TO PROPERTY TAX REASSESSMENTS.

We do not believe that the acquisition of any of our interests in the operating partnerships has resulted in a statutory change in ownership that could give rise to a reassessment of any of our properties for California property tax purposes. We cannot assure you, however, that county assessors or other tax administrative agencies in California will not attempt to assert that such a change occurred as a result of these transactions. Although we believe that such a challenge would not be successful ultimately, we cannot assure you regarding the outcome of any related dispute or proceeding. A reassessment could result in increased real estate taxes on our properties that, as a practical matter, we may be unable to pass through to our tenants in full. This could reduce our net income and our FAD and cause our stock price to fall.

OUR OBLIGATION TO PURCHASE TENDERED O.P. UNITS COULD REDUCE OUR CASH DISTRIBUTIONS.

Each of the limited partners of the operating partnerships, other than Carl E. Berg and Clyde J. Berg, has the annual right to cause the operating partnerships to purchase the limited partner's O.P. Units at a purchase price based on the average market value of the common stock for the ten-trading-day period immediately preceding the date of tender. Upon a limited partner's exercise of any such right, we will have the option to purchase the tendered O.P. Units with available cash, borrowed funds or the proceeds of an offering of newly issued shares of common stock. These put rights became exercisable on December 29, 1999, and are available once during a 12-month period. If the total purchase price of the O.P. Units tendered by all of the eligible limited partners in one year exceeds \$1 million, the operating partnerships or we will be entitled to reduce proportionately the number of O.P. Units to be acquired from each tendering limited partner so that the total purchase price does not exceed \$1 million. The exercise of these put rights may reduce the amount of cash that we have available to distribute to our stockholders and could cause our stock price to fall.

In addition, after December 1999, all O.P. Unit holders may tender their O.P. Units to us in exchange for shares of common stock on a one-for-one basis at then-current market value or an equivalent amount in cash, at our election. If we elect to pay cash for the O.P. Units, our liquidity may be reduced and we may lack sufficient funds to continue paying the amount of our anticipated or historical cash distributions. This could cause our stock price to fall.

SHARES ELIGIBLE FOR FUTURE SALE COULD AFFECT THE MARKET PRICE OF OUR STOCK.

We cannot predict the effect, if any, that future sales of shares of common stock, or the availability of shares for future sale, could have on the market price of the common stock. As of December 31, 2002, all outstanding shares of our common stock, other than shares controlled by affiliates, were eligible for sale in the public market without resale restrictions under the federal securities laws. Sales of substantial amounts of common stock, including shares issued in connection with the exercise of the exchange rights held by the limited partners of the operating partnerships, or the perception that such sales could occur, could adversely affect prevailing market prices for the common stock. Additional shares of common stock may be issued to limited partners, subject to the applicable REIT qualification ownership limit, if they exchange their O.P. Units for shares

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of common stock pursuant to their exchange rights, or may be sold by us to raise funds required to purchase such O.P. Units if eligible limited partners elect to tender O.P. Units to us using their put rights. Shares of stock controlled by our affiliates may be sold subject to Rule 144, including the limitation under Rule 144(e) on the number of shares that may be sold within a three-month period.

MARKET INTEREST RATES MAY REDUCE THE VALUE OF THE COMMON STOCK.

One of the factors that investors consider important in deciding whether to buy or sell shares of a REIT is the distribution rate on such shares, as a percentage of the price of such shares, relative to market interest rates. If market interest rates go up, prospective purchasers of REIT shares may expect a higher distribution rate. Higher interest rates would not, however, increase the funds available for us to distribute, and, in fact, would likely increase our borrowing costs and decrease FAD. Thus, higher market interest rates could cause the price of our common stock to fall.

- 14 -

### ITEM 2. PROPERTIES

#### GEOGRAPHIC AND TENANT FOCUS

We focus principally on the facility requirements of information technology companies in the Silicon Valley, which include space for office, R&D, light manufacturing and assembly. With the Silicon Valley's highly educated and skilled work force, history of numerous successful start-up companies and large contingent of venture capital firms, we believe that this region will continue to spawn successful new high-growth industries and entrepreneurial businesses to an extent matched nowhere else in the United States. We believe that our focus and thorough understanding of the Silicon Valley real estate market enables us to:

- anticipate trends in the market;
- identify and concentrate our efforts on the most favorably located sub-markets;
- take advantage of our experience and extensive contacts and relationships with local government agencies, real estate brokers and subcontractors, as well as with tenants and prospective tenants; and
- identify strong tenants.

All of our properties are general-purpose R&D properties located in desirable sub-markets of the Silicon Valley. Many of our properties have been developed for or leased to single tenants, many of whom are large, publicly traded information technology companies. Most of our major tenants have occupied our properties for many years under triple-net leases that require the tenant to pay substantially all operating costs, including property insurance, real estate taxes and general operating costs.

#### LEASING

The current leases for the properties typically have terms ranging from three to ten years. Most of the leases provide for fixed periodic rental increases. Substantially all of the leases are triple-net leases pursuant to which the tenant is required to pay substantially all of the operating expenses of the property, property taxes and insurance, including all maintenance and repairs, excluding only certain structural repairs to the



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building shell. Most of the leases contain renewal options that allow the tenant to extend the lease based on adjustments to then prevailing market rates, or based on fixed rental adjustments, which may be below market rates.

### PROPERTY PORTFOLIO

All of our properties are R&D properties. Generally, these properties are one- to four-story buildings of tilt-up concrete construction, have 3.5 or more parking spaces per thousand rentable square feet, clear ceiling heights of less than 18 feet, and range in size from 6,000 to 515,000 rentable square feet. Most of the office space is open and suitable for configuration to meet the tenants' requirements with the use of movable dividers.

The following table sets forth certain information relating to our properties as of December 31, 2002:

Location	No. of Properties	Total Rentable Sq. Ft.	Percentage Leased as of Dec. 31, 2002	Average 2002 Occupancy	Major Tenants
5300-5350 Hellyer Avenue (3)	2	160,000	100%	100%	Tyco International
10401-10411 Bubb Road (3)	1	20,330	100%	100%	Celerity Systems,
45365 Northport Loop West	1	64,218	51%	79%	JNI Corporation
45700 Northport Loop East	1	47,570	100%	100%	Philips Electronic
45738 Northport Loop West	1	44,256	100%	100%	EIC Corporation
4050 Starboard Drive	1	52,232	100%	100%	Flash Electronics,
3501 W. Warren Avenue & 46600 Fremont Blvd.	1	67,864	100%	100%	Storage Way, Inc.

- 15 -

Location	No. of Properties	Total Rentable Sq. Ft.	Percentage Leased as of Dec. 31, 2002	Average 2002 Occupancy	Major Tenants
48800 Milmont Drive	1	53,000	100%	100%	Zhone Technologies
4750 Patrick Henry Drive	1	65,780	0%	75%	Vacant
Triangle Technology Park (3)	7	416,927	100%	100%	JDS Uniphase Corpo Intevac Corporatio Xicom Technology, Solid Data Systems Diligent Software Corp.
5850-5870 Hellyer Avenue	1	109,715	0%	67%	Vacant

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5750 Hellyer Avenue	1	73,312	0%	67%	Vacant
800 Branham Lane East	1	239,000	0%	16%	Vacant
5500-5550 Hellyer Avenue	2	196,534	23%	68%	ACT Electronics, I
5400 Hellyer Avenue	1	77,184	100%	100%	Jetstream Communic Inc.
5325-5345 Hellyer Ave. (2) (4)	2	256,500	100%	100%	Celestica Asia, In
5905-5965 Silver Creek	4	346,000	100%	100%	CIENA Corporation
855 Branham Lane East	1	67,912	100%	100%	Lynuxworks, Inc.
1065 La Avenida Street	5	515,700	100%	100%	Microsoft Corporat
1750 Automation Parkway	1	80,641	100%	100%	JDS Uniphase Corpo
1756 Automation Parkway	1	80,640	100%	100%	JDS Uniphase Corpo
1762 Automation Parkway	1	61,100	100%	100%	JDS Uniphase Corpo
1768 Automation Parkway	1	110,592	100%	100%	JDS Uniphase Corpo
255 Caspian Drive	1	98,500	0%	33%	Vacant
245 Caspian Drive	1	-	0%	33%	Vacant
5900 Optical Court (2)	1	165,000	100%	100%	Stryker Endoscopy
2610 Orchard Parkway (2)	1	54,093	100%	100%	Cadence Design Sys
2630 Orchard Parkway (2)	1	60,633	0%	75%	Vacant
55 West Trimble Road (2)	1	91,722	100%	100%	Cadence Design Sys
2251 Lawson Lane	1	125,000	100%	100%	Amdahl Corporation
1230 East Arques	1	60,000	100%	100%	Amdahl Corporation
1250 East Arques	4	200,000	100%	100%	Amdahl Corporation
3120 Scott Blvd.	1	75,000	100%	100%	Amdahl Corporation
20400 Mariani Avenue	1	105,000	100%	100%	Dade Behring, Inc.
10500 De Anza Blvd.	1	211,000	100%	100%	Apple Computer, In
20605-705 Valley Green Dr.	2	142,000	100%	100%	Apple Computer, In
10300 Bubb Road	1	23,400	100%	100%	Apple Computer, In
10440 Bubb Road	1	19,500	100%	100%	Luminous Networks,
10460 Bubb Road	1	45,460	100%	100%	Luminous Networks,
1135 Kern Avenue	1	18,300	100%	100%	Broadmedia, Inc.

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Location	No. of Properties	Total Rentable Sq. Ft.	Percentage Leased as of Dec. 31, 2002	Average 2002 Occupancy	Major Tenants
1190 Morse Avenue & 405 Tasman Avenue	1	28,350	66%	89%	Coptech West
450 National Avenue	1	36,100	100%	100%	ePeople, Inc.
3301 Olcott Street	1	64,500	0%	16%	Vacant
2800 Bayview Avenue	1	59,736	100%	100%	Mattson Technology
6850 Santa Teresa Blvd.	1	30,000	59%	62%	Indala
6810 Santa Teresa Blvd.	1	54,996	100%	100%	Polaris Networks,
140-150 Great Oaks Blvd. & 6781 Via Del Oro	2	105,300	81%	84%	Atcor Corporation Amtech Corporation Saint Gobain
6540-6541 Via Del Oro & 6385-6387 San Ignacio Ave.	2	66,600	100%	100%	Exsil, Inc. Alcatel USA, Inc. Modutek Corporatio
6311-6351 San Ignacio Ave.	5	362,767	100%	100%	On Command Corpora Saint-Gobain Avnet, Inc. Photon Dynamics, I Teledex Corporatio
6320-6360 San Ignacio Ave.	1	157,292	84%	91%	Nortel Networks Co Quantum 3D
75 East Trimble Road & 2610 North First Street	2	170,810	100%	100%	Comerica Bank County of Santa Cl
2033-2243 Samaritan Drive	3	235,122	36%	36%	Texas Instruments State Farm Insuran
1170 Morse Avenue	1	39,231	100%	100%	CA Parkinsons Foun
3236 Scott Blvd.	1	54,672	100%	100%	Celeritek, Inc.
1212 Bordeaux Lane	1	71,800	100%	100%	TRW, Inc.
McCandless Technology Park	14	705,956	91%	92%	Larscom, Inc. Arrow Electronics, SDRC Chartered Semicond Panasonic Industri K-TEC Corporation.
1600 Memorex Drive	1	107,500	100%	100%	Sasco Electric
1688 Richard Avenue	1	52,800	100%	100%	NWE Technology, In
1700 Richard Avenue	1	58,783	100%	100%	Broadwing, Inc.

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TOTAL	101	7,163,930
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- (1) Annual cash rents do not include any effect for recognition of rental income on the straight-line method of accounting required by generally accepted accounting principles in the United States of America under which contractual rent payment increases are recognized evenly over the lease term. Cash rents for a property sold in 2002 are also excluded.
- (2) Property was purchased during 2002. The 2002 Annual Base Rent reflects rent received from the date of acquisition through December 31, 2002.
- (3) Joint venture properties. Only one property in the Triangle Technology Park is a joint venture.
- (4) Only property 5345 Hellyer Avenue was acquired in 2002.

- 17 -

We own 100% of all of the properties, except for one of the buildings in the Triangle Technology Park, which is owned by a joint venture in which we, through an operating partnership, own a 75% interest, the property at 10401-10411 Bubb Road, which is owned by a joint venture in which we, through an operating partnership, own an 83.33% interest, and the properties at 5300-5350 Hellyer Avenue, which are owned by a joint venture in which we, through an operating partnership, own a 50% interest.

EVENTS SUBSEQUENT TO DECEMBER 31, 2002

On January 1, 2003, we acquired a 50% interest in TBI-Mission West, LLC, a two-member joint venture that owns and developed a complex of four R&D properties totaling approximately 593,000 rentable square feet, from the Berg Group. The properties are operated and managed by the other joint venture partner of TBI-Mission West, LLC. The total acquisition price for the 50% interest in the joint venture was \$1.8 million, which we financed by issuing 181,032 O.P. Units to the Berg Group.

- 18 -

LEASE EXPIRATIONS

The following table sets forth a schedule of the lease expirations for the properties beginning with 2003, assuming that none of the tenants exercise existing renewal options or termination rights. The table excludes 1,156,122 rentable square feet that was vacant as of December 31, 2002.

Year of Lease Expiration	Number of Leases Expiring	Rentable Square Footage Subject to Expiring Leases	2003 Annual Base Rent Under Expiring Leases (1)
2003	16	527,369	\$ 8,133,121
2004	20	1,211,906	16,227,002
2005	21	578,513	11,834,886
2006	16	1,310,132	43,571,901

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2007	16	1,074,928	23,048,393
2008	4	218,402	2,407,255
2009	4	223,783	6,088,673
2010	2	100,275	1,838,767
2011	2	602,500	12,546,990
Thereafter	1	160,000	3,316,116
	-----	-----	-----
	102	6,007,808	\$129,013,104
	=====	=====	=====

- (1) The base rent for leases expiring is based on scheduled 2003 annualized cash rents, which are different than annual rents determined in accordance with GAAP.
- (2) Based upon 2003 annualized cash rents as discussed in Note (1).

If we are unable to lease a significant portion of the available space or space scheduled to expire in 2003 and thereafter at any of our properties, if existing tenants do not renew their leases, or if rental rates decrease, our results of operations, financial condition and cash flows would be adversely affected.

ENVIRONMENTAL MATTERS

To date, compliance with laws and regulations relating to the protection of the environment, including those regarding the discharge of materials into the environment has not had any material effects upon our capital expenditures, earnings or competitive position.

Under various federal, state and local laws, ordinances and regulations, an owner or operator of real property may be held liable for the costs of removal or remediation of certain hazardous or toxic substances located on or in the property. Such laws often impose liability on the owner and expose the owner to governmental proceedings without regard to whether the owner knew of, or was responsible for, the presence of the hazardous or toxic substances. The cost of any required remediation or removal of such substances may be substantial. In addition, the owner's liability as to any specific property is generally not limited and could exceed the value of the property and/or the aggregate assets of the owner. The presence of such substances, or the failure to properly remove or remediate such substances, may also adversely affect the owner's ability to sell or rent the property or to borrow using the property as collateral. Persons who arrange for treatment or the disposal of hazardous or toxic substances may also be liable for the costs of any required remediation or removal of the hazardous or toxic substances at a disposal facility, regardless of whether the facility is owned or operated by such owner or entity. In connection with the ownership of the properties or the treatment or disposal of hazardous or toxic substances, we may be liable for such costs.

Some of our properties are leased, in part, to businesses, including manufacturers that use, store or otherwise handle hazardous or toxic substances in their business operations. These operations create a potential for the release of hazardous or toxic substances. In addition, groundwater contaminated by chemicals used in various manufacturing processes, including semiconductor fabrication, underlies a significant

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portion of northeastern Santa Clara County, where many of our properties are located.

- 19 -

Environmental laws also govern the presence, maintenance and removal of asbestos. These laws require that owners or operators of buildings containing asbestos properly manage and maintain the asbestos, that they adequately inform or train those who may come into contact with asbestos and that they undertake special precautions, including removal or other abatement in the event that asbestos is disturbed during renovation or demolition of a building. These laws may impose fines and penalties on building owners or operators for failure to comply with these requirements and may allow third parties to seek recovery from owners or operators for personal injury associated with exposure to asbestos fibers. We are aware that there are asbestos-containing materials, or ACMs, present at several of the properties, primarily in floor coverings. We believe that the ACMs present at these properties are generally in good condition and that no ACMs are present at the remaining properties. We believe we are in compliance in all material respects with all present federal, state and local laws relating to ACMs and that if we were given limited time to remove all ACMs present at the properties, the cost of such removal would not have a material adverse effect on our financial condition, results of operations and ability to make cash distributions to our stockholders.

Phase I assessments are intended to discover and evaluate information regarding the environmental condition of the surveyed property and surrounding properties. Phase I assessments generally include a historical review, a public records review, an investigation of the surveyed site and surrounding properties and the preparation and issuance of a written report, but do not include soil sampling or subsurface investigations and typically do not include an asbestos survey. Environmental assessments have been conducted for about half of the properties.

The environmental investigations that have been conducted on our properties have not revealed any environmental liability that we believe would have a material adverse effect on our financial condition, results of operations and assets, and we are not aware of any such liability. Nonetheless, it is possible that there are material environmental liabilities of which we are unaware. We cannot assure you that future laws, ordinances, or regulations will not impose any material environmental liability, or that the current environmental condition of the properties has not been, or will not be, affected by tenants and occupants of the properties, by the condition of properties in the vicinity of the properties, or by third parties unrelated to us.

- 20 -

### ITEM 3. LEGAL PROCEEDINGS

Neither the operating partnerships, the properties nor we are subject to any material litigation nor, to our knowledge, is any material litigation threatened against the operating partnerships, the properties or us. From time to time, we are engaged in legal proceedings arising in the ordinary course of our business. We do not expect any of such proceedings to have a material adverse effect on our cash flows, financial condition or results of operations.

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

No matters were submitted to a vote of stockholders during the fourth quarter of the year ended December 31, 2002.

- 21 -

## PART II

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

Our common stock is listed on the American Stock Exchange ("AMEX") and the Pacific Exchange, Inc. and trades under the symbol "MSW." The high and low sale prices per share of common stock as reported on AMEX during each quarter of 2002 and 2001 were as follows:

	2002		2001	
	High	Low	High	Low
1st Quarter	\$13.22	\$11.10	\$14.20	\$12.50
2nd Quarter	\$13.03	\$11.91	\$14.39	\$11.23
3rd Quarter	\$11.99	\$10.31	\$14.35	\$11.60
4th Quarter	\$11.20	\$9.72	\$12.85	\$10.85

On March 25, 2003, there were 235 registered holders of the Company's common stock. We declared and paid dividends in each quarter of 2002 and 2001. We expect to pay quarterly dividends during 2003. The following tables show information for quarterly dividends for 2002 and 2001.

	2002		
	Record Date	Payment Date	Dividend Per Share
1st Quarter	03/29/02	04/11/02	\$0.24
2nd Quarter	06/28/02	07/11/02	0.24
3rd Quarter	09/30/02	10/10/02	0.24
4th Quarter	12/31/02	01/09/03	0.24
Total			\$0.96

2001

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	Record Date	Payment Date	Dividend Per Share
1st Quarter	03/30/01	04/10/01	\$0.19
2nd Quarter	06/29/01	07/12/01	0.22
3rd Quarter	09/28/01	10/11/01	0.24
4th Quarter	12/31/01	01/10/02	0.24
Total			\$0.89

For federal income tax purposes, we have characterized 100% of the dividends declared in 2002 and 2001 as ordinary income.

The closing price of our common stock on December 31, 2002, the last trading day, was \$9.90 per share.

- 22 -

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected historical financial information for Mission West Properties, Inc. See Part II - Item 7 "Management's Discussion and Analysis of Financial Conditions and Results of Operations" - Overview and Company History for discussion of business combinations and property dispositions that materially affect the comparability of the selected financial data. Selected consolidated financial data is derived from the audited financial statements and notes thereto (see Part II - Item 8 "Consolidated Financial Statements and Supplementary Data," below) and is as follows:

	Year Ended De		
	2002	2001	2000
<b>OPERATING DATA:</b>			
Revenue:			
Rental revenues	\$129,781	\$126,229	\$97,
Tenant reimbursements	20,097	17,474	14,
Other income, including interest	4,250	2,465	1,
Gain on sale of assets	-	11,454	
Total revenues	154,128	157,622	113,
Expenses:			
Property operating, maintenance and real estate taxes	22,015	18,308	14,
Interest	9,588	8,704	8,
Interest (related parties)	3,422	4,709	4,
General and administrative	1,488	1,284	1,
Depreciation	17,928	16,638	15,
Total expenses	54,441	49,643	43,



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Income before minority interest	99,687	107,979	69,
Minority interest	83,251	90,129	57,
Income (loss) from continuing operations	16,436	17,850	12,
Discontinued operations, net of minority interests:			
Gain from disposal of discontinued operations	1,018	-	
Income attributable to discontinued operations	47	285	
Income from discontinued operations	1,065	285	
Net income (loss) to common stockholders	\$ 17,501	\$ 18,135	\$12,
Net income to minority interest	\$ 88,576	\$ 91,565	\$59,
Basic net income (loss) from continuing operations per share	\$0.94	\$1.04	\$
Diluted net income (loss) from continuing operations per share	\$0.92	\$1.01	\$
Basic net income (loss) per share	\$1.00	\$1.06	\$
Diluted net income (loss) per share	\$0.98	\$1.03	\$
PROPERTY AND OTHER DATA: (2)			
Total properties, end of period	101	97	
Total square feet, end of period (000's)	7,164	6,799	6,
Average monthly rental revenue per square foot (1)	\$1.71	\$1.59	\$1
Occupancy at end of period	84%	97%	
FUNDS FROM OPERATIONS (3):	\$117,360	\$114,513	\$86,
Cash flows from operating activities	\$117,368	\$111,157	\$84,
Cash flows from investing activities	(20,744)	(3,040)	(2,
Cash flows from financing activities	(97,455)	(107,498)	(83,
			December
	2002	2001	2000
			(dollars in t
BALANCE SHEET DATA:			
Real estate assets, net of accumulated depreciation	\$894,728	\$860,935	\$807,
Total assets	929,406	910,255	826,
Line of credit - related parties	58,792	79,887	50,
Revolving line of credit	23,839	-	
Loan payable	20,000	-	
Debt	125,062	127,416	132,
Debt - related parties	11,078	11,371	11,
Total liabilities	289,817	286,768	255,
Minority interest	528,768	515,063	469,
Stockholders' equity	110,821	108,424	102,
Common stock outstanding	17,487,329	17,329,779	17,025,
O.P. Units issued and outstanding	86,474,032	85,762,541	83,576,

(1) Average monthly rental revenue per square foot has been determined by

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taking the total base rent for the period, divided by the number of months in the period, and then divided by the total square feet of occupied space.

- (2) Property and other data shown only as of December 31, 2002, 2001, 2000, and 1999.
- (3) As defined by the National Association of Real Estate Investment Trusts ("NAREIT"), FFO represents net income (loss) before minority interest of unit holders (computed in accordance with GAAP), including non-recurring events other than "extraordinary items" under GAAP and gains and losses from sales of discontinued operations, plus real estate related depreciation and amortization (excluding amortization of deferred financing costs and depreciation of non-real estate assets) and after adjustments for unconsolidated partnerships and joint ventures. Management considers FFO an appropriate measure of performance of an equity REIT because, along with cash flows from operating activities, financing activities and investing activities, it provides investors with an understanding of our ability to incur and service debt and make capital expenditures. FFO should not be considered as an alternative for neither net income as a measure of profitability nor is it comparable to cash flows provided by operating activities determined in accordance with GAAP. FFO is not comparable to similarly entitled items reported by other REITs that do not define them exactly as we define FFO. See Part II - Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations - Funds from Operations."

- 24 -

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

The following discussion includes forward-looking statements, including but not limited to statements with respect to the future financial performance, operating results, plans and objectives of Mission West Properties, Inc. Actual results may differ materially from those currently anticipated depending upon a variety of factors, including those described in Part I - Item 1 "Business - Risk Factors."

#### OVERVIEW AND BACKGROUND

Our original predecessor was formed in 1969 as Palomar Mortgage Investors, a California business trust, which operated as a mortgage REIT until 1979 when, under the name of Mission Investment Trust, it terminated its status as a REIT and began to develop and market its own properties. In 1982, Mission West Properties was incorporated as a successor to Mission Investment Trust. In 1997, our predecessor, Mission West Properties, sold all its real estate assets and paid a special dividend of \$9.00 per share to stockholders, after which it retained only nominal assets. Subsequently, the Berg Group acquired control of the corporation as a vehicle to acquire R&D properties, or interests in entities owning such properties in a transaction completed September 2, 1997. At that time the Berg Group and the other investors acquired an aggregate 79.6% controlling ownership position. In May 1998, we, the Berg Group members, John Kontrabecki, and certain other persons entered into an acquisition agreement providing, among other things, for our acquisition of interests as the sole general partner in the operating partnerships. At the time, the operating partnerships held approximately 4.34 million rentable square feet of R&D property located in Silicon Valley. The agreement also provided for the parties to enter into the Pending Projects Acquisition Agreement, the Berg Land Holdings Option Agreement and the Exchange Rights Agreement, following

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stockholder approval. Effective July 1, 1998, we consummated our acquisition of the general partnership interests in the operating partnerships through the purchase of the general partnership interests, and all limited partnership interests in the operating partnerships were converted into 59,479,633 O.P. Units, which represented ownership of approximately 87.89% of the operating partnerships. Our general partnership interests represented the balance of the ownership of the operating partnerships. At December 31, 2002, we owned a 16.82% general partnership interest in the operating partnerships, taken as a whole, on a weighted average basis.

On December 28, 1998, our stockholders approved and ratified our sale of common stock under two May 1998 private placements. They also ratified the Exchange Rights Agreement between us and the limited partners, the Pending Projects Acquisition Agreement and the Berg Land Holdings Option Agreement between us and the Berg Group, and approved our reincorporation in the State of Maryland. On December 29, 1998, we sold 6,495,058 shares of common stock at a price of \$4.50 per share to a number of accredited investors to complete two May 1998 private placements. The aggregate proceeds, net of fees and offering costs, of approximately \$27.8 million were used to pay down amounts outstanding under the demand notes due to the operating partnerships. Our reincorporation under the laws of the State of Maryland through the merger of Mission West Properties into Mission West Properties, Inc. occurred on December 30, 1998, at which time all outstanding shares issued by our predecessor California corporation were converted into shares of our common stock on a one-for-one basis.

On December 8, 1998, the AMEX recommenced trading of our common stock. In July 1999, we completed a public offering of 8,680,000 shares of our common stock at \$8.25 per share. The net proceeds of approximately \$66.9 million, after deducting underwriting discounts and other offering costs, were used primarily to repay indebtedness.

We have two wholly owned corporate subsidiaries, MIT Realty, Inc. and Mission West Executive Aircraft Center. Both corporations are inactive.

Since the beginning of calendar year 1999, we have been taxed as a qualified REIT.

### CRITICAL ACCOUNTING POLICIES

We prepare the consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP"), which requires us to make certain estimates, judgments and assumptions that affect the reported amounts in the accompanying consolidated financial statements, disclosure of contingent assets and liabilities and related footnotes. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are defined as those that require management to make estimates, judgments and assumptions, giving due consideration to materiality, in certain circumstances that affect amounts reported in the consolidated financial statements, and potentially result in materially different results under different conditions and assumptions. We believe that the following best describe our critical accounting policies:

- 25 -

**REAL ESTATE ASSETS.** Real estate assets are stated at cost. Cost includes expenditures for improvements or replacements. Maintenance and repairs are charged to expense as incurred. Gains and losses from sales are included in

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income in accordance with Statement of Financial Accounting Standard ("SFAS") No. 66, "Accounting for Sales of Real Estate."

We review real estate assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If the carrying amount of the asset exceeds its estimated undiscounted net cash flow, before interest, we will recognize an impairment loss equal to the difference between its carrying amount and its estimated fair value. If impairment is recognized, the reduced carrying amount of the asset will be accounted for as its new cost. For a depreciable asset, the new cost will be depreciated over the asset's remaining useful life. Generally, fair values are estimated using discounted cash flow, replacement cost or market comparison analyses. The process of evaluating for impairment requires estimates as to future events and conditions, which are subject to varying market and economic factors, however. Therefore, it is reasonably possible that a change in estimate resulting from judgments as to future events could occur which would affect the recorded amounts of the property.

ALLOWANCE FOR DOUBTFUL ACCOUNTS AND RESERVE. The preparation of the consolidated financial statements requires us to make estimates and assumptions. As such, we must make estimates of the uncollectability of our accounts receivable based on the evaluation of our tenants' financial position, analyses of accounts receivable and current economic trends. We also make estimates for a straight-line adjustment reserve for existing tenants with the potential of bankruptcy or ceasing operations. Our estimates are based on our review of tenants' payment histories, publicly available financial information and such additional information about their financial condition as tenants provided to us. The information available to us might lead us to overstate or understate these reserve amounts. The use of different estimates or assumptions could produce different results. Moreover, actual future collections of accounts receivable or reductions in future reported rental income due to tenant bankruptcies or other business failures could differ materially from our estimates.

CONSOLIDATED JOINT VENTURES. We, through an operating partnership, own three properties that are in joint ventures of which we have interests. We manage and operate all three properties. The recognition of these properties and their operating results are 100% reflected on our consolidated financial statements and minority interest because we have operational and financial control of the investments. We make judgments and assumptions about the estimated monthly payments made to our joint venture partners, which are reported with our periodic results of operations. Actual results may differ from these estimates under different assumptions or conditions.

REVENUE RECOGNITION. Rental revenue is recognized on the straight-line method of accounting required by GAAP under which contractual rent payment increases are recognized evenly over the lease term. The difference between recognized rental income and rental cash receipts is recorded as deferred rent on the balance sheet. Certain lease agreements contain terms that provide for additional rents based on reimbursement of certain costs. These additional rents are reflected on the accrual basis.

Rental revenue is affected if existing tenants terminate or amend their leases. Thus, if tenants lengthen their lease term, additional rental revenue is recognized. On the other hand, if tenants terminate their lease agreements or shorten their lease terms, rental revenue decreases because of reduced future cash flows and a one-time straight-line adjustment to deferred rent, which is the difference between recognized rental income and rental cash receipts. We try to identify tenants who have the potential of bankruptcy or of ceasing operations. By anticipating these events in

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advance, we expect to take actions to minimize the effect on the results of our operations. Our judgments and estimations about tenants' capacity to continue to meet their lease obligations will affect the rental revenue recognized. Material differences may result in the amount and timing of our rental revenue for any period if we made different judgments or estimations.

LEASE TERMINATION. Lease termination fees are included in revenues. These fees are paid by tenants who want to terminate their lease obligations before the end of the contractual term of the lease. There is no way of predicting or forecasting the timing or amounts of future lease termination fees.

- 26 -

### RESULTS OF OPERATIONS

COMPARISON OF THE YEAR ENDED DECEMBER 31, 2002 TO THE YEAR ENDED DECEMBER 31, 2001.

#### RENTAL REVENUES

As of December 31, 2002, through our controlling interests in the operating partnerships, we owned 101 R&D properties totaling approximately 7.2 million square feet compared to 97 such properties totaling approximately 6.8 million square feet as of December 31, 2001. This represented a net increase of approximately 6% in total rentable square footage from the prior year. During 2002, we made the following acquisitions by purchase of new properties under the Berg Land Holdings Option Agreement or as replacement property in exchange for existing R&D properties that we sold in 2001 and 2002.

Date of Acquisition	Address	Rentable Square Footage
-----	-----	-----
1/02	5345 Hellyer Avenue	125,000
3/02	2630 Orchard Parkway (1)	60,633
3/02	2610 Orchard Parkway (1)	54,093
3/02	55 West Trimble Road (1)	91,722
7/02	5900 Optical Court	165,000
	Total	----- 496,448 =====

- (1) Acquired in exchange for R&D properties located at 5713-5729 Fontanos Way that was sold in year 2001 and 2001 Logic Drive in San Jose, California that was sold in year 2002.

The following table depicts the amounts of rental revenues from continuing operations for the years ended December 31, 2002 and 2001 represented by our historical properties and the properties acquired in each such year and the percentage of the total increase in rental revenues over the period that is represented by each group of properties.

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	December 31,			% Chan
	2002	2001	\$ Change	Propert
	(dollars in thousands)			
Same Property (1)	\$103,076	\$112,545	(\$9,469)	(
2001 Acquisitions (2)	18,328	13,684	4,644	3
2002 Acquisitions	8,377	-	8,377	
Total/Overall	\$129,781	\$126,229	\$3,552	

- (1) "Same Property" is defined as properties owned by us prior to 2001 that we still owned as of December 31, 2002.
- (2) Operating rental revenues for 2001 Acquisitions do not reflect a full 12 months of operations in 2001 because these properties were acquired at various times during 2001.

For the year ended December 31, 2002, our rental revenues from real estate increased by \$3.5 million, or 3% from \$126.2 million for the year ended December 31, 2001 to \$129.7 million for the same period in 2002. The \$3.5 million increase in rental revenues resulted from new property acquisitions, as "Same Property" rents decreased by (\$9.5), rents from newly developed properties acquired in 2001 represented an increased of \$4.6 million and rents from newly developed properties acquired in 2002 added approximately \$8.4 million of new rental revenue. Approximately \$0.3 million and \$2.0 million in rental revenues were generated from a discontinued operation for the years ended December 31, 2002 and 2001, respectively. The decline in rental revenues from the "Same Property" portfolio was a result from adverse market conditions and loss of several tenants due to bankruptcy or cessation of operations. Our overall occupancy rate at December 31, 2002 was approximately 84%.

OTHER INCOME

The following table depicts the amounts of other income from continuing operations and gains from sales of assets for the years ended December 31, 2002 and 2001.

	December 31,			% Chan
	2002	2001	\$ Change	Gr
	(dollars in thousands)			
Other income	\$4,250	\$ 2,465	\$ 1,785	7
Gains from sales of assets	-	11,454	(11,454)	(
Total	\$4,250	\$13,919	\$ (9,669)	(6

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Other income, including interest, was approximately \$4.3 million and \$2.5 million for the years ended December 31, 2002 and 2001, respectively. The \$1.8 million increase was primarily from lease termination fees.

In 2001, gain from sales of real estate was \$11.5 million, which were effected as tax-deferred Section 1031 exchanges. Due to the adoption of Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets" ("SFAS No. 144") effective January 1, 2002, gains from sales of operating properties are classified as discontinued operations. In 2002, a gain of approximately \$6.1 million from the sale of one property consisting of 72,426 rentable square feet at 2001 Logic Drive in a Section 1031 exchange has been classified as Gain from Disposal of Discontinued Operations (see below).

### TENANT REIMBURSEMENTS AND EXPENSES

The following table reflects the increase in property operating expenses and real estate taxes from continuing operations for the year ended December 31, 2002 over property operating expenses and real estate taxes from continuing operations for the year ended December 31, 2001 and the percentage of total increase in expenses over the period that is represented by each group of properties.

	December 31,			
	2002	2001	\$ Change	% Chan Propert
	(dollars in thousands)			
Same Property (1)	\$18,026	\$15,894	\$2,132	1
2001 Acquisitions (2)	2,777	2,414	363	1
2002 Acquisitions	1,212	-	1,212	
Total/Overall	\$22,015	\$18,308	\$3,707	2

- (1) "Same Property" is defined as properties owned by us prior to 2001 that we still owned as of December 31, 2002.
- (2) Operating expenses and real estate taxes for 2001 Acquisitions do not reflect a full 12 months of operations in 2001 because these properties were acquired at various times during 2001.

Tenant reimbursements from continuing operations increased by \$2.6 million, or 15%, from \$17.5 million for the year ended December 31, 2001 to \$20.1 million for the year ended December 31, 2002. Operating expenses and real estate taxes from continuing operations, on a combined basis, increased by \$3.7 million, or 20%, from \$18.3 million for the year ended December 31, 2001 to \$22.0 million for the year ended December 31, 2002. Of the \$3.7 million increase in operating expenses and real estate taxes, \$2.1 million resulted from the Company's "Same Property" portfolio, \$0.4 million resulted from properties acquired in 2001 and \$1.2 million resulted from properties acquired in 2002. The overall increase in tenant reimbursements, operating expenses and real estate taxes is primarily a result of the growth in the total square footage of the Company's portfolio of properties during the periods presented. Total operating expenses and real estate taxes exceeded tenant reimbursements because of vacancies, which reached approximately 1.16 million square feet by year-end 2002. For the same reason, "Same Property" rental revenues decreased in 2002 over 2001 while

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"Same Property" operating expenses increased in 2002 over 2001. We expect tenant reimbursements to decrease further in the coming year as our vacancy rate increases. General and administrative expenses increased by \$0.2 million from \$1.3 million for the year ended December 31, 2001 to \$1.5 million for the year ended December 31, 2002, primarily due to the addition of one new employee in 2001 and minor increases in general expenses.

The following table depicts the amounts of interest expense from continuing operations for the years ended December 31, 2002 and 2001.

	December 31,			% Chan Gro
	2002	2001	\$ Change	
	(dollars in thousands)			
Interest	\$ 9,588	\$ 8,704	\$ 884	1
Interest (related parties)	3,422	4,709	(1,287)	(2)
Total	\$13,010	\$13,413	\$ (403)	(

Interest expense increased by \$0.9 million, or 10%, from \$8.7 million for the year ended December 31, 2001 to \$9.6 million for the year ended December 31, 2002. The increased expense resulted from additional debt that the Company incurred under a new \$20 million uncollateralized loan obtained from Citicorp USA, Inc. and a \$40 million credit line established with Cupertino National Bank. Interest expense (related parties) decreased by \$1.3 million, or 27%, from \$4.7 million for the year ended December 31, 2001 to \$3.4 million for the year ended December 31, 2002. As a result of five R&D property acquisitions totaling approximately 496,000 rentable square feet in 2002, debt outstanding, including amounts due related parties, increased by \$20.1 million, or 9%, from \$218.7 million as of December 31, 2001 to \$238.8 million as of December 31,

- 28 -

2002. Interest rates declined in 2002, which lessened the effect of the additional debt on total interest expense. We expect interest expense to increase if we acquire additional properties or interest rates increase in 2003.

The following table depicts the amounts of depreciation expense from continuing operations for the years ended December 31, 2002 and 2001.

	December 31,			% Ch
	2002	2001	\$ Change	
	(dollars in thousands)			
Depreciation	\$17,928	\$16,638	\$1,290	



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Depreciation expense from continuing operations increased by \$1.3 million, or 8%, from \$16.6 million for the year ended December 31, 2001 to \$17.9 million for the year ended December 31, 2002. The increase was attributable to the acquisition of five R&D properties in 2002. Depreciation expense attributable to discontinued operations was approximately \$46,000 and \$278,000 for the years ended December 31, 2002 and 2001, respectively.

### MINORITY INTEREST AND NET INCOME

The following table depicts the amounts of earnings attributable to shareholders and minority interests for the years ended December 31, 2002 and 2001.

	December 31,		
	2002	2001	\$ Change
	(dollars in thousands)		
Net income to shareholders	\$ 17,501	\$ 18,135	(\$ 634)
Net income to minority interest	88,576	91,565	(2,989)
	-----	-----	-----
Total	\$106,077	\$109,700	(\$3,623)
	=====	=====	=====

As of December 31, 2002 and 2001, we owned a general partnership interest of 16.68%, 21.46%, 15.46% and 12.27% and 16.54%, 21.41%, 15.42% and 12.24% in Mission West Properties, L.P., Mission West Properties, L.P. I, Mission West Properties, L.P. II and Mission West Properties, L.P. III, respectively, which are the operating partnerships. We owned a 16.82% and 16.73% general partnership interest in the operating partnerships, taken as a whole, on a weighted average basis as of December 31, 2002 and 2001, respectively. Net income to shareholders decreased by \$0.6 million, or 3%, from \$18.1 million for the year ended December 31, 2001 to \$17.5 million for the year ended December 31, 2002. Our income attributable to minority interest decreased by \$3.0 million, or 3%, from \$91.6 million for the year ended December 31, 2001 to \$88.6 million for the year ended December 31, 2002. Minority interest represents the limited partners' ownership interest of 83.18% and 83.27%, on a weighted average basis, as of December 31, 2002 and 2001, respectively, in the operating partnerships. The decrease in the minority interest percentage resulted from the issuance of additional common stock in connection with exchanging O.P. Units for common stock by minority interest holders and exercise of stock options.

### INCOME FROM DISCONTINUED OPERATIONS

The following table depicts the amounts of income from discontinued operations for the years ended December 31, 2002 and 2001.

	December 31,		
	2002	2001	\$
	(dollars in thousands)		
	-----	-----	-----

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Gain from disposal of discontinued operations	\$6,103	-
Income attributable to discontinued operations	287	\$1,721
Minority interest in earnings attributable to discontinued operations	5,325	1,436
	-----	-----
Total income from discontinued operations	\$1,065	\$ 285
	=====	=====

In accordance with our adoption of SFAS No. 144, in 2002, we sold one property consisting of 72,426 rentable square feet and recognized a net gain of \$6.1 million, of which \$1.0 million and \$5.1 million were attributable to shareholders and minority interests, respectively. The income to shareholders and minority interests attributable to discontinued operations from this property in 2002 was approximately \$47,000 and \$240,000, respectively. For 2001, the income to shareholders and minority interests attributable to discontinued operations from this property was approximately \$285,000 and \$1.4 million, respectively. We did not report gains from the disposal of discontinued operations or from discontinued operations for any transactions in 2001.

- 29 -

COMPARISON OF THE YEAR ENDED DECEMBER 31, 2001 TO THE YEAR ENDED DECEMBER 31, 2000.

RENTAL REVENUES

As of December 31, 2001, through our controlling interests in the operating partnerships, we owned 97 R&D properties totaling approximately 6.8 million square feet compared to 89 such properties totaling approximately 6.2 million square feet as of December 31, 2000. This represented a net increase of approximately 10% in total rentable square footage from the prior year. During 2001, we made the following acquisitions by purchase of new properties under the Berg Land Holdings Option Agreement or as replacement properties in exchange for existing R&D properties that we sold in 2001.

Date of Acquisition	Address	Rentable Square Footage
-----	-----	-----
1/01	5325 Hellyer Avenue	131,500
2/01	5500 Hellyer Avenue	117,740
4/01	245 Caspian Drive (1) (3)	59,400
5/01	855 Branham Lane East (1)	67,912
6/01	5550 Hellyer Avenue	78,794
7/01	5905-5965 Silver Creek Valley Road I (2)	247,500
8/01	5750 Hellyer Avenue	73,312
10/01	5905-5965 Silver Creek Valley Road II	98,500
	Total	874,658
		=====

(1) Acquired in exchange for R&D property located at 4949 Hellyer Avenue, San

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Jose, California.

- (2) Three buildings were acquired at this location.
- (3) A lessee was paying rent for this site under a 15-year lease, although the building has not been completed for occupancy by this lessee. This lessee filed for bankruptcy protection under Chapter 11 in September 2001 and has effectively terminated its lease agreement in May 2002 in a negotiated settlement with us.

During 2001, we sold the following two R&D properties in transactions effected as tax-deferred Section 1031 exchanges:

Date of Disposition	Address	Rentable Square Footage
-----	-----	-----
1/01	4949 Hellyer Avenue	200,484
9/01	5713-5729 Fontanoso Way	77,700
	Total	----- 278,184 =====

The following table depicts the amounts of rental revenues from continuing operations for the years ended December 31, 2001 and 2000 represented by our historical properties and the properties acquired in each such year and the percentage of the total increase in rental revenues over the period that is represented by each group of properties.

	December 31,		\$ Change	% Chan Propert
	2001	2000		
	-----	-----	-----	-----
	(dollars in thousands)			
Same Property (1)	\$ 92,394	\$85,271	\$ 7,123	
2000 Acquisitions (2)	20,151	12,297	7,854	6
2001 Acquisitions	13,684	-	13,684	
	-----	-----	-----	
Total/Overall	\$126,229	\$97,568	\$28,661	2
	=====	=====	=====	

- (1) "Same Property" is defined as properties owned by us prior to 2000 that we still owned as of December 31, 2001.
- (2) Operating rental revenues for 2000 Acquisitions do not reflect a full 12 months of operations in 2000 because these properties were acquired at various times during 2000.

For the year ended December 31, 2001, our rental revenues from real estate increased by \$28.6 million, or 29%, which included an increase of approximately \$6.1 million over base rental revenues to reflect rental revenues on a straight-line basis, from \$97.6 million for the year ended December 31, 2000 to \$126.2 million for the same period in 2001. These increases were primarily attributable to scheduled increases in rental rates and new acquisitions. Of the \$28.6 million increase in rental revenues, \$7.1 million resulted from the Company's "Same Property" portfolio, \$7.8 million resulted from newly developed properties acquired in 2000, and \$13.7 million resulted from newly developed properties acquired in 2001. Approximately \$2.0 million in rental revenues were

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generated for each of the years ended December 31, 2001 and 2000 from a property that we disposed of in a Section 1031 exchange in 2002.

- 30 -

### OTHER INCOME

The following table depicts the amounts of other income from continuing operations and gains from sales of assets for the years ended December 31, 2001 and 2000.

	December 31,			% Chan Gr
	2001	2000	\$ Change	
	(dollars in thousands)			
Other income	\$ 2,465	\$1,241	\$ 1,224	9
Gains from sales of assets	11,454	501	10,953	2,18
Total	\$13,919	\$1,742	\$12,177	69

Other income, including interest, was approximately \$2.5 million and \$1.2 million for the years ended December 31, 2001 and 2000, respectively. The \$1.3 million increase was primarily from interest earned on our restricted cash account.

In 2001, we recognized a gain of \$11.5 million from sales of real estate, which were effected as tax-deferred Section 1031 exchanges. We acquired replacement properties in 2001 and 2002. In 2001, we recognized a gain of \$0.5 million from the sale of common stock.

### TENANT REIMBURSEMENTS AND EXPENSES

The following table reflects the increase in property operating expenses and real estate taxes from continuing operations for the year ended December 31, 2001 over property operating expenses and real estate taxes from continuing operations for the year ended December 31, 2000 and the percentage of total increase in expenses over the period that is represented by each group of properties.

	December 31,			% Chan Propert
	2001	2000	\$ Change	
	(dollars in thousands)			
Same Property (1)	\$14,212	\$14,219	\$ (7)	
2000 Acquisitions (2)	1,682	713	969	13
2001 Acquisitions	2,414	-	2,414	
Total/Overall	\$18,308	\$14,932	\$3,376	2

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- (1) "Same Property" is defined as properties owned by us prior to 2000 that we still owned as of December 31, 2001.
- (2) Operating expenses and real estate taxes for 2000 Acquisitions do not reflect a full 12 months of operations in 2000 because these properties were acquired at various times during 2000.

Tenant reimbursements from continuing operations increased by \$3.0 million, or 21%, from \$14.5 million for the year ended December 31, 2000 to \$17.5 million for the year ended December 31, 2001. Operating expenses and real estate taxes from continuing operations, on a combined basis, increased by \$3.4 million, or 23%, from \$14.9 million for the year ended December 31, 2000 to \$18.3 million for the year ended December 31, 2001. Of the \$3.4 million increase in property operating expenses and real estate taxes, \$1.0 million resulted from properties acquired in 2000 and \$2.4 million resulted from properties acquired in 2001. The overall increase in tenant reimbursements, property operating expenses and real estate taxes is primarily a result of the growth in the total square footage of the Company's portfolio of properties during the periods presented. The increases experienced were consistent with the increase in rental revenues. General and administrative expenses increased by \$0.2 million from \$1.1 million for the year ended December 31, 2000 to \$1.3 million for the year ended December 31, 2001, primarily due to the addition of one new employee in 2001.

The following table depicts the amounts of interest expense from continuing operations for the years ended December 31, 2001 and 2000.

	December 31,			% Chan Gro
	2001	2000	\$ Change	
	(dollars in thousands)			
Interest	\$ 8,704	\$ 8,290	\$414	
Interest (related parties)	4,709	4,475	234	
Total	\$13,413	\$12,765	\$648	

Interest expense increased by \$0.4 million, or 5%, from \$8.3 million for the year ended December 31, 2000 to \$8.7 million for the year ended December 31, 2001, primarily due to a mortgage loan we established in May 2000 in connection with a property acquisition. Interest expense (related parties) increased by \$0.2 million, or 5%, from \$4.5 million for the year ended

- 31 -

December 31, 2000 to \$4.7 million for the year ended December 31, 2001. As a result of ten R&D property acquisitions totaling approximately 875,000 rentable square feet in 2001, debt outstanding, including amounts due related parties, increased by \$24.1 million, or 12%, from \$194.6 million as of December 31, 2000 to \$218.7 million as of December 31, 2001. Interest rates in 2001 were lower than interest rates in 2000, which lessened the effect of the additional debt on total debt interest expense.

The following table depicts the amounts of depreciation expense from

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continuing operations for the years ended December 31, 2001 and 2000.

	December 31,			% Ch
	2001	2000	\$ Change	
	(dollars in thousands)			
Depreciation	\$16,638	\$15,178	\$1,460	

Depreciation expense increased by \$1.4 million, or 10%, from \$15.2 million for the year ended December 31, 2000 to \$16.6 million for the year ended December 31, 2001. The increase was attributable to the acquisition of ten R&D properties in 2001. Depreciation expense from the discontinued operations of the R&D property sold in 2002 was approximately \$0.3 million in both 2001 and 2000.

### MINORITY INTEREST AND NET INCOME

The following table depicts the amounts of earnings attributable to shareholders and minority interests for the years ended December 31, 2001 and 2000.

	December 31,		
	2001	2000	\$ Change
	(dollars in thousands)		
Net income to shareholders	\$ 18,135	\$12,579	\$ 5,556
Net income to minority interest	91,565	59,054	32,511
Total	\$109,700	\$71,633	\$38,067

As of December 31, 2001 and 2000, we owned a general partnership interest of 16.54%, 21.41%, 15.42% and 12.24% and 18.15%, 21.36%, 15.38% and 12.21% in Mission West Properties, L.P., Mission West Properties, L.P. I, Mission West Properties, L.P. II and Mission West Properties, L.P. III, respectively, which are the operating partnerships. We owned a 16.73% and 16.92% general partnership interest in the operating partnerships, taken as a whole, on a weighted average basis as of December 31, 2001 and 2000, respectively. Net income to shareholders increased by \$5.5 million, or 44%, from \$12.6 million for the year ended December 31, 2000 to \$18.1 million for year ended December 31, 2001. Our income attributable to minority interest increased by \$32.5 million, or 55%, from \$59.1 million for the year ended December 31, 2000 to \$91.6 million for the year ended December 31, 2001. Minority interest represents the limited partners' ownership interest of 83.27% and 83.08%, on a weighted average basis, as of December 31, 2001 and 2000, respectively, in the operating partnerships. The increase in the minority interest percentage resulted from the issuance of additional O.P. Units in connection with the acquisition of eight new properties under the Berg Land Holdings Option Agreement.

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### INCOME FROM DISCONTINUED OPERATIONS

The following table depicts the amounts of income from discontinued operations for the years ended December 31, 2001 and 2000.

	December 31,		
	2001	2000	\$
	(dollars in thousands)		
Gain from disposal of discontinued operations	-	-	
Income attributable to discontinued operations	\$1,721	\$1,715	
Minority interest in earnings attributable to discontinued operations	1,436	1,404	
Total income from discontinued operations	\$ 285	\$ 311	\$
	=====	=====	=====

In accordance with SFAS No. 144, rental revenues, tenant reimbursements and expenses attributable to the 72,426 rentable square foot property, sold in a Section 1031 tax-deferred exchange in 2002, have been reclassified and reflected on a net basis as \$0.3 million income to shareholders attributable to discontinued operations in 2001 and 2000. Income to minority interests attributable to discontinued operations in 2001 and 2000 was \$1.4 million each.

- 32 -

### CHANGES IN FINANCIAL CONDITION

YEAR ENDED DECEMBER 31, 2002.

The most significant changes in our financial condition in 2002 resulted from property acquisitions and exchanges. In addition, stockholders' equity increased from the exercise of stock options and the exchange of O.P. Units for common stock.

During 2002, we acquired two R&D properties from the Berg Group, both located in Silicon Valley. Those acquisitions added approximately 290,000 square feet of rentable space and were acquired under the Berg Land Holdings Option Agreement. The total gross acquisition price for those two properties was approximately \$31.0 million. We financed those acquisitions by borrowing \$18.0 million under our line of credit from the Berg Group and issuing 835,491 O.P. Units to various members of the Berg Group. In addition to those two property purchases, we also acquired three R&D properties representing approximately 206,500 rentable square feet from Silicon Valley Properties, LLC for approximately \$31.2 million in connection with tax-deferred exchanges involving the property sold to Cisco Systems, Inc. in late 2001 and property sold to Xilinx, Inc. in early 2002. Until we obtained those three replacement properties, the sales proceeds from the properties sold by the Company were designated as restricted cash for use in tax-deferred property exchanges. No debt or O.P. Units were issued to acquire those three properties.

In March 2002, we completed the sale, in a tax-deferred exchange, of a 72,400 square foot R&D property located at 2001 Logic Drive, San Jose,

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California to Xilinx, Inc., which had exercised a purchase option in the same month. We realized a gain of \$6.1 million on the total sale price of \$18.5 million. Prior to our acquisition of the replacement property, described in the preceding paragraph, the proceeds from the sale of this property were designated as restricted cash to be used in tax-deferred property exchanges.

During the year ended December 31, 2002, stock options were exercised to purchase a total of 33,550 shares of common stock at \$4.50 per share. Total proceeds to the Company were approximately \$0.15 million.

In 2002, three limited partners exchanged 124,000 O.P. Units for 124,000 shares of the Company's common stock under the terms of the December 1998 Exchange Rights Agreement among the Company and all limited partners of the operating partnerships. In addition, in 2002, Carl E. Berg gave 155,000 O.P. Units to charitable institutions, which exchanged them for 155,000 shares of the Company's common stock pursuant to the Exchange Rights Agreement in early January 2003.

The proceeds from the exercise of stock options and the conversions of O.P. Units to shares of the Company's common stock were applied to increase our percentage interest as general partner in the operating partnerships.

YEAR ENDED DECEMBER 31, 2001.

The most significant changes in our financial condition in 2001 resulted from property acquisitions and exchanges. In addition, stockholders' equity increased from the exercise of stock options and the exchange of O.P. Units for common stock.

During 2001, we purchased eight R&D properties, all located in Silicon Valley. Those acquisitions added approximately 748,000 square feet of rentable space and were acquired from the Berg Group under the Berg Land Holdings Option Agreement. The total gross acquisition price for these eight properties was approximately \$80.7 million. We financed these acquisitions by borrowing \$45.9 million under our line of credit from the Berg Group, assuming other liabilities of \$2.0 million, and issuing 2,422,837 O.P. Units to various members of the Berg Group. In addition to those eight property purchases, we also acquired two R&D properties representing approximately 127,000 rentable square feet from the Berg Group for approximately \$23.2 million in connection with a tax-deferred Section 1031 exchange for properties sold to Cisco Systems, Inc. in 2001. Until we obtained those two replacement properties, the proceeds from the sale of properties to Cisco Systems, Inc. were classified as restricted cash for use in tax-deferred property exchanges and on our balance sheet at December 31, 2001. No debt or O.P. Units were issued to acquire those two properties.

In January 2001, we completed the sale, in a tax-deferred exchange, of a 200,484 square foot R&D property located at 4949 Hellyer Avenue, San Jose, California to Cisco Systems, Inc., which had exercised an option to purchase that property in November 2000. We realized a gain of \$3.1 million, which is included in other income, on the total sale price of \$23.2 million. In September 2001, we also completed the sale, in a tax-deferred exchange, of a 77,700 square foot R&D property located at 5713-5729 Fontanos Way, San Jose, California to Cisco Systems, Inc., which had also exercised an option to purchase that property in November 2000. We realized a gain of \$8.5 million on the total sale price of \$15.4 million.



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During the year ended December 31, 2001, stock options were exercised to purchase a total of 68,088 shares of common stock, consisting of 14,588 shares exercised at \$4.50 per share, 47,500 shares exercised at \$8.25 per share, and 6,000 shares exercised at \$13.00 per share. Total proceeds to the Company were approximately \$0.5 million.

Two limited partners exchanged 236,326 O.P. Units for 236,326 shares of the Company's common stock under the terms of the Exchange Rights Agreement.

The proceeds from the exercise of stock options and the conversions of O.P. Units to shares of the Company's common stock were applied to increase our percentage interest as general partner in the operating partnerships.

YEAR ENDED DECEMBER 31, 2000.

In 2000, our financial condition changed principally as a result of property acquisitions. In addition, stockholders' equity increased from the exercise of stock options. During 2000, we acquired nine R&D properties, all located in Silicon Valley.

The property acquisitions added approximately 891,000 square feet of rentable space and were acquired from the Berg Group under the Berg Land Holdings Option Agreement and the Pending Projects Acquisition Agreement. The total gross acquisition price for those nine properties was approximately \$122.9 million. We financed those acquisitions by borrowing \$39.9 million under our line of credit from the Berg Group, issuing an \$11.8 million note to the Berg Group, assuming other liabilities of \$2.6 million, and issuing 7,370,238 O.P. Units to various members of the Berg Group.

In May 2000, we entered into a joint venture and acquired two R&D properties of approximately 160,000 square feet located at 5300 and 5350 Hellyer Avenue in San Jose, California from the Berg Group under the Berg Land Holdings Option Agreement. Those properties are operated, managed, and owned by a partnership, Hellyer Avenue Limited Partnership, in which one of the operating partnerships owns a 50% interest. The total acquisition price for those properties was \$17.2 million. We acquired those properties by issuing an \$11.8 million note secured by the property to the Berg Group, issuing 659,223 O.P. Units to various members of the Berg Group, and assuming other liabilities of \$0.8 million. The note bears interest at 7.65%, and is due in ten years with principal payments amortized over 20 years. Included in the acquisition price were construction fees of approximately \$0.6 million, loan fees of approximately \$0.4 million and commission fees of approximately \$0.3 million.

Also in May 2000, we entered into a ten-year lease with ONI Systems Corporation ("ONI") for 444,500 square feet of space to be constructed by the Berg Group on land that is subject to the Berg Land Holdings Option Agreement. As partial consideration for the lease, we were allowed to purchase 100,000 shares of ONI common stock in its initial public offering. We purchased and then sold all of the shares and realized net proceeds of \$6.3 million. Of this amount, we recognized approximately \$0.5 million during the second quarter with the balance deferred as prepaid rent that we are amortizing ratably over the ten-year lease term.

In November 2000, Cisco Systems, Inc. exercised a purchase option to purchase the properties it was leasing from us at 4949 Hellyer Avenue, San Jose, California and 5713-5729 Fontanoso Way, San Jose, California, comprising 200,484 and 77,700 rentable square feet, respectively. The sale at 4949 Hellyer Avenue was effected as a Section 1031 tax-deferred exchange in January 2001 and the sale of 5713-5729 Fontanoso Way, also a Section 1031 tax-deferred exchange, closed in the third quarter of 2001.

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During the year ended December 31, 2000, stock options were exercised to purchase a total of 52,991 shares of common stock, consisting of 39,237 shares exercised at \$4.50 per share and 13,754 shares exercised at \$8.25 per share. Total proceeds to the Company were approximately \$0.3 million.

The proceeds from the exercise of stock options were applied to increase our percentage interest as general partner in the operating partnerships.

### LIQUIDITY AND CAPITAL RESOURCES

We expect our principal source of liquidity for distributions to stockholders and O.P. Unit holders, debt service, leasing commissions and recurring capital expenditures to come from FFO and/or the borrowings under the lines of credit with the Berg Group and Cupertino National Bank and the Northwestern Mutual Life Insurance Company loan, which we obtained in January 2003. We expect these sources of liquidity to be adequate to meet projected distributions to stockholders and other presently anticipated liquidity requirements in 2003. We expect to meet our long-term liquidity requirements for the funding of property development, property acquisitions and other material non-recurring capital improvements through long-term

- 34 -

secured and unsecured indebtedness and the issuance of additional equity securities by us. We have the ability to meet short-term obligations or other liquidity needs based on the Berg Group and Cupertino National Bank lines of credit. Despite the current weakness in the economy, we expect our total interest expense to increase, but not significantly, as we incur debt through acquisitions of new properties and financing activities. In 2003, we will be obligated to make payments of debt principal under mortgage notes without regard to any debt refinancing or new debt obligations that we might incur, or optional payments of debt principal.

On March 1, 2002, we obtained a \$20 million uncollateralized loan from Citicorp USA, Inc. with an interest rate based on LIBOR. The loan, which matures on March 1, 2003, bears a fixed LIBOR interest rate of 4.09% for the first six months and LIBOR plus 2.0% thereafter. We paid a loan fee of \$50,000 and used the loan for acquiring new R&D properties. This loan was paid off in its entirety in January 2003 and retired in March 2003.

On July 12, 2002, we established a \$40 million uncollateralized revolving line of credit (the "Revolving Line of Credit") with Cupertino National Bank, Cupertino, California. We have guaranteed the Revolving Line of Credit and two operating partnerships have pledged four properties under separate guarantees. The loans under this line of credit bear interest at LIBOR plus 2%, and mature on July 12, 2004. We pay an annual loan fee of \$33,000. The proceeds from the Revolving Line of Credit may be used to repay debt, complete acquisitions and finance other working capital requirements.

On July 1, 2001, our \$75.0 million credit line with the Berg Group was increased to \$100.0 million with all other terms remaining the same. The Berg Group line of credit is currently collateralized by ten properties, bears interest at LIBOR plus 1.30%, and matures in March 2004. Debt of \$58.8 million outstanding at December 31, 2002 under this line of credit was fully repaid in early 2003. The interest rate was 2.7% at December 31, 2002. We believe that the terms of the Berg Group line of credit were more favorable than those available from institutional lenders. We are continually evaluating alternative sources of credit to replace the Berg Group line of credit. There can be no assurance that we will be able to

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obtain a line of credit with terms similar to the Berg Group line of credit, and its cost of borrowing could increase substantially. See "Item 1 - Business - Risk Factors - Our contractual business relationships with the Berg Group presents additional conflicts of interest which may result in the realization of economic benefits or the deferral of tax liabilities by the Berg Group without equivalent benefits to our stockholders."

At December 31, 2002, we had total indebtedness of approximately \$238.8 million, including approximately \$136.2 million of fixed rate mortgage debt and approximately \$102.6 million under the loan from Citicorp USA, Inc. and the lines of credit from the Berg Group and Cupertino National Bank, as to which the interest rate varies with LIBOR. Of total fixed debt, the Prudential loan represented approximately \$123.3 million.

At December 31, 2002, our debt to total market capitalization ratio, which is computed as our total debt outstanding divided by the sum of total debt outstanding plus the market value of common stock (based upon the closing price of \$9.90 per share on December 31, 2002) on a fully diluted basis, including the conversion of all O.P. Units into common stock, was approximately 18.8%. On December 31, 2002, the last trading day for the year, total market capitalization was approximately \$1.3 billion.

On January 9, 2003, we paid dividends of \$0.24 per share of common stock to all common stockholders of record as of December 31, 2002. On the same date, the operating partnerships paid a distribution of \$0.24 per O.P. Unit.

On January 9, 2003, we obtained a \$100 million secured mortgage loan from Northwestern Mutual Life Insurance Company ("Northwestern Loan") that bears a fixed interest rate at 5.64% and matures in ten years with principal payments amortized over 20 years. The mortgage loan is secured by 11 of our properties. We paid approximately \$675,000 in loan fees and financing costs and used the proceeds to pay down the Citicorp USA, Inc. loan, the balance of the Cupertino National Bank line of credit, and most of the Berg Group line of credit.

On March 12, 2003, we declared dividends of \$0.24 per common share payable on April 10, 2003 to all common stockholders of record on March 31, 2003.

- 35 -

The following table sets forth certain information regarding debt outstanding as of December 31, 2002.

Debt Description	Collateral Properties	At D
(dollar		
Line of Credit:		
Berg Group (related parties)	2033-2043 Samaritan Drive, San Jose, CA 2133 Samaritan Drive, San Jose, CA 2233-2243 Samaritan Drive, San Jose, CA 1310-1450 McCandless Drive, Milpitas, CA 1315-1375 McCandless Drive, Milpitas, CA 1650-1690 McCandless Drive, Milpitas, CA 1795-1845 McCandless Drive, Milpitas, CA	

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2251 Lawson Lane, Santa Clara, CA (2)  
20605-20705 Valley Green Dr, Cupertino, CA (2)

Mortgage Notes Payable (related parties): 5300-5350 Hellyer Avenue, San Jose, CA

Mortgage Notes Payable (3):

Prudential Capital Group 20400 Mariani Avenue, Cupertino, CA  
New York Life Insurance Company 10440 Bubb Road, Cupertino, CA  
Washington Mutual (Home S&L Association) 10460 Bubb Road, Cupertino, CA  
Prudential Insurance Co. of America (4) 10300 Bubb Road, Cupertino, CA  
10500 North De Anza Blvd, Cupertino, CA  
4050 Starboard Drive, Fremont, CA  
45700 Northport Loop, Fremont, CA  
45738 Northport Loop, Fremont, CA  
450-460 National Ave, Mountain View, CA  
6311 San Ignacio Avenue, San Jose, CA  
6321 San Ignacio Avenue, San Jose, CA  
6325 San Ignacio Avenue, San Jose, CA  
6331 San Ignacio Avenue, San Jose, CA  
6341 San Ignacio Avenue, San Jose, CA  
6351 San Ignacio Avenue, San Jose, CA  
3236 Scott Blvd, Santa Clara, CA  
3560 Bassett Street, Santa Clara, CA  
3570 Bassett Street, Santa Clara, CA  
3580 Bassett Street, Santa Clara, CA  
1135 Kern Avenue, Sunnyvale, CA  
1212 Bordeaux Lane, Sunnyvale, CA  
1230 East Arques, Sunnyvale, CA  
1250 East Arques, Sunnyvale, CA  
1170 Morse Avenue, Sunnyvale, CA  
1600 Memorex Drive, Santa Clara, CA  
1688 Richard Avenue, Santa Clara, CA  
1700 Richard Avenue, Santa Clara, CA  
3540 Bassett Street, Santa Clara, CA  
3542 Bassett Street, Santa Clara, CA  
3544 Bassett Street, Santa Clara, CA  
3550 Bassett Street, Santa Clara, CA

Mortgage Notes Payable

Uncollateralized Loan:  
Citicorp USA, Inc.

Revolving Line of Credit:  
Cupertino National Bank

TOTAL

- 36 -

- (1) The debt owed to the Berg Group under the line of credit carries a variable interest rate equal to LIBOR plus 1.30% and is payable in full in March 2004. The interest rate was 2.7% at December 31, 2002.
- (2) Substituted collateral properties for the Berg Group line of credit in place of properties at 5325-5345 Hellyer Avenue, 2610 North First Street, and 75 East Trimble Road. These four properties were collateralized under the Berg Group line of credit at December 31, 2001.

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- (3) Mortgage notes payable generally require monthly installments of interest and principal over various terms extending through the year 2009. The weighted average interest rate of mortgage notes payable was 6.68% at December 31, 2002.
- (4) The Prudential loan is payable in monthly installments of \$827, which includes principal (based upon a 30-year amortization) and interest. John Kontrabecki, one of the limited partners, has guaranteed approximately \$12,000 of this debt. Costs and fees incurred with obtaining this loan aggregated approximately \$900.
- (5) The uncollateralized loan from Citicorp USA, Inc. carries a fixed LIBOR interest rate equal to 4.09% for the first six months and LIBOR plus 2.0% thereafter and is payable in full in March 2003. The interest rate at December 31, 2002 was 3.81%. The full balance was paid off in January 2003.
- (6) The uncollateralized revolving line of credit from Cupertino National Bank carries a variable interest rate equal to LIBOR plus 2.0% and is payable in full in July 2004. The interest rate at December 31, 2002 was 3.72%.

At December 31, 2002, the outstanding balance remaining under the demand notes owed to the operating partnerships was \$1.37 million. The Company and the operating partnerships have agreed to extend the due date of the demand notes to September 30, 2005. The principal of the demand notes, along with the interest expense, which is interest income to the operating partnerships, is eliminated in consolidation and is not included in the corresponding line items within the consolidated financial statements. However, the interest income earned by the operating partnerships, which is interest expense to us, in connection with this debt, is included in the calculation of minority interest as reported on the consolidated statement of operations, thereby reducing our net income by this same amount. At present, our only means for repayment of this debt is through distributions received from the operating partnerships in excess of the amount of dividends to be paid to our stockholders.

- 37 -

### HISTORICAL CASH FLOWS

COMPARISON OF THE YEAR ENDED DECEMBER 31, 2002 TO THE YEAR ENDED DECEMBER 31, 2001.

Net cash provided by operating activities for the year ended December 31, 2002 was approximately \$117.4 million, compared to approximately \$111.2 million for the prior year. The increase in cash resulted from increased rental receipts attributable to newly acquired properties.

Net cash used in investing activities was approximately (\$20.7) million for the year ended December 31, 2002, compared to approximately (\$3.0) million for the prior year. Cash used in investing activities during 2002 related to the acquisition of three R&D properties through a tax-deferred exchange transaction involving the property sold to Xilinx, Inc. pursuant to its purchase option as well as new equipment and improvements

Net cash used in financing activities was approximately (\$97.5) million for the year ended December 31, 2002, compared to (\$107.5) million for the year ended December 31, 2001. During 2002, we paid debt principal and made distributions to holders of our common stock and O.P. Units utilizing cash

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generated from operating activities and other borrowed funds. Financing activities in 2002 also consisted of a \$20 million uncollateralized loan from Citicorp USA, Inc. and a \$40 million line of credit established with Cupertino National Bank of which \$23.8 million had been drawn as of the year end. For the year ended December 31, 2002, we paid dividends to our stockholders and made distributions to the O.P. Unit holders totaling approximately \$99.7 million, compared to approximately \$85.0 million for the year ended December 31, 2001.

COMPARISON OF THE YEAR ENDED DECEMBER 31, 2001 TO THE YEAR ENDED DECEMBER 31, 2000.

Net cash provided by operating activities for the year ended December 31, 2001 was approximately \$111.2 million, compared to approximately \$84.6 million for the prior year. The change was a direct result of increased rent from newly acquired properties and higher rental rates under existing leases.

Net cash used in investing activities was approximately (\$3.0) million for the year ended December 31, 2001, compared to approximately (\$2.7) million for the prior year. Cash used in investing activities during 2001 related to improvements and the amortization of the Xilinx purchase option deposit.

Net cash used in financing activities was approximately (\$107.5) million for the year ended December 31, 2001, compared to (\$83.7) million for the year ended December 31, 2000. During 2001, we paid debt principal and made distributions to holders of our common stock and O.P. Units utilizing cash generated from operating activities. For the year ended December 31, 2001, we paid dividends to our stockholders and made distributions to the O.P. Unit holders totaling approximately \$85.0 million, compared to approximately \$61.1 million for the year ended December 31, 2000.

### CAPITAL EXPENDITURES

The properties require periodic investments of capital for tenant-related capital expenditures and for general capital improvements. For the years ended December 31, 1995 through December 31, 2002, the recurring tenant improvement costs and leasing commissions incurred with respect to new leases and lease renewals of the properties previously owned or controlled by members of the Berg Group averaged approximately \$1.75 million annually. We will have approximately 527,369 rentable square feet under expiring leases in 2003. We expect that the average annual cost of recurring tenant improvements and leasing commissions, related to these properties, will be approximately \$1.5 million during 2003. We believe we will recover substantially all of these sums from the tenants under the new or renewed leases through increases in rental rates. Until we actually sign the leases, however, we cannot assure you that this will occur. Capital expenditures may fluctuate in any given period subject to the nature, extent, and timing of improvements required to be made to the properties. Tenant improvements and leasing costs may also fluctuate in any given period year depending upon factors such as the property, the term of the lease, the type of lease and the overall market conditions. We expect to meet our long-term liquidity requirements for the funding of property acquisitions and other material non-recurring capital improvements through long-term secured and unsecured indebtedness and the issuance of additional equity securities by the Company, but cannot be assured that we will be able to meet our requirements on favorable terms. See "Policy with Respect to Certain Activities - Financing Policies."

### FUNDS FROM OPERATIONS

As defined by the NAREIT, FFO represents net income (loss) before minority

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interest of O.P. Unit holders, computed in accordance with GAAP, including non-recurring events other than "extraordinary items" under GAAP and gains and losses from sales of depreciable operating properties, plus real estate related depreciation and amortization, excluding amortization of deferred financing costs and depreciation of non-real estate assets, and after adjustments for unconsolidated partnerships and

- 38 -

joint ventures. Management considers FFO an appropriate measure of performance of an equity REIT because, along with cash flows from operating activities, financing activities and investing activities, it provides investors with an understanding of our ability to incur and service debt and make capital expenditures. With the recent emphasis on the disclosure of operating earnings per share, we will still continue to use FFO as a measure of the Company's performance. FFO should not be considered as an alternative for net income as a measure of profitability nor is it comparable to cash flows provided by operating activities determined in accordance with GAAP, nor is FFO necessarily indicative of funds available to meet our cash needs, including our need to make cash distributions to satisfy REIT requirements. For example, FFO is not adjusted for payments of debt principal required under our service debt obligations.

Our definition of FFO also assumes conversion at the beginning of the period of all convertible securities, including minority interests that might be exchanged for common stock. Our FFO does not represent the amount available for management's discretionary use; as such funds may be needed for capital replacement or expansion, debt service obligations or other commitments and uncertainties.

Furthermore, FFO is not comparable to similarly entitled items reported by other REITs that do not define FFO exactly as we do. FFO for the years ended December 31, 2002 and 2001 is as follows:

	For the Year Ended Dec
	----- 2002 -----
	(dollars in thous
Net income	\$ 17,501
Add:	
Minority interest (1)	87,988
Depreciation	17,974
Less:	
Gain on sales of assets	6,103
	-----
FFO	\$117,360 =====

- (1) The minority interest for unrelated parties was deducted from total minority interest in calculating FFO.

### OVERVIEW OF DISTRIBUTION POLICY

We intend to make regular quarterly distributions to stockholders and O.P. Unit holders based on our FAD, which is calculated as FFO less

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straight-line rents, leasing commissions paid, and capital expenditures made during the respective period. Our ability to make such distributions will be affected by numerous factors including, most importantly, the receipt of distributions from the operating partnerships.

FAD does not represent cash generated from operating activities in accordance with GAAP and is not necessarily indicative of cash available to fund cash needs. The actual return that we will realize and the amount available for distributions to stockholders will be affected by a number of factors, including the revenues received from our properties, our operating expenses, debt service on borrowings, and planned and unanticipated capital expenditures.

We anticipate that cash available for distribution will exceed earnings and profits for federal income tax purposes, as the latter figure takes into account non-cash expenses, such as depreciation and amortization, that we will incur. Distributions, other than capital gain distributions, by us to the extent of our current and accumulated earnings and profits for federal income tax purposes most likely will be taxable to U.S. stockholders as ordinary dividend income unless a stockholder is a tax-exempt entity. Distributions in excess of earnings and profits generally will be treated as a non-taxable reduction of the U.S. stockholder's basis in the common stock to the extent of such basis, and thereafter as taxable gain. The percentage of such distributions in excess of earnings and profits, if any, may vary from period to period.

Distributions are determined by our board of directors and depend on actual FAD, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and such other factors as the board of directors deems relevant. For a discussion of the risk that we will not meet our distribution objectives, see Part I, Item 1., "Business - Risk Factors -- Stockholders are not assured of receiving cash distributions from us." The calculation of FAD for the years ended December 31, 2002 and 2001 is as follows:

- 39 -

	For the Year Ended Dec
	2002
	(dollars in thous
FFO	\$117,360
Less:	
Straight-line rents	78
Leasing commissions	478
Capital expenditures	717
FAD	\$116,087

### POLICIES WITH RESPECT TO CERTAIN ACTIVITIES

We have adopted policies with respect to investment, financing, conflicts



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of interest and other activities. These policies have been formulated by our board of directors, are set forth in our charter, bylaws, operating partnership agreements or agreements with the Berg Group, and generally may be amended or revised from time to time, subject to applicable agreement terms, at the discretion of the board of directors without a vote of the stockholders. Among other things, these policies provide that:

- so long as the Berg Group members and their affiliates, other than us and the operating partnerships, beneficially own, in the aggregate, at least 15% of the outstanding shares of common stock on a Fully Diluted basis, the approval of a majority of our directors, including Carl E. Berg or his designee as a director, and of the holders of a majority of the O.P. Units is required for us to take title to assets, other than temporarily in connection with an acquisition prior to contributing such assets to the operating partnerships, or to conduct business other than through the operating partnerships, or for us or the operating partnerships to engage in any business other than the ownership, construction, development and operation of real estate properties, or for certain fundamental corporate actions, including amendments to our charter, bylaws or any operating partnership agreement and any merger, consolidation or sale of all or substantially all of our assets or the assets of the operating partnerships;
- changes in certain policies with respect to conflicts of interest must be consistent with legal requirements;
- certain policies with respect to competition by the Berg Group are imposed pursuant to provisions of the acquisition agreement that cannot be amended or waived without the approval of the independent directors committee of our board of directors;
- we cannot take any action intended to terminate our qualification as a REIT without the approval of more than 75% of the entire board of directors; and
- we cannot undertake certain other specified transactions, including the issuance of debt securities, and borrowings in excess of specified limits, or the amendment of our charter and bylaws, without the approval of more than 75% of the entire board of directors.

### INVESTMENT POLICIES

We expect to pursue our business and investment objectives principally through the direct ownership by the operating partnerships of our properties and future acquired properties. Development or investment activities are not limited to any specified percentage of our assets. We may also participate with other entities in property ownership, through joint ventures or other types of co-ownership. Equity investments may be subject to existing mortgage financing and other indebtedness that have priority over our equity interests.

While we will emphasize equity real estate investments, we may, in our discretion and subject to the percentage ownership limitations and gross income tests necessary for REIT qualification, invest in mortgage and other real estate interests, including securities of other real estate investment trusts. We have not previously invested in mortgages or securities of other real estate investment trusts, and we do not have any present intention to make such investments.

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### FINANCING POLICIES

To the extent that our board of directors determines to seek additional capital, we may raise such capital through additional equity offerings, debt financing or retention of cash flow, or through a combination of these sources, after consideration of provisions of the Code requiring the distribution by a REIT of a certain percentage of its taxable income and taking into account taxes that would be imposed on undistributed taxable income. It is our present intention that any additional borrowings will be made through the operating partnerships, although we may incur borrowings that would be reloaned to the operating partnerships. Borrowings may be unsecured or may be secured by any or all of our assets, the operating partnerships or any existing or new property, and may have full or limited recourse to all or any portion of our assets, the operating partnerships or any existing or new property.

We have not established any limit on the number or amount of mortgages that may be placed on any single property or on our portfolio as a whole. We may also determine to finance acquisitions through the exchange of properties or the issuance of additional O.P. Units in the operating partnerships, shares of common stock or other securities.

In the event that the board of directors determines to raise additional equity capital, it has the authority, without stockholder approval, to issue additional shares of common stock, preferred stock or other capital stock, including securities senior to the common stock, in any manner and on such terms and for such consideration it deems appropriate, including in exchange for property. In the event that we issue any shares of common stock or securities convertible into or exchangeable or exercisable for, shares of common stock, subject to limited exceptions, such as the issuance of common stock pursuant to any stock incentive plan adopted by us or pursuant to limited partners' exercise of the exchange rights or the put rights, the limited partners will have the right to purchase common stock or such securities in order to maintain their respective percentage interests in us on a Fully Diluted basis. If the board of directors determines that we will raise additional equity capital to fund investments by the operating partnerships, we will contribute such funds to the operating partnerships as a contribution to capital and purchase of additional general partnership interest; however, holders of O.P. Units will have the right to participate in such funding on a pro rata basis. In the event that holders of O.P. Units sell their O.P. Units to us upon exercise of their put rights, we are authorized to raise the funds for such purchase by issuing additional shares of common stock. Alternatively, we may issue additional shares of common stock in exchange for the tendered O.P. Units.

Our board of directors also has the authority to cause the operating partnerships to issue additional O.P. Units in any manner and on such terms and for such consideration, as it deems appropriate, including in exchange for property. In the event that the operating partnerships issue new O.P. Units for cash, but not property, the limited partners holding O.P. Units in an operating partnership will have the right to purchase O.P. Units in order, and to the extent necessary, to maintain their respective percentage interests in that operating partnership. The new O.P. Units will be exchangeable for common stock pursuant to the exchange rights or may be tendered to us pursuant to the put rights.

### DISPOSITION POLICIES

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We have no current intention of disposing of any of our properties, although we reserve the right to do so. The tax basis of the limited partners in the properties in the operating partnerships is substantially less than current fair market value. Accordingly, prior to the disposition of their O.P. Units, upon a disposition of any of the properties, a disproportionately large share of the gain for federal income tax purposes would be allocated to the limited partners. Consequently, it may be in the interests of the limited partners that we continue to hold the properties in order to defer such taxable gain. In light of this tax effect, the operating partnership agreements provide that, until January 2009, or until the Berg Group members and their affiliates, other than us and the operating partnerships, beneficially own, in the aggregate, less than 15% of the outstanding shares of common stock on a Fully Diluted basis, if earlier, Carl E. Berg and Clyde J. Berg may prohibit the operating partnerships from disposing of properties which they designate in a taxable transaction. Mr. Kontrabecki has a similar right with respect to seven of the properties, which right will lapse before the end of the ten-year period if his beneficial ownership interest falls below 750,000 O.P. Units. The limited partners may seek to cause us to retain the properties even when such action may not be in the interests of some, or a majority, of our stockholders. The operating partnerships will be able to effect "tax-deferred," like-kind exchanges under Section 1031 of the Code, or in connection with other non-taxable transactions, such as a contribution of property to a new partnership, without obtaining the prior written consent of these individuals. The approval of a majority of our directors, including Carl E. Berg or his designee, will be required to sell all or substantially all of our assets. The consent of the holders of a majority of the O.P. Units will be required to effect a sale or sales of all, or substantially all, of the assets of any of the operating partnerships.

### IMPACT OF RECENTLY ISSUED ACCOUNTING STANDARDS

We do not believe that recently issued accounting standards will materially impact our financial position, results of operations, or cash flows.

- 41 -

### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not generally hold market risk sensitive instruments for trading purposes. We use fixed and variable rate debt to finance our operations. Our exposure to market risk for changes in interest rates relates primarily to our current and future debt obligations. We are vulnerable to significant fluctuations of interest rates on our floating rate debt. We manage our market risk by monitoring interest rates where we try to recognize the unpredictability of the financial markets and seek to reduce potentially adverse effect on the results of our operations. This takes frequent evaluation of available lending rates and examination of opportunities to reduce interest expense through new sources of debt financing. Several factors affecting the interest rate risk include governmental monetary and tax policies, domestic and international economics and other factors that are beyond our control. The following table provides information about the principal cash flows, weighted average interest rates, and expected maturity dates for debt outstanding as of December 31, 2002. The current terms of this debt are described in Item 7., "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources." Average interest rates are based on implied LIBOR for the respective time period. Fair value approximates book value for fixed rate debt. Of the projected fair value of secured notes payable, approximately \$123.3 million represents the

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Prudential secured loan.

For variable rate debt, the table presents the assumption that the outstanding principal balance at December 31, 2002 will be paid upon maturity.

For fixed rate debt, the table presents the assumption that the outstanding principal balance at December 31, 2002 will be paid according to scheduled principal payments and that we will not prepay any of the outstanding principal balance.

	2003 ----	2004 ----	2005 ----	2006 ----	2007 ----
VARIABLE RATE DEBT: <span style="float: right;">(dollars in thousands)</span>					
Secured and unsecured debt	\$20,000	\$82,631			
Weighted average interest rate	3.42%	3.42%			
FIXED RATE DEBT:					
Secured notes payable	\$2,465	\$2,642	\$2,832	\$3,000	\$3,150
Weighted average interest rate	6.68%	6.68%	6.68%	6.68%	6.68%

The variable rate debt represented 43.0% and 36.5%, and the fixed rate debt represented 57.0% and 63.5% of all debt outstanding for the years ended December 31, 2002 and 2001, respectively. All of the debt is denominated in United States dollars. The weighted average interest rate for variable rate debt was approximately 3.42% and 4.88% for the years ended December 31, 2002 and 2001, respectively. The difference in spread was due to numerous cuts in interest rates by the Federal Reserve during 2001 and 2002. The weighted average interest rate for fixed rate debt was approximately 6.68% and 6.69% for the years ended December 31, 2002 and 2001, respectively. The difference in interest expense attributable to the average interest rate difference between 2001 and 2002 was \$403,000. We do not anticipate interest rate changes in 2003 that would result in a change in interest expense significantly larger than we experienced from 2001 to 2002.

The primary market risk we face is the risk of interest rate fluctuations. The Berg Group line of credit, the Cupertino National Bank line of credit, and the Citicorp USA, Inc. loan, which are tied to a LIBOR, based interest rate, were approximately \$102.6 million, or 43.0%, of the total \$238.8 million of debt as of December 31, 2002. As a result, we pay lower rates of interest in periods of decreasing interest rates and higher rates of interest in periods of increasing interest rates. In early 2003, with the proceeds that we received from the \$100 million secured mortgage loan with Northwestern Mutual Life Insurance Company, we paid \$20 million to Citicorp USA, Inc., \$23 million to Cupertino National Bank and \$57 million to the Berg Group. The Citicorp USA, Inc. loan was retired in March 2003, but we anticipate drawing upon on the lines of credit with Cupertino National Bank and the Berg Group in the future. At December 31, 2002, we had no interest rate caps or interest rate swap contracts.

The following discussion of market risk is based solely on a possible hypothetical change in future market conditions related to our variable-rate debt. It includes "forward-looking statements" regarding market risk, but we are not forecasting the occurrence of these market changes. Based on the amount of variable debt outstanding as of December 31, 2002, a 1% increase or decrease in interest rates on our \$102.6 million of floating rate debt would decrease or increase, respectively, annual

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earnings and cash flows by approximately \$1.0 million, as a result of the increased or decreased interest expense associated with the change in rate, and would not have an impact on the fair value of the floating rate debt. This amount is determined by considering the impact of hypothetical interest rates on our borrowing cost. Due to the uncertainty of fluctuations in interest rates and the specific actions that might be taken by us to mitigate of such fluctuations and their possible effects, the foregoing sensitivity analysis assumes no changes on our financial structure.

- 42 -

### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

MISSION WEST PROPERTIES, INC.

#### INDEX TO FINANCIAL STATEMENTS

##### Report of Independent Accountants

Consolidated Balance Sheets of Mission West Properties, Inc. at December 31, 2002 and 2001  
Consolidated Statements of Operations of Mission West Properties, Inc. for the years ended  
December 31, 2002, 2001 and 2000

Consolidated Statements of Changes in Stockholders' Equity of Mission West Properties, Inc.  
for the years ended December 31, 2002, 2001 and 2000

Consolidated Statements of Cash Flows of Mission West Properties, Inc. for the years ended  
December 31, 2002, 2001 and 2000

Notes to the Consolidated Financial Statements

Supplemental Financial Information

Report of Independent Accountants

Schedule III: Real Estate and Accumulated Depreciation of Mission West Properties, Inc. as of  
December 31, 2002

Schedule III: Real Estate and Accumulated Depreciation of Mission West Properties, Inc. as of  
December 31, 2001

- 43 -

#### REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders  
of Mission West Properties, Inc.

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of changes in stockholders' equity and of cash flows present fairly, in all material respects, the financial position of Mission West Properties, Inc. and its subsidiaries (the "Company") 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

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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.

As discussed in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standard No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets", in 2002.

PricewaterhouseCoopers LLP

San Francisco, California  
January 28, 2003

- 44 -

MISSION WEST PROPERTIES, INC.  
CONSOLIDATED BALANCE SHEETS  
(dollars in thousands, except share and per share data)

ASSETS	Dece ----- 2002 -----
Real estate assets:	
Land	\$ 234,70
Buildings and improvements	726,58
	-----
	961,28
Less accumulated depreciation	(66,56)
	-----
Net real estate assets	894,72
Cash and cash equivalents	4,47
Restricted cash	
Deferred rent, net of allowance	17,00
Other assets (net of accumulated amortization of \$2,663 and \$1,317 at December 31, 2002 and 2001, respectively)	13,19
	-----
Total assets	\$ 929,40 =====

LIABILITIES AND STOCKHOLDERS' EQUITY

Liabilities:	
Line of credit (related parties)	\$ 58,79

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Revolving line of credit	23,83
Loan payable	20,00
Mortgage notes payable	125,06
Mortgage notes payable (related parties)	11,07
Interest payable	33
Security deposits	11,18
Prepaid rental income	9,87
Dividends/distributions payable	24,95
Refundable option payment	
Accounts payable and accrued expenses	4,69
	-----
Total liabilities	289,81
	-----
Commitments and contingencies (Notes 3, 5, 12 and 14)	
Minority interest	528,76
Stockholders' equity:	
Preferred stock, no par value, 200,000 shares authorized, none issued and outstanding	
Common stock, \$.001 par value at December 31, 2002 and 2001, 200,000,000 shares authorized, 17,487,329 and 17,329,779 shares issued and outstanding at December 31, 2002 and 2001, respectively	1
Paid-in capital	128,29
Accumulated deficit	(17,49)
	-----
Total stockholders' equity	110,82
	-----
Total liabilities and stockholders' equity	\$ 929,40
	=====

See notes to consolidated financial statements

- 45 -

MISSION WEST PROPERTIES, INC.  
CONSOLIDATED STATEMENTS OF OPERATIONS  
(dollars in thousands, except per share data)

	Year Ended December	
	2002	2001
	-----	-----
Revenues:		
Rental revenues from real estate	\$ 129,781	\$ 126,2
Tenant reimbursements	20,097	17,4
Other income, including interest	4,250	2,4
Gain on sales of assets	-	11,4
	-----	-----
	154,128	157,6

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Expenses:		
Property operating, maintenance and real estate taxes	22,015	18,3
Interest	9,588	8,7
Interest (related parties)	3,422	4,7
General and administrative	1,488	1,2
Depreciation	17,928	16,6
	-----	-----
	54,441	49,6
	-----	-----
Income before minority interest	99,687	107,9
Minority interest	83,251	90,1
	-----	-----
Income from continuing operations	16,436	17,8
	-----	-----
Discontinued operations, net of minority interests:		
Gain from disposal of discontinued operations	1,018	
Income attributable to discontinued operations	47	2
	-----	-----
Income from discontinued operations	1,065	2
	-----	-----
Net income to common stockholders	\$ 17,501	\$ 18,1
	=====	=====
Net income to minority interest	\$ 88,576	\$ 91,5
	=====	=====
Income per share from continuing operations:		
Basic	\$ 0.94	\$ 1.
	=====	=====
Diluted	\$ 0.92	\$ 1.
	=====	=====
Income per share from discontinued operations:		
Basic	\$ 0.06	\$ 0.
	=====	=====
Diluted	\$ 0.06	\$ 0.
	=====	=====
Net income per share to common stockholders:		
Basic	\$ 1.00	\$ 1.
	=====	=====
Diluted	\$ 0.98	\$ 1.
	=====	=====
Weighted average shares of common stock (basic)	17,455,799	17,103,7
	=====	=====
Weighted average shares of common stock (diluted)	17,854,892	17,589,3
	=====	=====
Weighted average O.P. Units	86,334,548	85,122,7
	=====	=====
Outstanding common stock	17,487,329	17,329,7
	=====	=====
Outstanding O.P. Units	86,474,032	85,762,5
	=====	=====

See notes to consolidated financial statements

- 46 -

MISSION WEST PROPERTIES, INC.  
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY



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(dollars in thousands, except share data)

	Shares of Common Stock Outstanding	Common Stock	Paid-in- Capital	Accumu Defi
Balance, December 31, 1999	16,972,374	\$17	\$122,746	\$ (2
Issuance of common stock upon option exercise	52,991		390	
Dividends declared				(1
Net income				1
Balance, December 31, 2000	17,025,365	17	123,136	(2
Issuance of common stock upon option exercise	68,088		535	
Issuance of common stock upon O.P. Unit conversion	236,326		2,955	
Dividends declared				(1
Net income				1
Balance, December 31, 2001	17,329,779	17	126,626	(1
Issuance of common stock upon option exercise	33,550		151	
Issuance of common stock upon O.P. Unit conversion	124,000		1,518	
Dividends declared				(1
Net income				1
Balance, December 31, 2002	17,487,329	\$17	\$128,295	\$ (1

See notes to consolidated financial statements

- 47 -

MISSION WEST PROPERTIES, INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(dollars in thousands)

	2002	Year Ended Decemb 2001
Cash flows from operating activities:		
Net income	\$ 17,501	\$ 18,135
Adjustments to reconcile net income to net cash provided by operating activities:		
Minority interest	88,576	91,565
Depreciation	17,974	16,917
Gain on sales of assets	(6,103)	(11,454)
Other	(14)	14

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Change in operating assets and liabilities:		
Deferred rent	(78)	(6,054)
Other assets	(1,546)	(164)
Interest payable	(5)	(5)
Security deposits	3,847	797
Prepaid rental income	(2,594)	1,172
Accounts payable and accrued expenses	(190)	234
	-----	-----
Net cash provided by operating activities	117,368	111,157
	-----	-----
Cash flows from investing activities:		
Improvements to real estate	(1,902)	(1,041)
Refundable option payment	(18,836)	(1,999)
Proceeds from sales of real estate	31,305	38,489
Purchase of real estate	(31,311)	(38,489)
	-----	-----
Net cash used in investing activities	(20,744)	(3,040)
	-----	-----
Cash flows from financing activities:		
Principal payments on mortgage notes payable	(2,354)	(4,639)
Principal payments on mortgage notes payable (related parties)	(293)	(272)
Net payments under line of credit (related parties)	(39,095)	(18,136)
Proceeds from unsecured loan	20,000	-
Proceeds from line of credit	28,839	-
Payment on line of credit	(5,000)	-
Financing costs	(52)	-
Net proceeds from exercise of stock options	151	536
Minority interest distributions	(82,916)	(70,636)
Dividends	(16,735)	(14,351)
	-----	-----
Net cash used in financing activities	(97,455)	(107,498)
	-----	-----
Net (decrease) increase in cash and cash equivalents	(831)	619
Cash and cash equivalents, beginning of year	5,310	4,691
	-----	-----
Cash and cash equivalents, end of year	\$ 4,479	\$ 5,310
	=====	=====

Refer to Note 13 for supplemental cash flow information.

See notes to consolidated financial statements

- 48 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

1. ORGANIZATIONS AND FORMATION OF THE COMPANY

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Mission West Properties, Inc. ("the Company") is a fully integrated, self-administered and self-managed real estate company that acquires and manages office/R&D/manufacturing properties in the portion of the San Francisco Bay Area commonly referred to as Silicon Valley. In July 1998, the Company acquired control of four existing limited partnerships (referred to collectively as the "operating partnerships"), by becoming the sole general partner in each one effective July 1, 1998 for financial accounting and reporting purposes. The Company purchased an approximate 12.11% interest in each of the operating partnerships. All limited partnership interests in the operating partnerships were converted into 59,479,633 O.P. Units, which represented an ownership interest of approximately 87.89% of the operating partnerships. The operating partnerships are the vehicles through which the Company will own its assets, will make its future acquisitions, and generally conduct its business.

On December 30, 1998, the Company was reincorporated under the laws of the State of Maryland through a merger with and into Mission West Properties, Inc. Accordingly, shares of the former company, Mission West Properties, a California corporation (no par), which were outstanding at December 30, 1998, were converted into shares of common stock (\$.001 par value per share) on a one-for-one basis.

As of December 31, 2002, the Company owns a general partnership interest of 16.68%, 21.46%, 15.46% and 12.27% in Mission West Properties, L.P., Mission West Properties, L.P. I, Mission West Properties, L.P. II and Mission West Properties, L.P. III, respectively, for a 16.82% general partnership interest in the operating partnerships, taken as a whole, on a weighted average basis.

The Company, through the operating partnerships, owns interests in 101 R&D properties, all of which are located in Silicon Valley.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### PRINCIPLES OF CONSOLIDATION AND FINANCIAL STATEMENT PRESENTATION:

The accompanying consolidated financial statements include the accounts of the Company and its controlled subsidiaries, the operating partnerships (the "Company"). All significant intercompany transactions have been eliminated in consolidation.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") 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 dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

The Company adopted Statement of Financial Accounting Standard, ("SFAS") No. 144 "Accounting for the Impairment or Disposal of Long Lived Assets" ("SFAS" No. 144), effective January 1, 2002 (see note 15).

### REAL ESTATE ASSETS:

Real estate assets are stated at cost. Cost includes expenditures for improvements or replacements. Maintenance and repairs are charged to expense as incurred.

The Company reviews real estate assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If the carrying amount of the asset exceeds its estimated undiscounted net cash flow, before interest, the Company will recognize an

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impairment loss equal to the difference between its carrying amount and its estimated fair value. If impairment is recognized, the reduced carrying amount of the asset will be accounted for as its new cost. For a depreciable asset, the new cost will be depreciated over the asset's remaining useful life. Generally, fair values are estimated using discounted cash flow, replacement cost or market comparison analyses. The process of evaluating for impairment requires estimates as to future events and conditions, which are subject to varying market and economic factors. Therefore, it is reasonably possible that a change in estimate resulting from judgments as to future events could occur which

- 49 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

would affect the recorded amounts of the property. As of December 31, 2002 and 2001, the properties' carrying values did not exceed the estimated sum of their undiscounted net cash flow and no impairment losses were recorded.

#### DEPRECIATION:

Depreciation is computed using the straight-line method over estimated useful lives of 40 years for buildings and improvements.

#### CASH AND CASH EQUIVALENTS:

The Company considers highly liquid short-term investments with initial maturities of three months or less to be cash equivalents.

Cash and cash equivalents are primarily held in a single financial institution, and at times, such balances may be in excess of the Federal Deposit Insurance Corporation insurance limit.

#### RESTRICTED CASH:

Restricted cash represent proceeds received from property sales that are held in a separate cash account at a trust company that the Company has designated for future use in tax-deferred exchanges.

#### DEFERRED RENT:

Deferred rent is the difference between recognized rental income and rental cash receipts. Rental income is recognized on the straight-line method of accounting required by GAAP under which contractual rent payment increases are recognized evenly over the lease term.

#### OTHER ASSETS:

Included in other assets are costs associated with obtaining debt financing and commissions associated with new leases. Such debt financing costs are being amortized over the term of the associated debt, by a method that approximates the effective interest method and such lease commissions are amortized over the term of the related lease. Also included is the Berg Group's obligation of approximately \$7.5 million to construct a building at 245 Caspian Drive in Sunnyvale, California.

#### MINORITY INTERESTS:

Minority interests represent the limited partnership interests in the operating partnerships.

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### REVENUE RECOGNITION:

Rental income is recognized on the straight-line method of accounting required by GAAP under which contractual rent payment increases are recognized evenly over the lease term. The difference between recognized rental income and rental cash receipts is recorded as deferred rent on the balance sheet. Certain lease agreements contain terms that provide for additional rents based on reimbursement of certain costs. These additional rents are reflected on the accrual basis.

Gains and losses from sales are included in income in accordance with SFAS No. 66, "Accounting for Sales of Real Estate."

### INCOME TAXES:

The Company has been taxed as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended, (the "Code") commencing with the taxable year ended December 31, 1999. In order for the Company to qualify as a REIT, it must distribute annually at least 90% of its REIT taxable income, as defined in the Code, to its stockholders and comply with certain other requirements. Accordingly, for the years ended December 31, 2002, 2001 and 2000, no provision for federal income taxes has been included in the accompanying consolidated financial statements.

For the year ended December 31, 2002, the Company's total dividends paid or payable to the stockholders represent 100% ordinary income for income tax purposes.

- 50 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

### NET INCOME PER SHARE:

The computation of net income per share is based on the weighted average number of common shares outstanding during the period. Diluted earnings per share amounts are based upon the weighted average of common and common equivalent shares outstanding during the year.

### ACCOUNTING FOR STOCK-BASED COMPENSATION:

SFAS No. 123, "Accounting for Stock-Based Compensation," encourages, but does not require companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has chosen to continue to account for stock-based compensation using the intrinsic value method prescribed in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" and related interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the quoted market price of the Company's stock at the date of the grant over the amount an employee must pay to acquire the stock.

### FAIR VALUE OF FINANCIAL INSTRUMENTS:

The Company's financial instruments include cash and cash equivalents, accounts payable, and debt. Considerable judgment is required in interpreting market data to develop estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in

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a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts. Cash and cash equivalents and accounts payable are carried at amounts that approximate their fair values due to their short-term maturities. The carrying amounts of the Company's variable rate debt approximate fair value since the interest rates on these instruments are equivalent to rates currently offered to the Company. For fixed rate debt, the Company estimates fair value by using discounted cash flow analyses based on borrowing rates for similar kinds of borrowing arrangements. The fair value of the Company's fixed rate debt at December 31, 2002 was \$145 million.

### RECLASSIFICATIONS:

Certain amounts from prior year's financial statements have been reclassified to conform to the presentation of the current year's financial statements. There is no impact on net income or stockholders' equity.

### CONCENTRATION OF CREDIT RISK:

The Company's properties are not geographically diverse, and its tenants operate primarily in the information technology industry. Additionally, because the properties are leased to 84 tenants at December 31, 2002, default by any major tenant could significantly impact the results of the consolidated total. One tenant, Microsoft Corporation, accounted for approximately 15.7%, 16.0% and 19.9% of the Company's rental revenues for the years ended December 31, 2002, 2001 and 2000, respectively, with the next largest tenant accounting for 8.6, 8.8% and 6.7%, respectively, of total rental revenues. Rental income from Microsoft Corporation was \$20,338, \$19,556 and \$18,803 for the years ended December 31, 2002, 2001 and 2000, respectively. Future minimum rents from this tenant are \$71,801. During 2002, eight of the Company's tenants either filed voluntary petitions for bankruptcy protection under Chapter 11 or ceased operations.

### 3. STOCK TRANSACTIONS

As of December 31, 2002 and 2001, \$1,369 and \$1,274 remained outstanding under notes issued in connection with the Company's purchase of its general partnership interests in 1998 (the "demand notes"), respectively. The demand notes which accrue interest at 7.25%, along with the interest expense (interest income to the operating partnerships), are eliminated in consolidation and are not included in the corresponding line items within the consolidated financial statements.

The limited partners of the operating partnerships have the right to tender their O.P. Units to the Company for shares of common stock or, at the Company's election, for cash. Each of the limited partners of the operating partnerships (other than Carl E. Berg and Clyde J. Berg) has the annual right to exercise put rights and cause the operating partnerships to purchase a portion of the limited partner's O.P. Units at a purchase price based on the average market value of the common stock for the 10-trading day period immediately preceding the date of tender, generally limited to one-third of the aggregate number of O.P.

- 51 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

Units owned by each limited partner. Upon the exercise of any such right by a

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limited partner, the Company will have the option to purchase the tendered O.P. Units with available cash, borrowed funds or the proceeds of an offering of newly issued shares of common stock. These put rights are available once a year. If the total purchase price of the O.P. Units tendered by all of the eligible limited partners in one year exceeds \$1 million, the Company or the operating partnerships will be entitled to reduce proportionately the number of O.P. Units to be acquired from each tendering limited partner so that the total purchase price does not exceed \$1 million.

During the year ended December 31, 2002, stock options at \$4.50 per share were exercised to purchase a total of 33,550 shares of common stock. Total proceeds to the Company were approximately \$151.

In 2002 and 2001, 124,000 and 236,326 O.P. Units, respectively, were exchanged for 124,000 and 236,326 shares of the Company's common stock, respectively, under the terms of the December 1998 Exchange Rights Agreement among the Company and all limited partners of the operating partnerships.

In 2002, Carl E. Berg gave 155,000 O.P. Units to charitable institutions that exchanged them for 155,000 shares of the Company's common stock pursuant to the Exchange Rights Agreement in January 2003.

#### 4. MINORITY INTEREST

Minority interest represents the separate private ownership of the operating partnerships, by the Berg Group and other non-affiliate interests. In total, these interests account for 83.18% and 83.27%, on a weighted average basis, of the ownership interests in the real estate operations of the Company as of December 31, 2002 and 2001, respectively. Minority interest in earnings has been calculated by taking the net income of the operating partnerships (on a stand-alone basis) multiplied by the respective minority interest ownership percentage.

There are three properties owned through three separate joint ventures, which are not wholly owned by the operating partnerships. The operating partnerships own an 83.33% interest in one joint venture, a 75% interest in another, and a 50% interest in the third. For the years ended December 31, 2002, 2001, and 2000, income associated with the interests held by the non-affiliated third parties of the three joint ventures was \$587, \$650, and \$481, respectively.

#### 5. REAL ESTATE

##### BERG LAND HOLDINGS OPTION AGREEMENT

Under the terms of the Berg Land Holdings Option Agreement, the Company, through the operating partnerships, has the option to acquire any future R&D property developed by the Berg Group on land currently owned or optioned, or acquired for these purposes in the future, directly or indirectly, by Carl E. Berg or Clyde J. Berg. At present, there are approximately 287 acres of Silicon Valley land, including land under development, owned directly or under 50% joint venture entities by certain members of the Berg Group that are subject to the terms of the Berg Land Holdings Option Agreement. The owners of the future R&D property developments may obtain cash or, at their option, O.P. Units valued at the average closing price of the shares of common stock over the 30-trading-day period preceding the acquisition date. To date, the Company has completed 18 acquisitions under the Berg Land Holdings Option Agreement representing approximately 1,864,000 rentable square feet (see Property Acquisitions below). Upon the Company's exercise of an option to purchase any of the future R&D property developments, the acquisition price will equal the sum of (a) the full construction cost of the building; plus (b) 10% of the full construction cost of the building; plus (c) interest at LIBOR (London Interbank Offer Rate) plus

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1.65% on the amount of the full construction cost of the building for the period from the date funds were disbursed by the developer to the close of escrow; plus (d) the original acquisition cost of the parcel on which the improvements will be constructed, which range from \$8.50 to \$20.00 per square foot for land currently owned; plus (e) 10% per annum of the amount of the original acquisition cost of the parcel from the later of January 1, 1998 and the seller's acquisition date to the close of escrow; minus (f) the aggregate principal amount of all debt encumbering the acquired property, or a lesser amount as approved by the members of the independent directors committee of the Company's board of directors.

Pursuant to the Berg Land Holdings Option Agreement between the Company and the Berg Group, the Company currently has the option to acquire any future R&D, office and industrial property developed by the Berg Group on land it currently owns or has under option, or acquires for these purposes in the future, directly or indirectly by certain members of the Berg Group.

- 52 -

### MISSION WEST PROPERTIES, INC. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED (Dollars in thousands, except share and per share data)

The time required to complete the leasing of developments varies from project to project. The acquisition dates and acquisition costs set forth in the table are only estimates by management. Generally, the Company will not acquire any of the above projects until they are fully completed and leased. There can be no assurance that the acquisition date and final cost to the Company as indicated above would be realized. No estimate can be given at this time as to the Company's total cost to acquire projects under the Berg Land Holdings Option Agreement, nor can it be certain of the period in which it will acquire any of the projects. Acquisitions of property under the Berg Land Holdings Option Agreement must be approved by the independent directors committee of the board of directors.

Although the Company has the right to acquire the new properties available to it under the terms of the Berg Land Holdings Option Agreement, there can be no assurance that the Company actually will consummate any intended transactions, including all of those discussed above. Furthermore, the Company has not yet determined the means by which it would acquire and pay for any such properties or the impact of any of the acquisitions on its business, results of operations, financial condition, FFO or available cash for distribution.

No estimate can be given at this time as to the total cost to the Company to acquire projects under the Berg Land Holdings Option Agreement, or the timing as to when the Company will acquire such projects. In addition to projects currently under development, the Company has the right to acquire future developments by the Berg Group on up to 250 additional acres of land currently controlled by the Berg Group, which could support approximately 3.9 million square feet of new developments. Under the Berg Land Holdings Option Agreement, as long as the Berg Group ownership in the Company and the operating partnerships taken as a whole is at least 65%, the Company also has an option to purchase all land acquired, directly or indirectly, by Carl E. Berg or Clyde J. Berg in the future which has not been improved with completed buildings and which is zoned for, intended for or appropriate for R&D, office and/or industrial development or use in the states of California, Oregon, and Washington.

Given the recent economic downturn in the Silicon Valley, the Company may not be able to maintain historical levels of growth from acquisitions of new



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developments in the future.

- 53 -

MISSION WEST PROPERTIES, INC.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
 (Dollars in thousands, except share and per share data)

6. DEBT

The following table sets forth certain information regarding debt outstanding as of December 31, 2002 and 2001.

Debt Description	Collateral Properties	Balance At December	
		2002	
Line of Credit:			
Berg Group (related parties)	2033-2043 Samaritan Drive, San Jose, CA 2133 Samaritan Drive, San Jose, CA 2233-2243 Samaritan Drive, San Jose, CA 1310-1450 McCandless Drive, Milpitas, CA 1315-1375 McCandless Drive, Milpitas, CA 1650-1690 McCandless Drive, Milpitas, CA 1795-1845 McCandless Drive, Milpitas, CA 2251 Lawson Lane, Santa Clara, CA (2) 20605-20705 Valley Green Dr, Cupertino, CA (2)	\$ 58,792	\$
Mortgage Notes Payable (related parties):	5300-5350 Hellyer Avenue, San Jose, CA	11,078	
Mortgage Notes Payable: (3)			
Prudential Capital Group	20400 Mariani Avenue, Cupertino, CA	1,423	
New York Life Insurance Company (4)	10440 Bubb Road, Cupertino, CA	-	
Washington Mutual (Home S&L Association)	10460 Bubb Road, Cupertino, CA	297	
Prudential Insurance Company of America (5)	10300 Bubb Road, Cupertino, CA 10500 North De Anza Blvd, Cupertino, CA 4050 Starboard Drive, Fremont, CA 45700 Northport Loop, Fremont, CA 45738 Northport Loop, Fremont, CA 450-460 National Ave, Mountain View, CA 6311 San Ignacio Avenue, San Jose, CA 6321 San Ignacio Avenue, San Jose, CA 6325 San Ignacio Avenue, San Jose, CA 6331 San Ignacio Avenue, San Jose, CA 6341 San Ignacio Avenue, San Jose, CA 6351 San Ignacio Avenue, San Jose, CA 3236 Scott Blvd, Santa Clara, CA 3560 Bassett Street, Santa Clara, CA 3570 Bassett Street, Santa Clara, CA 3580 Bassett Street, Santa Clara, CA 1135 Kern Avenue, Sunnyvale, CA	123,342	

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1212 Bordeaux Lane, Sunnyvale, CA  
 1230 E. Arques, Sunnyvale, CA  
 1250 E. Arques, Sunnyvale, CA  
 1170 Morse Avenue, Sunnyvale, CA  
 1600 Memorex Drive, Santa Clara, CA  
 1688 Richard Avenue, Santa Clara, CA  
 1700 Richard Avenue, Santa Clara, CA  
 3540 Bassett Street, Santa Clara, CA  
 3542 Bassett Street, Santa Clara, CA  
 3544 Bassett Street, Santa Clara, CA  
 3550 Bassett Street, Santa Clara, CA

Mortgage Notes Payable	125,062
Uncollateralized Loan: Citicorp USA, Inc.	20,000
Revolving Line of Credit: Cupertino National Bank	23,839
 Total	 \$238,771

- (1) The debt owed to the Berg Group under the line of credit carries a variable interest rate equal to LIBOR plus 1.30% and is payable in full in March 2004. The interest rate was 2.7% and 3.3% at December 31, 2002 and 2001, respectively.
- (2) Substituted collateral properties for the Berg Group line of credit in place of properties at 5325-5345 Hellyer Avenue, 2610 North First Street, and 75 East Trimble Road. These four properties were collateralized under the Berg Group line of credit at December 31, 2001.
- (3) Mortgage notes payable generally require monthly installments of interest and principal over various terms extending through the year 2009. The weighted average interest rate of mortgage notes payable was 6.68% and 6.69% at December 31, 2002 and 2001, respectively.
- (4) The New York Life Insurance loan was paid off in its entirety in November 2002.
- (5) The Prudential loan is payable in monthly installments of \$827, which includes principal (based upon a 30-year amortization) and interest. John Kontrabecki, one of the limited partners, has guaranteed approximately \$12,000 of this debt. Costs and fees incurred with obtaining this loan aggregated approximately \$900.
- (6) The uncollateralized loan from Citicorp USA, Inc. carries a fixed LIBOR interest rate equal to 4.09% for the first six months and LIBOR plus 2.0% thereafter and is payable in full in March 2003. The interest rate at December 31, 2002 was 3.81%. The full balance was paid off in January 2003.
- (7) The uncollateralized revolving line of credit from Cupertino National Bank carries a variable interest rate equal to LIBOR plus 2.0% and is payable in full in July 2004. The interest rate at December 31, 2002 was 3.72%.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

Scheduled principal payments on debt for the years ending are as follows:

	Fixed Rate Debt (Including Related Parties)	Variable Rate Debt (Including Related Parties)
	-----	-----
December 31, 2003	\$ 2,465	\$ 20,000
December 31, 2004	2,642	82,631
December 31, 2005	2,832	
December 31, 2006	3,000	
December 31, 2007	3,150	
Thereafter	122,051	
	-----	-----
	\$ 136,140	\$ 102,631
	=====	=====

### 7. OPERATING PARTNERSHIP AND STOCKHOLDER DISTRIBUTIONS

During 2002, the Company, as general partner of the operating partnerships, declared quarterly distributions aggregating \$0.96 per common share and O.P. Unit for total distributions of \$99,643, including \$24,951 payable in January 2003. Total distributions attributable to O.P. Units owned by various members of the Berg Group were \$75,076, which was treated as a draw on the Berg Group line of credit.

During 2001, the Company, as general partner of the operating partnerships, declared quarterly distributions aggregating \$0.89 per common share and O.P. Unit for total distributions of \$91,126, including \$24,742 payable in January 2002. Total distributions attributable to O.P. Units owned by various members of the Berg Group were \$70,371, which was treated as a draw on the Berg Group line of credit.

During 2000, the Company, as general partner of the operating partnerships, declared quarterly distributions aggregating \$0.68 per common share and O.P. Unit for total distributions of \$66,993, including \$19,115 payable in January 2001. Total distributions attributable to O.P. Units owned by various members of the Berg Group were \$52,478, which was treated as a draw on the Berg Group line of credit.

### 8. STOCK-BASED COMPENSATION PLANS

The Company's 1997 Stock Option Plan was approved by the Company's shareholders on November 10, 1997. The 1997 Stock Option Plan was adopted so that the Company may attract and retain the high quality employees, consultants and directors necessary to build the Company's infrastructure and to provide ongoing incentives to the Company's employees in the form of options to purchase the Company's common stock by enabling them to participate in the Company's success.

The 1997 Stock Option Plan provides for the granting to employees, including officers (whether or not they are directors) of "incentive stock options" within the meaning of Section 422 of the Code, and for the granting of non-statutory options to employees, consultants and directors of the Company. Options to purchase a maximum of 5,500,000 shares of common stock may be granted under the

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1997 Stock Option Plan, subject to equitable adjustments to reflect certain corporate events.

No options were granted in 2002.

During 2001, options were granted to one employee totaling 375,000, which become exercisable as follows: a) six months from date of grant, 8.33%; and b) each month thereafter for 66 months, an additional 1.39%. This option has a term of eight years from the date of grant subject to earlier termination in certain events related to termination of employment. The options granted during 2001 have an \$11.33 per share exercise price.

During 2000, options were granted to five employees and three directors totaling 256,000 and 96,000, respectively, which become exercisable in quarterly installments equal to 1/16th of the underlying shares beginning on the first month anniversary of the grant date. In addition, one employee was granted an option for 80,000 shares that become exercisable as follows: a) one year from date of grant, 10%; and b) each month thereafter for 36 months, an additional 2.5%. Each option has a term of six years from the date of grant subject to earlier termination in certain events related to termination of employment.

- 55 -

### MISSION WEST PROPERTIES, INC.

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED (Dollars in thousands, except share and per share data)

During 1999, one employee was granted an option for 100,000 shares that become exercisable as follows: a) 10,000 shares on May 10, 2000; and b) each month thereafter for 36 months, an additional 2,500 shares.

All options granted to employees in 1998 become exercisable as follows: a) six months from date of grant, 6.25%; b) one year from date of grant, an additional 12.50%; c) each month thereafter for 36 months, an additional 2.26%. Each option has a term of six years from the date of grant subject to earlier termination in certain events related to termination of employment. Options granted to directors will become exercisable cumulatively with respect to 1/48th of the underlying shares on the first day of each month following the date of grant. Generally, the options must be exercised while the optionee is a director of the Company. The option price is equal to the fair market value of the common stock on the date of grant.

The remaining contractual lives of unexercised options granted range from January 2004 to April 2007.

The following table shows the activity and detail for the 1997 Stock Option Plan.

	1997 Stock Option Plan	Option Price Per Share
Balance, December 31, 1998	680,000	
Options granted	337,000	\$8.25
Options exercised	(191,920)	
Options cancelled	(299,722)	
	-----	
Balance, December 31, 1999	525,358	
Options granted	80,000	\$8.25

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Options granted	352,000	\$13.00
Options exercised	(52,991)	
Options cancelled	(113,867)	
	-----	
Balance, December 31, 2000	790,500	
Options granted	375,000	\$11.33
Options exercised	(68,088)	
Options cancelled	(113,500)	
	-----	
Balance, December 31, 2001	983,912	
Options exercised	(33,550)	
	-----	
Balance, December 31, 2002	950,362	
	=====	

As of December 31, 2002, 3,978,089 additional shares were available for grant under the 1997 Stock Option Plan. None of the options granted are contingent upon the attainment of performance goals or subject to other restrictions. As of December 31, 2002, outstanding options to purchase 510,654 shares of common stock were exercisable.

The Company applies APB 25 and related interpretations in accounting for its stock-based compensation plans. Accordingly, no compensation expense has been recognized for its stock-based compensation plans. Had compensation cost for the Company's stock option plans been determined based upon the fair value at the grant date for awards under these plans consistent with the methodology prescribed under SFAS No. 123, "Accounting for Stock-Based Compensation," the Company's net income and net income per share for the year ended December 31, 2002 would not have changed since no options were granted in 2002.

For the year ended December 31, 2001, the Company's net income and net income per share would have been decreased by approximately \$439 or \$0.03 per share, resulting in a total consolidated net income of \$17,696 or \$1.01 per share on a diluted basis. The estimated fair value of the options granted during 2001 was \$13.25 share on the date of grant using the Black-Scholes option pricing model with the following assumptions: dividend yield of 8%, volatility of 23.03%, risk free rates of 4.85% and an expected life of 5 years.

For the year ended December 31, 2000, the Company's net income and net income per share would have been decreased by approximately \$634 or \$0.04 per share, resulting in a total consolidated net income of \$11,945 or \$0.68 per share on a diluted basis. The estimated fair value of the options granted during 2000 ranged from \$9.32 to \$14.56 per share on the date of grant

- 56 -

MISSION WEST PROPERTIES, INC.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
 (Dollars in thousands, except share and per share data)

using the Black-Scholes option pricing model with the following assumptions: dividend yield of 8%, volatility of 25.37%, risk free rates of 5.70% to 6.61% and an expected life of 4 years.

The Company has adopted an employee investment plan (the "Plan"), under Section 401(k) of the Internal Revenue Code. Employees who are at least 21 years old and who have completed six months of eligibility service may become participants in the Plan. Each participant may make contributions to the Plan through salary deferrals in amounts of at least 1% to a maximum of 15% of the participant's

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compensation, subject to certain limitations imposed by the Internal Revenue Code. The Company contributes an amount up to 15% of the participant's compensation, based upon management's discretion. A participant's contribution to the Plan is 100% vested and nonforfeitable. A participant will become vested in 100% of the Company's contributions after two years of eligible service. For the years ended December 31, 2002, 2001 and 2000, the Company recognized \$95, \$58 and \$40 of expense for employer contributions made in connection with this plan, respectively.

### 9. NET INCOME PER SHARE

Basic net income per share is computed by dividing net income by the weighted-average number of common shares outstanding for the period. Diluted net income per share is computed by dividing net income by the sum of weighted-average number of common shares outstanding for the period plus the assumed exercise of all dilutive securities.

The computation for weighted average shares is detailed below:

	Year Ended December 31, 2002	Year Ended December 31, 2001
	-----	-----
Weighted average shares outstanding (basic)	17,455,799	17,103,714
Incremental shares from assumed option exercise	399,093	485,639
	-----	-----
Weighted average shares outstanding (diluted)	17,854,892	17,589,353
	=====	=====

The outstanding O.P. Units have been excluded from the diluted net income per share calculation as there would be no effect on the amounts since the minority interests' share of income would also be added back to net income. O.P. Units outstanding at December 31, 2002 and 2001 were 86,474,032 and 85,762,541, respectively.

### 10. OTHER INCOME

Other income, including interest, was approximately \$4,250, \$2,465, and \$1,241 for the years ended December 31, 2002, 2001 and 2000, respectively. For the year ended December 31, 2002, termination fees accounted for approximately \$2,529 of other income.

Gain on sales of assets was approximately \$11,454 and \$501 for the years ended December 31, 2001, and 2000, respectively.

### 11. RELATED PARTY TRANSACTIONS

As of December 31, 2002 and 2001, the Berg Group owned 78,338,684 and 79,191,923 O.P. Units, respectively, of the total 86,474,032 and 85,762,541 O.P. Units issued and outstanding, respectively. Along with the Company's common shares owned by the Berg Group, the Berg Group's interest in the Company represents 75.4% and 76.8% of the Company as of December 31, 2002 and 2001, respectively, assuming conversion of the O.P. Units into common shares of the Company.

During 2002, the Company acquired two R&D properties, both located in Silicon

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Valley. These acquisitions added approximately 290,000 square feet of rentable space and were acquired from the Berg Group under the Berg Land Holdings Option Agreement. The total gross acquisition price for these two properties was approximately \$30,953. The Company financed these acquisitions by borrowing \$18,000 under the Berg Group line of credit and issuing 835,491 O.P. Units to various members of the Berg Group.

During 2001, the Company acquired eight R&D properties, all located in Silicon Valley. These acquisitions added approximately 748,000 square feet of rentable space and were acquired from the Berg Group under the Berg Land Holdings Option Agreement. The total gross acquisition price for these eight properties was approximately \$80,683. The Company financed these acquisitions by borrowing \$45,884 under the Berg Group line of credit, assuming other liabilities of \$2,024,

- 57 -

### MISSION WEST PROPERTIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

and issuing 2,422,837 O.P. Units to various members of the Berg Group. In addition to those eight property purchases, the Company also acquired two R&D properties representing approximately 127,000 rentable square feet for approximately \$23,197 in a tax-deferred exchange with the Berg Group. The sales proceeds from the properties sold by the Company were classified as restricted cash for use in tax-deferred property exchanges and were included in restricted cash at December 31, 2001. No debt or O.P. Units were issued for these two acquisitions.

As of December 31, 2002 and 2001, debt in the amount of \$58,792 and \$79,887, respectively, was due the Berg Group under the line of credit. This amount includes \$18,000 and \$45,884 of debt assumed in connection with the acquisitions of properties from the Berg Group in 2002 and 2001, respectively. Additionally, during 2002 and 2001, the operating partnerships declared distributions of \$0.96 and \$0.89 per O.P. Unit, respectively. Distributions paid to various members of the Berg Group were \$75,281 and \$66,423 during 2002 and 2001, respectively. Interest expense incurred in connection with debt due the Berg Group was \$2,562, \$3,828 and \$3,914 for the years ended December 31, 2002, 2001 and 2000, respectively.

As of December 31, 2002 and 2001, debt in the amount of \$11,078 and \$11,371, respectively, was due the Berg Group under a mortgage note established May 15, 2000 in connection with the acquisition of a 50% interest in Hellyer Avenue Limited Partnership, the obligor under the mortgage note. The mortgage note bears interest at 7.65%, and is due in ten years with principal payments amortized over 20 years.

Carl E. Berg has a significant financial interest in one company that leases space from the operating partnerships. This company occupies, in the aggregate, 5,862 square feet at a rate of \$2.34 per square foot per month. This lease was in effect prior to the Company's acquisition of its general partnership interests. The lease expires in May 2003.

The Company currently leases office space owned by Berg & Berg Enterprises, Inc., an affiliate of Carl E. Berg and Clyde J. Berg. Rental amounts and overhead reimbursements paid to Berg & Berg Enterprises, Inc. were \$90, \$88 and \$80 for the years ended December 31, 2002, 2001 and 2000, respectively.

#### 12. FUTURE MINIMUM RENTS

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The Company, through the operating partnerships, owns interests in 101 R&D properties that are leased to tenants under net operating leases with initial terms extending to the year 2015, and are typically subject to fixed increases. Generally, the leases grant tenants renewal options. Future minimum rentals under non-cancelable operating leases, excluding tenant reimbursements of expenses are as follows:

2003	\$124,841
2004	119,498
2005	108,946
2006	75,638
2007	44,126
Thereafter	108,616
Total	----- \$581,665 =====

### 13. SUPPLEMENTAL CASH FLOW INFORMATION

Cash paid for interest was \$12,752, \$13,307 and \$12,676 for the years ended December 31, 2002, 2001 and 2000, respectively.

In connection with the property acquisitions, the Company assumed \$18,000, \$45,884 and \$51,732 of related party debt due the Berg Group, assumed other liabilities of \$387, \$2,024 and \$2,636, and issued 835,491, 2,422,837 and 7,370,238 O.P. Units for a total acquisition value of \$62,265, \$103,881 and \$122,875 for the years ended December 31, 2002, 2001 and 2000, respectively.

Amounts of \$75,281, \$66,423 and \$48,202 were due the Berg Group for distributions declared to O.P. Unit holders during the years ended December 31, 2002, 2001 and 2000, respectively, and were treated as draws under the Berg Group line of credit.

- 58 -

### MISSION WEST PROPERTIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

### 14. COMMITMENTS AND CONTINGENCIES

The Company and the operating partnerships, from time to time, are parties to litigation arising out of the normal course of business. Management is not aware of any litigation against the Company that would have a material adverse effect on the cash flows, consolidated financial position or results of operations of the Company.

Insurance policies currently maintained by the Company do not cover seismic activity, although they do cover losses from fires after an earthquake.

### 15. DISCONTINUED OPERATIONS

Effective January 1, 2002, the Company adopted SFAS No. 144, which addresses financial accounting and reporting for the impairment and disposal of long lived assets. In general, income or loss attributable to the operations and sale of



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property, and the operations related to property held for sale, are classified as discontinued operations in the statements of operations. Prior period statements of operations presented in this report have been reclassified to reflect the income or loss related to properties that were sold and presented as discontinued operations for the year ended December 31, 2002. Additionally, all periods presented in this report will likely require further reclassification in future periods if additional property sales occur.

As of December 31, 2002, there were no properties under contract to be sold or disposed of which would qualify as discontinued operations.

In March 2002, the Company sold one property for a gain of \$6,103. Condensed results of operations for this property for the years ended December 31, 2002, 2001 and 2000 are as follows:

	2002	For the Year Ended December 2001
	-----	-----
		(dollars in thousands)
Rental income from real estate	\$ 333	\$1,999
Tenant reimbursements	293	96
	-----	-----
Total revenues	626	2,095
	-----	-----
Real estate taxes	293	96
Depreciation	46	278
	-----	-----
Total expenses	339	374
	-----	-----
Net income from discontinued operations	287	1,721
Net gain on disposition of discontinued operations	6,103	-
Minority interest in earnings attributable to discontinued operations	(5,325)	(1,436)
	-----	-----
Total income from discontinued operations	\$1,065	\$ 285
	=====	=====

- 59 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

16. SUPPLEMENTAL FINANCIAL INFORMATION (Unaudited)

Quarterly financial information for the year ended December 31, 2002 (1) is as follows:

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	First -----	Second -----	Third -----	
Rental revenue from continuing operations	\$ 32,484	\$ 32,753	\$ 32,165	\$
Income before minority interest	\$ 24,905	\$ 24,896	\$ 24,594	\$
Income from continuing operations	\$ 4,136	\$ 4,073	\$ 4,558	\$
Income from discontinued operations	\$ 1,065	\$ -	\$ -	\$
Net income	\$ 5,201	\$ 4,073	\$ 4,558	\$
Per share data:				
Basic net income per share	\$ 0.30	\$ 0.23	\$ 0.26	\$
Diluted net income per share	\$ 0.29	\$ 0.23	\$ 0.26	\$
Weighted average shares of common stock (basic)	17,404,568	17,464,692	17,467,329	
Weighted average shares of common stock (diluted)	17,853,809	17,902,853	17,856,688	

Quarterly financial information for the year ended December 31, 2001 (1) is as follows:

	First -----	Second -----	Third -----	
Rental revenue from continuing operations	\$ 29,179	\$ 31,154	\$ 32,728	\$
Income before minority interest	\$ 24,879	\$ 23,484	\$ 34,361	\$
Income from continuing operations	\$ 4,147	\$ 3,911	\$ 5,659	\$
Income from discontinued operations	\$ 72	\$ 72	\$ 71	\$
Net income	\$ 4,219	\$ 3,983	\$ 5,730	\$
Per share data:				
Basic net income per share	\$ 0.25	\$ 0.23	\$ 0.33	\$
Diluted net income per share	\$ 0.24	\$ 0.23	\$ 0.33	\$
Weighted average shares of common stock (basic)	17,037,201	17,093,710	17,120,279	
Weighted average shares of common stock (diluted)	17,242,821	17,308,601	17,320,462	

Quarterly financial information for the year ended December 31, 2000 (1) is as follows:

	First -----	Second -----	Third -----	
Rental revenue from continuing operations	\$ 20,736	\$ 23,399	\$ 26,322	\$
Income before minority interest	\$ 14,033	\$ 16,128	\$ 18,935	\$
Income from continuing operations	\$ 2,556	\$ 2,845	\$ 3,281	\$
Income from discontinued operations	\$ 75	\$ 85	\$ 76	\$
Net income	\$ 2,631	\$ 2,930	\$ 3,357	\$
Per share data:				
Basic net income per share	\$ 0.15	\$ 0.17	\$ 0.20	\$
Diluted net income per share	\$ 0.15	\$ 0.17	\$ 0.20	\$
Weighted average shares of common stock (basic)	16,990,353	17,025,365	17,025,365	
Weighted average shares of common stock (diluted)	17,389,409	17,113,346	17,191,306	

(1) The summation of the quarterly financial data may not equal the annual

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number reported on the consolidated financial statements of operations due to rounding differences.

- 60 -

MISSION WEST PROPERTIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, CONTINUED  
(Dollars in thousands, except share and per share data)

### 17. SUBSEQUENT EVENTS

On January 1, 2003, the Company acquired a 50% interest in a joint venture consisting of four properties with approximately 593,000 rentable square feet from the Berg Group. These properties are operated and managed by the Company's joint venture partner, TBI-Mission West, LLC. The total acquisition price for the 50% interest in the joint venture was \$1,800. The Company acquired the 50% interest by issuing 181,032 O.P. Units to various members of the Berg Group.

On January 9, 2003, the Company obtained a \$100,000 secured mortgage loan from Northwestern Mutual Life Insurance Company that bears a fixed interest rate at 5.64% and matures in ten years with principal payments amortized over 20 years. The mortgage loan is collateralized by real estate properties. The Company paid approximately \$675 in loan fees and financing costs and used the proceeds to primarily pay down short-term debt. The balances of Citicorp USA, Inc., Cupertino National Bank line of credit and most of the Berg Group line of credit were paid with the proceeds from the Northwestern Mutual Life Insurance Company loan.

On January 9, 2003, the Company paid dividends of \$0.24 per share of common stock to all common stockholders of record as of December 31, 2002. On the same date, the operating partnerships paid a distribution of \$0.24 per O.P. Unit.

On March 12, 2003, the Company declared dividends of \$0.24 per common share payable on April 10, 2003 to all common stockholders of record on March 31, 2003.

- 61 -

Report of Independent Accountants on  
Financial Statement Schedules

To the Board of Directors and Stockholders  
of Mission West Properties, Inc.

Our audits of the consolidated financial statements referred to in our report dated January 28, 2003 included in this Form 10-K of Mission West Properties, Inc. also included audits of the financial statement schedules listed in Item 15(a)(2) of this Form 10-K. In our opinion, the financial statement schedules present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements.

PricewaterhouseCoopers LLP

San Francisco, California  
January 28, 2003

- 62 -

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- 63 -

MISSION WEST PROPERTIES, INC.  
 Schedule III  
 Real Estate and Accumulated Depreciation  
 December 31, 2002  
 (dollars in thousands)

Property Name	City		December 31, 2002 Encumbrances	Initial Cost	
				Land	Buildings and Improvements
5300-5350 Hellyer Avenue	San Jose	E	\$ 11,078	\$ 5,742	\$ 11,442
10401-10411 Bubb Road	Cupertino	A		632	3,078
45365 Northport Loop	Fremont			2,447	5,711
47000 Northport Loop	Fremont	B		1,184	5,760
45738 Northport Loop	Fremont	B		891	4,338
4050 Starboard Drive	Fremont	B		1,329	6,467
3501 W. Warren Ave/Fremont Blvd	Fremont			1,866	9,082
48800 Milmont Blvd	Fremont			1,013	4,932
4750 Patrick Henry Drive	Santa Clara			1,604	7,805
3520 Bassett Street	Santa Clara C			1,104	5,371
3530 Bassett Street	Santa Clara C,D			849	4,133
5850-5870 Hellyer Avenue	San Jose			2,787	6,502
5750 Hellyer Avenue	San Jose			3,266	3,354
800 Branham Lane East	San Jose			5,508	12,851
5500 Hellyer Avenue	San Jose			4,735	13,073
5550 Hellyer Avenue	San Jose			3,261	3,872
5400 Hellyer Avenue	San Jose			3,238	5,358
5325 Hellyer Avenue	San Jose			4,684	10,789
5345 Hellyer Avenue	San Jose			4,866	8,786
5905-5965 Silver Creek Valley Road	San Jose			8,437	18,554
5905-5965 Silver Creek Valley Road	San Jose			3,438	3,220
855 Branham Lane East	San Jose			3,289	6,521
1065-1105 La Avenida Street	Mountain View			46,832	109,275
1750 Automation Parkway	San Jose			4,789	11,174
1756 Automation Parkway	San Jose			4,378	10,216
1762 Automation Parkway	San Jose			4,804	12,224
1768 Automation Parkway	San Jose			8,195	19,121
255 Caspian Drive	Sunnyvale			3,491	8,146
245 Caspian Drive	Sunnyvale			5,894	-
5900 Optical Court	San Jose			3,634	13,667
2630 Orchard Parkway	San Jose			3,065	6,131
2610 Orchard Parkway	San Jose			2,735	5,470
55 West Trimble Road	San Jose			4,637	9,274
2251 Lawson Lane	Santa Clara		F	1,952	9,498

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1230 East Arques	Sunnyvale	B	540	2,628
1250 East Arques	Sunnyvale	B	1,335	6,499
3120 Scott Blvd	Santa Clara		2,044	9,948
20400 Mariani Avenue	Cupertino	1,423	1,670	8,125
10500 De Anza Blvd	Cupertino	B	7,666	37,304
20605-20705 Valley Green Drive	Cupertino	F	3,490	16,984
10300 Bubb Road	Cupertino	B	635	3,090
10440 Bubb Road	Cupertino		434	2,112
10460 Bubb Road	Cupertino	297	994	4,838
1135 Kern Avenue	Sunnyvale	B	407	1,982
405 Tasman Drive	Sunnyvale		550	2,676
450 National Avenue	Mountain View	B	611	2,973
3301 Olcott Street	Santa Clara		1,846	8,984
2800 Bayview Avenue	Fremont		1,070	5,205
6850 Santa Teresa Blvd	San Jose		377	1,836
6810 Santa Teresa Blvd	San Jose		2,567	5,991
140-160 Great Oaks Blvd	San Jose		1,402	6,822
6541 Via del Oro/6385 San Ignacio	San Jose		1,039	5,057
6311-6351 San Ignacio Avenue	San Jose	B	6,246	30,396
6320-6360 San Ignacio Avenue	San Jose		2,616	12,732
75 E. Trimble Rd./2610 N. First St	San Jose		3,477	16,919
2033-2243 Samaritan Drive	San Jose	58,792F	5,046	24,556
1170 Morse Avenue	Sunnyvale	B	658	3,201
3236 Scott Blvd	Santa Clara	B	1,234	6,005
1212 Bordeaux Lane	Sunnyvale	B	2,250	10,948

MISSION WEST PROPERTIES, INC.  
Schedule III  
Real Estate and Accumulated Depreciation  
December 31, 2002  
(dollars in thousands)

Property Name	City		Total Cost			Accum Depre
			Land	Buildings And Improvements	Total	
5300-5350 Hellyer Avenue	San Jose	E	\$ 5,742	\$ 11,442	\$ 17,184	\$
10401-10411 Bubb Road	Cupertino	A	632	3,078	3,710	
45365 Northport Loop	Fremont		2,447	5,722	8,169	
47000 Northport Loop	Fremont		1,184	5,767	6,951	
45738 Northport Loop	Fremont		891	4,343	5,234	
4050 Starboard Drive	Fremont		1,329	6,475	7,804	
3501 W. Warren Ave/Fremont Blvd	Fremont		1,866	9,082	10,948	
48800 Milmont Blvd	Fremont		1,013	4,932	5,945	
4750 Patrick Henry Drive	Santa Clara		1,604	7,958	9,562	
3520 Bassett Street	Santa Clara C		1,104	5,371	6,475	
3530 Bassett Street	Santa Clara C,D		849	4,133	4,982	
5850-5870 Hellyer Avenue	San Jose		2,787	6,502	9,289	
5750 Hellyer Avenue	San Jose		3,266	3,354	6,620	
800 Branham Lane East	San Jose		5,508	12,867	18,375	
5500 Hellyer Avenue	San Jose		4,735	13,076	17,811	
5550 Hellyer Avenue	San Jose		3,261	3,872	7,133	
5400 Hellyer Avenue	San Jose		3,238	5,573	8,811	
5325 Hellyer Avenue	San Jose		4,684	10,823	15,507	
5345 Hellyer Avenue	San Jose		4,866	8,786	13,652	

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5905-5965 Silver Creek Valley Road	San Jose	8,437	18,554	26,991
5905-5965 Silver Creek Valley Road	San Jose	3,438	3,220	6,658
855 Branham Lane East	San Jose	3,289	6,589	9,878
1065-1105 La Avenida Street	Mountain View	46,832	109,340	156,172
1750 Automation Parkway	San Jose	4,789	11,489	16,278
1756 Automation Parkway	San Jose	4,378	10,231	14,609
1762 Automation Parkway	San Jose	4,804	12,244	17,048
1768 Automation Parkway	San Jose	8,195	19,135	27,330
255 Caspian Drive	Sunnyvale	3,491	9,193	12,684
245 Caspian Drive	Sunnyvale	5,894	-	5,894
5900 Optical Court	San Jose	3,634	13,719	17,353
2630 Orchard Parkway	San Jose	3,065	6,131	9,196
2610 Orchard Parkway	San Jose	2,735	5,470	8,205
55 West Trimble Road	San Jose	4,637	9,274	13,911
2251 Lawson Lane	Santa Clara	1,952	9,498	11,450
1230 East Arques	Sunnyvale	540	2,667	3,207
1250 East Arques	Sunnyvale	1,335	6,499	7,834
3120 Scott Blvd	Santa Clara	2,044	9,948	11,992
20400 Mariani Avenue	Cupertino	1,670	8,125	9,795
10500 De Anza Blvd	Cupertino	7,666	37,304	44,970
20605-20705 Valley Green Drive	Cupertino	3,490	16,984	20,474
10300 Bubb Road	Cupertino	635	3,090	3,725
10440 Bubb Road	Cupertino	434	2,112	2,546
10460 Bubb Road	Cupertino	994	5,999	6,993
1135 Kern Avenue	Sunnyvale	407	1,982	2,389
405 Tasman Drive	Sunnyvale	550	2,766	3,316
450 National Avenue	Mountain View	611	2,973	3,584
3301 Olcott Street	Santa Clara	1,846	8,984	10,830
2800 Bayview Avenue	Fremont	1,070	5,205	6,275
6850 Santa Teresa Blvd	San Jose	377	2,656	3,033
6810 Santa Teresa Blvd	San Jose	2,567	6,003	8,570
140-160 Great Oaks Blvd	San Jose	1,402	7,027	8,429
6541 Via del Oro/6385 San Ignacio	San Jose	1,039	5,057	6,096
6311-6351 San Ignacio Avenue	San Jose	6,246	30,541	36,787
6320-6360 San Ignacio Avenue	San Jose	2,616	13,085	15,701
75 E. Trimble Rd./2610 N. First St	San Jose	3,477	17,004	20,481
2033-2243 Samaritan Drive	San Jose	5,046	24,710	29,756
1170 Morse Avenue	Sunnyvale	658	3,201	3,859
3236 Scott Blvd	Santa Clara	1,234	6,005	7,239
1212 Bordeaux Lane	Sunnyvale	2,250	10,948	13,198

- 64 -

MISSION WEST PROPERTIES, INC.  
Schedule III  
Real Estate and Accumulated Depreciation  
December 31, 2002  
(dollars in thousands)

Property Name	City	December 31, 2002 Encumbrances	Initial Cost	
			Land	Buildings and Improvements
1325-1810 McCandless Drive	Milpitas	F	13,994	66,213
1600 Memorex Drive	Santa Clara	B	1,221	5,940

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1688 Richard Avenue	Santa Clara	B	1,248	2,913
1700 Richard Avenue	Santa Clara	B	1,727	4,030
3506-3510 Bassett Street	Santa Clara C		943	4,591
3540-3544 Bassett Street	Santa Clara C	B	1,565	7,615
3550 Bassett Street	Santa Clara C	B	1,079	5,251
3560 Bassett Street	Santa Clara C	B	1,075	5,233
3570-3580 Bassett Street	Santa Clara C	B	1,075	5,233
Prudential Insurance Company of America Loan		123,342B		
			\$ 194,932	\$ 234,707
				\$ 720,025

Property Name	City	Total Cost			Accum Depre
		Land	Buildings And Improvements	Total	
1325-1810 McCandless Drive	Milpitas	13,994	67,269	81,263	
1600 Memorex Drive	Santa Clara	1,221	5,976	7,197	
1688 Richard Avenue	Santa Clara	1,248	2,919	4,167	
1700 Richard Avenue	Santa Clara	1,727	4,030	5,757	
3506-3510 Bassett Street	Santa Clara C	943	4,707	5,650	
3540-3544 Bassett Street	Santa Clara C	1,565	7,804	9,369	
3550 Bassett Street	Santa Clara C	1,079	5,284	6,363	
3560 Bassett Street	Santa Clara C	1,075	5,241	6,316	
3570-3580 Bassett Street	Santa Clara C	1,075	5,233	6,308	
Prudential Insurance Company of America Loan					
		\$ 234,707	\$ 726,581	\$ 961,288	\$

- (A) 16.67% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (B) Encumbered by the \$123,342 Prudential Insurance Company of America loan - full amount of loan shown at the bottom of the schedule.
- (C) Part of the property group referred to as Triangle Technology Park.
- (D) 25% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (E) 50% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (F) Four properties at McCandless Drive, three properties at Samaritan Drive and three other various properties are encumbered by the \$58,792 debt due the Berg Group under the line of credit.

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MISSION WEST PROPERTIES, INC.  
 Schedule III  
 Real Estate and Accumulated Depreciation  
 December 31, 2001  
 (dollars in thousands)

Property Name	City		December 31, 2002 Encumbrances	Initial Cost	
				Land	Buildings and Improvements
5300-5350 Hellyer Avenue	San Jose	E	\$ 11,371	\$ 5,742	\$ 11,442
10401-10411 Bubb Road	Cupertino	A		632	3,078
2001 Logic Drive	San Jose			2,288	11,134
45365 Northport Loop	Fremont			2,447	5,711
47000 Northport Loop	Fremont	B		1,184	5,760
45738 Northport Loop	Fremont	B		891	4,338
4050 Starboard Drive	Fremont	B		1,329	6,467
3501 W. Warren Ave/Fremont Blvd	Fremont			1,866	9,082
48800 Milmont Blvd	Fremont			1,013	4,932
4750 Patrick Henry Drive	Santa Clara			1,604	7,805
3520 Bassett Street	Santa Clara C			1,104	5,371
3530 Bassett Street	Santa Clara C,D			849	4,133
5850-5870 Hellyer Avenue	San Jose			2,787	6,502
5750 Hellyer Avenue	San Jose			3,266	3,354
800 Branham Lane East	San Jose			5,508	12,851
5500 Hellyer Avenue	San Jose			4,735	13,073
5550 Hellyer Avenue	San Jose			3,261	3,872
5400 Hellyer Avenue	San Jose			3,238	5,358
5325 Hellyer Avenue	San Jose	F		4,684	10,789
5905-5965 Silver Creek Valley Rd	San Jose			8,437	18,554
5905-5965 Silver Creek Valley Rd	San Jose			3,438	3,220
855 Branham Lane East	San Jose			3,289	6,521
1065-1105 La Avenida Street	Mountain View			46,832	109,275
1750 Automation Parkway	San Jose			4,789	11,174
1756 Automation Parkway	San Jose			4,378	10,216
1762 Automation Parkway	San Jose			4,804	12,224
1768 Automation Parkway	San Jose			8,195	19,121
255 Caspian Drive	Sunnyvale			3,491	8,146
245 Caspian Drive	Sunnyvale			5,894	-
2251 Lawson Lane	Santa Clara			1,952	9,498
1230 East Arques	Sunnyvale	B		540	2,628
1250 East Arques	Sunnyvale	B		1,335	6,499
3120 Scott Blvd	Santa Clara			2,044	9,948
20400 Mariani Avenue	Cupertino		1,597	1,670	8,125
10500 De Anza Blvd	Cupertino	B		7,666	37,304
20605-20705 Valley Green Drive	Cupertino			3,490	16,984
10300 Bubb Road	Cupertino	B		635	3,090
10440 Bubb Road	Cupertino		347	434	2,112
10460 Bubb Road	Cupertino		363	994	4,838
1135 Kern Avenue	Sunnyvale	B		407	1,982
405 Tasman Drive	Sunnyvale			550	2,676
450 National Avenue	Mountain View	B		611	2,973
3301 Olcott Street	Santa Clara			1,846	8,984
2800 Bayview Avenue	Fremont			1,070	5,205
6850 Santa Teresa Blvd	San Jose			377	1,836



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6810 Santa Teresa Blvd	San Jose		2,567	5,991
140-160 Great Oaks Blvd	San Jose		1,402	6,822
6541 Via del Oro/6385 San Ignacio	San Jose		1,039	5,057
6311-6351 San Ignacio Avenue	San Jose	B	6,246	30,396
6320-6360 San Ignacio Avenue	San Jose		2,616	12,732
75 E. Trimble Rd/2610 N. First St	San Jose	F	3,477	16,919
2033-2243 Samaritan Drive	San Jose	79,887 F	5,046	24,556
1170 Morse Avenue	Sunnyvale	B	658	3,201
3236 Scott Blvd	Santa Clara	B	1,234	6,005
1212 Bordeaux Lane	Sunnyvale	B	2,250	10,948
1325-1810 McCandless Drive	Milpitas	F	13,994	66,213
1600 Memorex Drive	Santa Clara	B	1,221	5,940
1688 Richard Avenue	Santa Clara	B	1,248	2,913
1700 Richard Avenue	Santa Clara	B	1,727	4,030

Property Name	City		Total Cost			Accum Depre
			Land	Buildings And Improvements	Total	
5300-5350 Hellyer Avenue	San Jose	E	\$ 5,742	\$ 11,458	\$ 17,200	
10401-10411 Bubb Road	Cupertino	A	632	3,078	3,710	
2001 Logic Drive	San Jose		2,288	11,134	13,422	
45365 Northport Loop	Fremont		2,447	5,722	8,169	
47000 Northport Loop	Fremont		1,184	5,767	6,951	
45738 Northport Loop	Fremont		891	4,343	5,234	
4050 Starboard Drive	Fremont		1,329	6,475	7,804	
3501 W. Warren Ave/Fremont Blvd	Fremont		1,866	9,082	10,948	
48800 Milmont Blvd	Fremont		1,013	4,932	5,945	
4750 Patrick Henry Drive	Santa Clara		1,604	7,958	9,562	
3520 Bassett Street	Santa Clara C		1,104	5,371	6,475	
3530 Bassett Street	Santa Clara C,D		849	4,133	4,982	
5850-5870 Hellyer Avenue	San Jose		2,787	6,502	9,289	
5750 Hellyer Avenue	San Jose		3,266	3,354	6,620	
800 Branham Lane East	San Jose		5,508	12,867	18,375	
5500 Hellyer Avenue	San Jose		4,735	13,076	17,811	
5550 Hellyer Avenue	San Jose		3,261	3,872	7,133	
5400 Hellyer Avenue	San Jose		3,238	5,435	8,673	
5325 Hellyer Avenue	San Jose		4,684	10,823	15,507	
5905-5965 Silver Creek Valley Rd	San Jose		8,437	18,554	26,991	
5905-5965 Silver Creek Valley Rd	San Jose		3,438	3,220	6,658	
855 Branham Lane East	San Jose		3,289	6,589	9,878	
1065-1105 La Avenida Street	Mountain View		46,832	109,340	156,172	
1750 Automation Parkway	San Jose		4,789	11,489	16,278	
1756 Automation Parkway	San Jose		4,378	10,231	14,609	
1762 Automation Parkway	San Jose		4,804	12,244	17,048	
1768 Automation Parkway	San Jose		8,195	19,135	27,330	
255 Caspian Drive	Sunnyvale		3,491	8,146	11,637	
245 Caspian Drive	Sunnyvale		5,894	-	5,894	
2251 Lawson Lane	Santa Clara		1,952	9,498	11,450	
1230 East Arques	Sunnyvale		540	2,667	3,207	
1250 East Arques	Sunnyvale		1,335	6,499	7,834	
3120 Scott Blvd	Santa Clara		2,044	9,948	11,992	

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20400 Mariani Avenue	Cupertino	1,670	8,125	9,795
10500 De Anza Blvd	Cupertino	7,666	37,304	44,970
20605-20705 Valley Green Drive	Cupertino	3,490	16,984	20,474
10300 Bubb Road	Cupertino	635	3,090	3,725
10440 Bubb Road	Cupertino	434	2,112	2,546
10460 Bubb Road	Cupertino	994	5,999	6,993
1135 Kern Avenue	Sunnyvale	407	1,982	2,389
405 Tasman Drive	Sunnyvale	550	2,676	3,226
450 National Avenue	Mountain View	611	2,973	3,584
3301 Olcott Street	Santa Clara	1,846	8,984	10,830
2800 Bayview Avenue	Fremont	1,070	5,205	6,275
6850 Santa Teresa Blvd	San Jose	377	2,616	2,993
6810 Santa Teresa Blvd	San Jose	2,567	6,003	8,570
140-160 Great Oaks Blvd	San Jose	1,402	6,980	8,382
6541 Via del Oro/6385 San Ignacio	San Jose	1,039	5,057	6,096
6311-6351 San Ignacio Avenue	San Jose	6,246	30,490	36,736
6320-6360 San Ignacio Avenue	San Jose	2,616	13,070	15,686
75 E. Trimble Rd/2610 N. First St	San Jose	3,477	17,001	20,478
2033-2243 Samaritan Drive	San Jose	5,046	24,681	29,727
1170 Morse Avenue	Sunnyvale	658	3,201	3,859
3236 Scott Blvd	Santa Clara	1,234	6,005	7,239
1212 Bordeaux Lane	Sunnyvale	2,250	10,948	13,198
1325-1810 McCandless Drive	Milpitas	13,994	66,916	80,910
1600 Memorex Drive	Santa Clara	1,221	5,940	7,161
1688 Richard Avenue	Santa Clara	1,248	2,919	4,167
1700 Richard Avenue	Santa Clara	1,727	4,030	5,757

- 66 -

Property Name	City	December 31, 2002 Encumbrances	Initial Cost	
			Land	Buildings and Improvements
3506-3510 Bassett Street	Santa Clara C		943	4,591
3540-3544 Bassett Street	Santa Clara C	B	1,565	7,615
3550 Bassett Street	Santa Clara C	B	1,079	5,251
3560 Bassett Street	Santa Clara C	B	1,075	5,233
3570-3580 Bassett Street	Santa Clara C	B	1,075	5,233
Prudential Insurance Company of America Loan		125,109B		
		\$ 218,674	\$ 218,058	\$ 687,831

Property Name	City	Total Cost			Accum Depre
		Land	Buildings And Improvements	Total	
3506-3510 Bassett Street	Santa Clara C	943	4,690	5,633	

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3540-3544 Bassett Street	Santa Clara C	1,565	7,804	9,369
3550 Bassett Street	Santa Clara C	1,079	5,284	6,363
3560 Bassett Street	Santa Clara C	1,075	5,241	6,316
3570-3580 Bassett Street	Santa Clara C	1,075	5,233	6,308
Prudential Insurance Company of America Loan				
		-----	-----	-----
		\$ 218,058	\$ 692,485	\$ 910,543
		=====	=====	=====

- (A) 16.67% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (B) Encumbered by the \$125,109 Prudential Insurance Company of America loan - full amount of loan shown at the bottom of the schedule.
- (C) Part of the property group referred to as Triangle Technology Park.
- (D) 25% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (E) 50% of this property's ownership is held by unaffiliated parties outside the operating partnerships of the Company.
- (F) Four properties at McCandless Drive, three properties at Samaritan Drive and four other various properties are encumbered by the \$79,887 debt due the Berg Group under the line of credit.

- 67 -

MISSION WEST PROPERTIES, INC.  
NOTE TO SCHEDULE III  
December 31, 2002 and 2001  
(dollars in thousands)

1. Reconciliation of real estate and accumulated depreciation:

		2002	
		-----	-----
Real estate investments:			
Balance at beginning of year		\$ 910,543	\$ 8
Additions		64,167	
Dispositions		(13,422)	(
		-----	-----
Balance at end of year		\$ 961,288	\$ 9
		=====	=====
Accumulated depreciation:			
Balance at beginning of year		\$ 49,608	\$
Additions		17,974	
Dispositions		(1,022)	
		-----	-----
Balance at end of year		\$ 66,560	\$
		=====	=====

- 68 -

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

Not applicable.

- 69 -

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by Item 10 is incorporated by reference from the sections titled "Directors and Executive Officers" and "Section 16(a) Beneficial Ownership Reporting Compliance" in the Company's definitive proxy statement for its annual stockholders' meeting.

ITEM 11. EXECUTIVE COMPENSATION

The information required by Item 11 is incorporated by reference from the section titled "Executive Compensation" in the Company's definitive proxy statement for its annual stockholders' meeting, excluding, however, the sections titled "Executive Compensation - Performance Graph" and "Executive Compensation - Report on Executive Compensation by the Compensation Committee of the Board of Directors," none of which are incorporated by reference in response to this item.

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

The information required by Item 12 is incorporated by reference from the sections titled "Share Ownership" and "Securities Authorized for Issuance Under Equity Compensation Plans" in the Company's definitive proxy statement for its annual stockholders' meeting.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by Item 13 is incorporated by reference from the sections titled "Certain Relationships and Related Transactions" in the Company's definitive proxy statement for its annual stockholders' meeting.

ITEM 14. CONTROLS AND PROCEDURES

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES. Within the 90 days prior to the date of this report, the Company has conducted an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-14c. Base upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective in timely alerting them to material information relating to the Company (including its subsidiaries) required to be included in the Company's periodic SEC filings.

CHANGES IN INTERNAL CONTROLS. There were no significant changes in our

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internal controls or to our knowledge, in other factors that could significantly affect such internal controls subsequent to the date of their evaluation.

- 70 -

### PART IV

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

Exhibits required by Item 601 of Regulation S-K.

#### EXHIBIT INDEX

3.2.1+	Articles of Amendment and Restatement of Mission West Properties, Inc.
3.2.2+	Restated Bylaws of Mission West Properties, Inc.
10.1.1**	Amended and Restated Agreement of Limited Partnership of Mission West Properties
10.1.2**	Amended and Restated Agreement of Limited Partnership of Mission West Properties
10.1.3**	Amended and Restated Agreement of Limited Partnership of Mission West Properties
10.1.4**	Amended and Restated Agreement of Limited Partnership of Mission West Properties
10.2**	Exchange Rights Agreement between Mission West Properties and the Limited Partnership
10.3.1*	1997 Stock Option Plan
10.3.2*	Form of Incentive Stock Option Agreement
10.3.3*	Form of Non-statutory Stock Option Agreement
10.3.4*	Form of Directors Stock Option Agreement
10.4.1*	Acquisition Agreement, dated as of May 14, 1998, among Mission West Properties and the Operating Group (as defined therein)
10.4.2*	Amendment of Acquisition Agreement, dated as of July 1, 1998
10.4.3*	Form of Partnership Interest Purchase Demand Note
10.5.1*	Stock Purchase Agreement dated as of May 4, 1998, between Mission West Properties and the Operating Group
10.5.2*	Stock Purchase Agreement dated as of May 4, 1998 between Mission West Properties and the Operating Group
10.5.3**	Stock in a private placement of 695,058 shares and Subscription Agreement relating to the same
10.6**	Form of Registration Rights Agreement for purchasers, who acquired shares of Common Stock pursuant to the Stock Purchase Agreements (filed as Exhibits 10.8 to Post-effective Amendment to the Prospectus filed on Form S-3 on February 11, 1999. Commission File No. 333-52835-99)
10.7**	Pending Projects Acquisition Agreement among Mission West Properties, the Operating Group and the Operating Group
10.8**	Berg Land Holdings Option Agreement between Mission West Properties and certain members of the Operating Group
10.8*	Berg & Berg Enterprises, Inc. Sublease Agreement
10.9	Not In Use
10.10	Not In Use
10.11	Not In Use
10.12*	Lease Agreement with Apple Computer, Inc.
10.13*	Lease Agreement with Cisco Systems, Inc.
10.14*	Lease Agreement with Amdahl Corporation
10.15*	Prudential Promissory Note
10.16*	Prudential Deed of Trust
10.17*	Prudential Certificate Regarding Distribution
10.18*	Prudential Guaranty
10.19+	Waiver Agreement
10.20**	Ownership Limit Exemption Agreement dated December 29, 1999 between Mission West Properties and the Operating Group
10.21x	McCarthy
10.22x	Lease Agreement with Microsoft Corporation
10.23xx	10.22x Contribution Agreement
	Assumption Agreement for Wells Fargo Line of Credit

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10.24xx Not In Use  
10.25xx Not In Use  
10.26xx Supplemental Agreement among Mission West Properties, Inc., Carl E. Berg and C  
10.27 Berg Group Revolving Credit - \$100,000,000 Secured Promissory Note

- 71 -

10.28 Berg Group Deed of Trust Securing Revolving Promissory Note  
10.29 Cupertino National Bank Revolving Credit Loan Agreement  
10.30 Mission West Properties, LP Continuing Guaranty  
10.31 Mission West Properties, LP II Continuing Guaranty  
10.32 Mission West Properties, L.P. Promissory Note to Northwestern Mutual Life Insu  
10.33 Mission West Properties, L.P. I Promissory Note to Northwestern Mutual Life In  
10.34 Mission West Properties, L.P. II Promissory Note to Northwestern Mutual Life I  
10.35 Mission West Properties, L.P. Deed of Trust and Security Agreement (First Prio  
10.36 Mission West Properties, L.P. Deed of Trust and Security Agreement (Second Pri  
10.37 Mission West Properties, L.P. I Deed of Trust and Security Agreement (First Pr  
10.38 Mission West Properties, L.P. I Deed of Trust and Security Agreement (Second P  
10.39 Mission West Properties, L.P. II Deed of Trust and Security Agreement (First P  
10.40 Mission West Properties, L.P. II Deed of Trust and Security Agreement (Second  
10.41 Mission West Properties, L.P. Absolute Assignment of Leases and Rents (First P  
10.42 Mission West Properties, L.P. I Absolute Assignment of Leases and Rents (First  
10.43 Mission West Properties, L.P. II Absolute Assignment of Leases and Rents (Firs  
21.1++ Subsidiaries of the Registrant  
23.1 Consent of Independent Public Accountants  
24.1 Powers of Attorney (included on the signature page hereto)  
99.1 Section 1350 Certificate

- \* Incorporated herein by reference to the same-numbered exhibit to the Company's Registration Statement on Form S-4 filed on May 15, 1998 and declared effective on November 23, 1998.
- \*\* Incorporated herein by reference to the same-numbered exhibit to the Company's Post-effective Amendment No. 1 to Registration Statement on Form S-4 filed on Form S-3 on February 11, 1999. (Commission File No. 333-52835-99).
- + Incorporated herein by reference to the same-numbered exhibit to Amendment No. 4 to the Registration Statement on Form S-4 filed on November 16, 1998 and declared effective on November 23, 1998.
- ++ Incorporated herein by reference to the same-numbered exhibit to the annual report on Form 10-K for 1998 filed on March 31, 1999.
- x Incorporated herein by reference to the same-numbered exhibit to current report on Form 8-K filed on May 14, 1999 (Commission File No. 000-25235).
- xx Incorporated herein by reference to the same-numbered exhibit to the Registration Statement on Form S-11 filed on June 8, 1999 (Commission File No. 333-80203).

(b) Reports on Form 8-K.

The registrant has not filed any reports on Form 8-K during the last quarter of the period covered by this report.

- 72 -

### SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of the Securities

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Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

MISSION WEST PROPERTIES, INC.

Date: March 26, 2003

By: /s/ CARL E. BERG  
-----

Carl E. Berg  
Chief Executive Officer

Date: March 26, 2003

By: /s/ WAYNE N. PHAM  
-----

Wayne N. Pham  
Vice President of Finance and Controller  
(Principal Accounting Officer)

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carl E. Berg his true and lawful attorney-in-fact with the power of substitution, to sign any amendments to this Report on Form 10-K 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 attorney-in-fact, or his or her substitute, may do or choose 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/ CARL E. BERG ----- Carl E. Berg	Chairman of the Board, Chief Executive Officer and Director	March 26, 2003
/s/ RAYMOND V. MARINO ----- Raymond V. Marino	President, Chief Operating Officer and Director	March 26, 2003
/s/ JOHN C. BOLGER ----- John C. Bolger	Director	March 26, 2003
/s/ WILLIAM A. HASLER ----- William A. Hasler	Director	March 26, 2003
/s/ LAWRENCE B. HELZEL ----- Lawrence B. Helzel	Director	March 26, 2003

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### CERTIFICATE PURSUANT TO RULE 13a-14 THE SECURITIES EXCHANGE ACT OF 1934

I, Carl E. Berg, certify that:

1. I have reviewed this Annual Report on Form 10-K of Mission West Properties, Inc. (the "Company") for the year ended December 31, 2002;

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 officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

- a) designed such disclosure controls and procedures to ensure the 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 officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

- 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 offices 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.



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Carl E. Berg  
Chairman and CEO

March 26, 2003

- 74 -

CERTIFICATE PURSUANT TO  
RULE 13a-14 THE SECURITIES EXCHANGE ACT OF 1934

I, Wayne N. Pham, certify that:

1. I have reviewed this Annual Report on Form 10-K of Mission West Properties, Inc. (the "Company") for the year ended December 31, 2002;

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 officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

- a) designed such disclosure controls and procedures to ensure the 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 officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

- 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

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other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying offices 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.

Wayne N. Pham  
Vice President of Finance and Controller

March 26, 2003

- 75 -

EXHIBIT 99.1

CERTIFICATION OF CEO AND CFO PURSUANT TO  
18 U.S.C. ss. 1350,  
AS ADOPTED PURSUANT TO  
ss. 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Mission West Properties, Inc. (the "Company") for the year ended December 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Carl E. Berg, Chairman of the Board and Chief Executive Officer of the Company, and Wayne N. Pham, Vice President of Finance and Controller of the Company, hereby certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, to the best of his knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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/ Carl E. Berg  
-----

Carl E. Berg  
Chairman of the Board and Chief Executive Officer  
March 26, 2003

/s/ Wayne N. Pham  
-----

Wayne N. Pham  
Vice President of Finance and Controller  
March 26, 2003

This certification accompanies this Report pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the

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Sarbanes-Oxley Act of 2002, or otherwise required, be deemed filed by the Company for purposes of ss. 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

- 77 -

EXHIBIT 10.29

### CUPERTINO NATIONAL BANK

#### REVOLVING CREDIT LOAN AGREEMENT

THIS REVOLVING CREDIT LOAN AGREEMENT (this "Agreement") is made and delivered this 12th day of July 2002, by and between Mission West Properties, Inc., a Maryland corporation ("Borrower") and Cupertino National Bank (the "Bank").

#### WITNESSETH

WHEREAS, the Borrower desires to borrow up to Forty Million Dollars (\$40,000,000.00) from the Bank from time to time to meet the working capital needs of the Borrower; and

WHEREAS, the Bank is willing to supply such financing subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained and in reliance upon Borrower's representations and warranties set forth herein, the Borrower and the Bank agree as follows:

#### 1. DEFINITIONS.

1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate" shall mean, when used with respect to any person, any other person which, directly or indirectly, controls or is controlled by or is under common control with such person. For purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), with respect to any person, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" is defined in the first paragraph of this Agreement.

"Annual Gross Rental Income" shall mean with respect to any of the MWP Pool Properties and any of the MWP II Pool Properties, the annual gross rental income received by MWP or MWP II from each of their respective

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properties, except that, for purposes of determining Annual Gross Rental Income hereunder, income shall be calculated on a stabilized basis and shall not include security or other deposits or letters of credit, late fees, lease termination or other similar charges, delinquent rent recoveries unless previously reflected in reserves, or proceeds of insurance or any other items of a non-recurring nature.

"Automatic Loan Calculation Time" is defined in Section 2.4.1 of this Agreement.

"Automatic Loan Repayment Time" is defined in Section 2.4.2 of this Agreement.

"Automatic Variable Rate Loan" is defined in Section 2.4.1 of this Agreement.

"Bank" is defined in the first paragraph of this Agreement.

"Bankruptcy Code" shall mean Title 11 of the United States Code, as amended, or any successor act or code.

"Borrower" is defined in the first paragraph of this Agreement.

"Borrower's Deposit Account" is defined in Section 6.12 of this Agreement.

"Business Day" shall mean a day on which the Bank is open to carry on its normal commercial lending business.

"Commitment" shall mean the Bank's agreement to lend to Borrower in accordance with and subject to the terms of this Agreement.

"Commitment Amount" shall mean, as of any applicable date of determination, Forty Million Dollars and no cents (\$40,000,000.00).

"Consolidated" or "consolidated" shall mean, when used with reference to any financial term in this Agreement, the aggregate for two or more persons of the amounts signified by such term for all such persons determined on a consolidated basis in accordance with GAAP as defined below. Unless otherwise specified herein, reference to "consolidated" financial statements or data of the Borrower includes consolidation with its Subsidiaries in accordance with GAAP.

"Debt" shall mean, as of any applicable date of determination, all items of indebtedness, obligation or liability of a person, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, that should be classified as liabilities in accordance with GAAP.

"Debt Service Coverage Ratio" shall mean, as of any applicable date of determination, the ratio of: (1) the sum of Borrower's net income, plus interest (related parties), plus all other interest (including but not limited to any interest paid to any other party), plus minority interest distributions paid by Borrower (as set forth in Borrower's Consolidated Statement of Cash Flows), plus dividends paid by Borrower (as set forth in Borrower's Consolidated Statement of Cash Flows), plus depreciation, minus deferred rent (as set forth in Borrower's Consolidated Statement of Cash Flows), and minus Borrower's gains on sale of real estate; to (2) the sum of interest (related parties), plus all other interest (including but not limited to any interest paid to any other party), plus the current portion

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of Borrower's long term debt. The Debt Service Coverage Ratio shall be determined by the Bank as of each Fiscal Quarter (as defined below) and on the basis of the preceding twelve (12) month period (actual or based on annualized quarters) as follows: (i) as to each Fiscal Quarter ending on March 31, June 30, and September 30, from Borrower's SEC Form 10-Q filed with the Securities and Exchange Commission relating to such quarter, with such quarter results annualized; and (ii) as to each Fiscal Quarter ending on December 31, from Borrower's SEC Form 10-K relating to the year ending on such date. Notwithstanding the foregoing, the Bank may also rely on other information that Borrower is obligated to provide to the Bank pursuant to Section 6.1 of this Agreement. Exhibit E hereto includes an example of the calculation of Debt Service Coverage Ratio as defined herein from Borrower's SEC Form 10-K for the period ending December 31, 2001, and is provided for example purposes only.

"Default" shall mean a condition or event which, with the giving of notice or the passage of time, or both, would become an Event of Default as defined below.

"Default Rate" shall mean, as of the applicable date or time of determination, LIBOR as defined below plus nine percent (9%).

"Deposit Account Excess Amount" is defined in Section 2.4.2 of this Agreement.

"Deposit Account Shortfall Amount" is defined in Section 2.4.1 of this Agreement.

"Effective Date" shall mean the date this Agreement becomes effective as set forth in Section 9.1 herein.

"Election" shall mean that election referred to in Section 2.3.2.2.2.1 of this Agreement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor act or code.

"Event of Default" shall mean any of those conditions or events listed in Section 8.1 of this Agreement.

"Financial Statements" shall mean all those consolidated balance sheets, consolidated earnings statements and other consolidated financial data which have been furnished to the Bank for the purposes of, or in connection with, this Agreement and the transactions contemplated hereby, including without limit the following: the "Proposed Pool Of Assets - Multi-Tenant" provided by Borrower to the Bank, Borrower's SEC Form 10-K for the periods ending December 31, 2000, and December 31, 2001, Borrower's SEC Form 10-Q dated November 12, 2001 for the period ending September 30, 2001, and Borrower's SEC Form 10-Q dated May 14, 2002 for the period ending March 31, 2002.

"Fiscal Quarter" shall mean each three-month period ending on March 31, June 30, September 30, and December 31 of each year.

"Funding Date" shall mean, with respect to any Revolving Loan made by the Bank hereunder, the date of the funding of such Revolving Loan by Bank.

"GAAP" shall mean, as of any applicable date of determination, generally accepted accounting principles consistently applied in the United States.

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"Guarantor" shall mean Mission West Properties, L.P., a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership, and any other person who may execute a Guaranty of all or part of the Indebtedness, jointly and severally.

"Guaranty" shall mean a guaranty (or separate guaranties) in the form and content of Exhibit A to this Agreement pursuant to which the Guarantors (jointly and severally) unconditionally guarantee repayment to the Bank of all the Indebtedness and other obligations as provided therein.

"Indebtedness" shall mean all loans, advances, indebtedness, obligations and liabilities of Borrower to the Bank under this Agreement, together with all other indebtedness, obligations and liabilities whatsoever of the Borrower to the Bank, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising.

"Initial LIBOR Period" shall mean, as to each LIBOR Loan as defined below, the LIBOR Period selected by Borrower in its Notice of Borrowing applicable to such LIBOR Loan.

"Initial LIBOR Rate" shall mean, as to each LIBOR Loan as defined below, the interest rate payable for such LIBOR Loan in accordance with Section 2.3.2.2.1 herein as of the first day of the Initial LIBOR Period for such LIBOR Loan.

"Interest Coverage Ratio" shall mean, as of any applicable date of determination, the ratio of: (1) the sum of Borrower's net income, plus interest (related parties), plus all other interest (including but not limited to any interest paid to any other party), plus minority interest distributions paid by Borrower (as set forth in the Consolidated Statement of Cash Flows), plus dividends paid by Borrower (as set forth in the Consolidated Statement of Cash Flows), plus depreciation, minus deferred rent (as set forth in Borrower's Consolidated Statement of Cash Flows), and minus Borrower's gains on sale of real estate; to (2) the sum of interest (related parties), plus all other interest (including but not limited to any interest paid to any other party). The Interest Coverage Ratio shall be determined by the Bank as of each Fiscal Quarter (as defined below) and on the basis of the preceding twelve (12) month period (actual or based on annualized quarters) as follows: (i) as to each Fiscal Quarter ending on March 31, June 30, and September 30, from Borrower's SEC Form 10-Q filed with the Securities and Exchange Commission relating to such quarter, with such quarter results annualized; and (ii) as to each Fiscal Quarter ending on December 31, from Borrower's SEC Form 10-K relating to the year ending on such date. Notwithstanding the foregoing, the Bank may also rely on other information that Borrower is obligated to provide to the Bank pursuant to Section 6.1 of this Agreement. Exhibit F hereto includes an example of the calculation of Interest Coverage Ratio as defined herein from Borrower's SEC Form 10-K for the period ending December 31, 2001, and is provided for example purposes only.

"Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended from time to time and hereafter, and any successor statute.

"Legal Rate" shall mean the maximum interest rate allowed by law to be paid by the Borrower or received by the Bank with respect to the Indebtedness represented by the Note.

"Lender" shall mean any bank, financial institution, finance company, insurance or other financial institution or any other person who extends or has extended any credit or loan or line of credit to any other person.

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"LIBOR" shall mean the London Inter-Bank Offered Rate, rounded up, if necessary, to the nearest whole 1/100 of 1%.

"LIBOR Loan" shall mean a Revolving Loan as to which, pursuant to Sections 2.3.1, 2.3.2, and 2.3.4, Borrower has selected an interest rate based on a thirty (30), sixty (60), or ninety (90) day LIBOR Period.

"LIBOR Period" shall mean the period beginning on and including the Funding Date and ending on (but excluding) the day which numerically corresponds to such date thirty (30), sixty (60) or ninety (90) days thereafter, in each case as Borrower may select in its relevant Notice of Borrowing pursuant to Section 2.3.4.1 herein or in its Election pursuant to Section 2.3.2.2.1 herein (except that if the LIBOR Period would otherwise end on a day which is not a Business Day, then such LIBOR Period shall end on the next following Business Day and except that no LIBOR Period may end later than the Termination Date as defined below).

"Loan" shall mean the Revolving Loans.

"Loan Documents" shall mean this Agreement, the Note, each Guaranty, the Non-Encumbrance Agreement and all other agreements, instruments and documents (together with all amendments and supplements thereto and replacements thereof) now or hereafter executed by Borrower or Guarantor that evidence, guaranty or secure all or any portion of the Indebtedness or Borrower's obligations hereunder.

"Material Adverse Effect" or "Materially Adverse Effect" shall mean, with respect to a Person, a material adverse effect upon the condition (financial or otherwise), operations, performance or properties or assets of such Person.

"Minimum Tangible Net Worth" shall be calculated each Fiscal Quarter and shall mean, as of any applicable date of determination, Total Stockholders' Equity (but not including Minority Interest) as stated in the Consolidated Balance Sheet of Borrower in Borrower's SEC Form 10-Q or, as applicable, SEC Form 10-K (or other financial information that Bank may obtain regarding Borrower or that may be provided by Borrower to Bank in accordance with), less intangibles calculated in accordance with GAAP.

"MWP" shall mean Mission West Properties, L.P., a Delaware limited partnership, and its successors and assigns.

"MWP II" shall mean Mission West Properties, L.P. II, a Delaware limited partnership, and its successors and assigns.

"MWP Pool Properties" shall mean those real estate properties identified in Schedule 1 to the Non-Encumbrance Agreement as defined below including any "Replacement Properties" as defined in such agreement.

"MWP II Pool Properties" shall mean those real estate properties identified in Schedule 2 to the Non-Encumbrance Agreement as defined below including any "Replacement Properties" as defined in such agreement.

"Non-Encumbrance Agreement" shall mean a non-encumbrance agreement between Bank, Borrower, MWP and MWP II in the form and content of Exhibit C to this Agreement pursuant to which Borrower, MWP and MWP II (jointly and severally) agree not to encumber the MWP Pool Properties and the MWP II Pool Properties in accordance with the terms therein.

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"Note" shall mean the Revolving Credit Note.

"Notice of Borrowing" shall mean, with respect to a proposed Revolving Loan pursuant to Section 2.3 of this Agreement, a notice substantially in the form of Exhibit D hereto.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any person succeeding to the present powers and functions of the Pension Benefit Guaranty Corporation.

"Person" or "person" shall mean any individual, corporation, partnership, joint venture, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision or agency, or other entity.

"Prepayment Date" is defined in Section 2.3.2.3 of this Agreement.

"Prepayment Penalty" is defined in Section 2.3.2.3 of this Agreement.

"Prime Variable Rate" shall mean that variable rate of interest equal to the Prime Rate as published in the Wall Street Journal minus 3/4 percent (3/4%), per annum, with the interest rate to be initially calculated by the Bank as of approximately 10:00 a.m. San Jose, California time on the date on which the Bank exercises its option under Section 2.16 if such option date is the first day of the month, or, if not, as of approximately 10:00 a.m. San Jose, California time as the first day of the month during which such option date occurs, and with the interest rate to thereafter fluctuate with changes in such Prime Rate with such fluctuations to be effective, and the interest rate to be adjusted, on the first day of each month.

"Revolving Credit Note" shall mean a promissory note conforming to Section 2.5 of this Agreement and in the form and content of Exhibit B to this Agreement.

"Revolving Loan" shall mean advances or loans made by the Bank to the Borrower under this Agreement.

"Section" when used to refer to a portion of this Agreement shall mean the section to which reference is made plus all subparts and subsections thereof.

"Solvent" shall mean, as to any person at the time of determination, that such person (a) owns property and assets the value of which (both at fair valuation and at present fair salable value) is greater than the amount required to pay all of such person's liabilities

(including contingent liabilities and debts); (b) is able to pay all of its debts as such debts mature; and (c) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage.

"Subsidiary" shall mean any corporation (whether now existing or hereafter organized or acquired) in which more than fifty percent (50%) of the outstanding securities having ordinary voting power for the election of directors, as of any applicable date of determination, shall be owned directly, or indirectly through one or more Subsidiaries, by the Borrower.

"Termination Date" shall mean July 12, 2004.

"Total Loans of Borrower" shall mean, as of the date of any such



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determination, the sum of the total outstanding principal balance of all secured loans to Borrower from any Lender plus the total amount of all the balances and the credit commitments under any and all unsecured loans, unsecured lines of credit, unsecured credit facilities of any kind (including but not limited to the Commitment Amount), and any other commitments evidencing any extension of unsecured debt to Borrower by any Lender.

"Value" as to each and any of the MWP Pool Properties and each and any of the MWP II Pool Properties shall be based upon the Annual Gross Rental Income from each such property less a fifteen percent reserve for vacancy and expenses, and using a ten percent income capitalization rate, and shall mean at any time an amount equal to (i) the Annual Gross Rental Income from such property for the preceding twelve month period multiplied by 0.85, and (ii) which amount shall be divided by 0.10, illustrated as follows:

$(\text{Annual Gross Rental Income} \times 0.85) / 0.10 = \text{Value of subject property}$

"Value (Borrower Aggregate)" shall be determined as of each Fiscal Quarter and shall mean, as of the applicable date of determination, the sum of total quarterly rental revenue as reported by Borrower in its SEC Form 10-Q filed with the Securities Exchange Commission (or as determined by Bank from such other financial information as Bank may reasonably request and Borrower may provide in accordance with Section 6.1 herein or as Bank may obtain) multiplied by four (which sum shall be referred to as "Annualized Quarterly Rental Revenue"), multiplied by 0.85, and which amount shall be divided by 0.10, illustrated as follows:

$\text{Quarterly Rental Revenue} \times 4 = \text{Annualized Quarterly Rental Revenue}$

$(\text{Annualized Quarterly Rental Revenue} \times 0.85) / 0.10 = \text{Value (Borrower Aggregate)}$

"UCC" shall mean Uniform Commercial Code of the State of California (approved June 8, 1968) as amended.

"Variable Rate" shall mean that variable rate of interest equal to the sum of LIBOR applicable to funds borrowed for a thirty (30) day period plus two percent (2%), per annum, the interest rate to be initially calculated by the Bank as of approximately 10:00 a.m. San Jose, California time on the Funding Date if the Funding Date is the first day of a month, or, if not, as of approximately 10:00 a.m. San Jose, California time on the first day of the month during which the Funding Date occurs, and with the interest rate to thereafter fluctuate with changes in such LIBOR with such fluctuations to be effective, and the interest rate to be adjusted, on the first day of each month.

"Variable Rate Loan" shall mean a Revolving Loan as to which Borrower has selected a Variable Rate pursuant to Sections 2.3.1, 2.3.3, and 2.3.4, any LIBOR Loan that has converted to a Variable Rate Loan pursuant to Section 2.3.2.2.2.2 or Section 2.13.2; and/or an Automatic Variable Rate Loan under Section 2.4.1.

"Variable Rate Loans Outstanding Amount" is defined in Section 2.4.2 of this Agreement.

1.2 ACCOUNTING TERMS. All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP.

1.3 SINGULAR AND PLURAL. Where the context herein requires, the singular number shall be deemed to include the plural, the masculine gender shall include the feminine and neuter genders, and vice versa.

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### 2. COMMITMENT, PROCEDURES, INTEREST AND FEES.

2.1 REVOLVING CREDIT COMMITMENT. Subject to the terms and conditions of this Agreement and at any time from the Effective Date until the earlier of (a) the Termination Date, (b) such earlier date on which, pursuant to the terms of this Agreement and a result of acceleration or otherwise, the Indebtedness is fully due and payable, or (c) the termination of the Bank's Commitment pursuant to Section 8.2 of this Agreement or otherwise, the Bank agrees to make Revolving Loans to the Borrower on a revolving basis

up to an aggregate principal amount outstanding at any time not to exceed the Commitment Amount. Notwithstanding the foregoing, the Bank shall not be obligated to make the Revolving Loan if: (i) any of the conditions precedent set forth in Section 4 of this Agreement shall not have been satisfied or waived by the Bank in accordance with Section 9.4 of this Agreement, or (ii) such proposed Revolving Loan would cause the aggregate unpaid principal amount of the Revolving Loans outstanding under this Agreement to exceed the Commitment Amount on the Funding Date.

2.2 REVOLVING LOANS MADE PURSUANT TO NOTICE OF BORROWING AND AUTOMATIC LOANS. Pursuant to the terms of this Agreement, Revolving Loans shall be made pursuant to a Notice of Borrowing pursuant to Section 2.3 or automatically pursuant to Section 2.4.

2.3 REVOLVING LOANS MADE PURSUANT TO NOTICE OF BORROWING.

2.3.1 BORROWER'S SELECTION OF LOAN TYPE. Pursuant to the procedures set forth in Section 2.3.4 and as to each Revolving Loan made pursuant to a Notice of Borrowing, Borrower shall select whether the Loan shall be a LIBOR Loan or a Variable Rate Loan, and, if a LIBOR Loan, the applicable LIBOR Period (whether 30-day, 60-day, or 90-day). Borrower may select a LIBOR Loan only if there is sufficient time for the selected LIBOR Period to commence and end prior to the Termination Date.

2.3.2 LIBOR LOANS. The following provisions apply to each LIBOR Loan:

2.3.2.1 MAXIMUM NUMBER OF LIBOR LOANS; REVOLVING LOAN AMOUNT. At any one time, there shall not be more than eight (8) outstanding LIBOR Loans. The amount of each LIBOR Loan must be in the amount of One Million Dollars (\$1,000,000.00) or integral multiples of One Million Dollars (\$1,000,000.00).

2.3.2.2 INTEREST RATE. Except as otherwise provided herein (including without limitation Section 2.6 relating to the Default Rate), each LIBOR Loan will bear interest as follows:

2.3.2.2.1 INITIAL LIBOR RATE. During the Initial LIBOR Period, the LIBOR Loan shall bear interest on the unpaid principal amount thereof at a rate per annum equal to the sum of LIBOR applicable to the Initial LIBOR Period calculated by the Bank as of approximately 10:00 a.m. San Jose, California time on the first day of the Initial LIBOR Period plus two percent (2%) (the "Initial LIBOR Rate").

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2.3.2.2.2 SUBSEQUENT RATES. Upon expiration of the Initial LIBOR Period, the LIBOR Loan shall bear interest as follows:

2.3.2.2.2.1 BORROWER'S TIMELY ELECTION OF ADDITIONAL LIBOR PERIOD(S). Borrower may elect to continue the LIBOR Loan after expiration of the Initial LIBOR Period for additional, successive LIBOR Periods as long as, (i) there is sufficient time for the additional LIBOR Period to commence and end prior to the Termination Date; (ii) there is no Default or Event of Default; and (iii) not less than two (2) nor more than five (5) Business Days prior to the expiration of each LIBOR Period, Borrower provides to the Bank at 20230 Stevens Creek Boulevard, Cupertino, California 95014, Attention Michael Zukin, or to such other persons or entities as the Bank may designate, a written election (the "Election") to continue the LIBOR Loan for an additional LIBOR Period. The Election shall specify the additional LIBOR Period (whether 30-day, 60-day, or 90-day). During each additional LIBOR Period, the LIBOR Loan shall bear interest on the unpaid principal amount thereof at a rate per annum equal to the sum of LIBOR applicable to such additional LIBOR Period calculated by the Bank as of approximately 10:00 a.m. on the first Business Day immediately following expiration of the Initial LIBOR Period plus two percent (2%).

2.3.2.2.2.2 BORROWER'S FAILURE TO MAKE A TIMELY ELECTION OF ADDITIONAL LIBOR PERIOD(S) OR INSUFFICIENT TIME LEFT PRIOR TO TERMINATION DATE. If, during any LIBOR Period, (i) Borrower fails to provide the Election in accordance with Section 2.3.2.2.2.1, or (ii) there is insufficient time for an additional LIBOR Period to commence and end prior to the Termination Date, then upon the expiration of such LIBOR Period, the LIBOR Loan will convert automatically to a Variable Rate Loan and shall bear interest on the unpaid principal amount thereof at the Variable Rate.

2.3.2.3 Prepayment Penalty. Borrower acknowledges that prepayment or acceleration of a LIBOR Loan during a LIBOR Period may result in the Bank incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities. Therefore, on a date a LIBOR Loan is so prepaid or so accelerated (the "Prepayment Date"), Borrower will pay to the Bank (in addition to all other sums then owing) an amount (a "Prepayment Penalty") equal to the following: (i) the present value as of the Prepayment Date of the amount of interest that would have accrued on the LIBOR Loan for the remainder of the LIBOR Period at the rate applicable to such LIBOR Loan, less (ii) the present value as of the Prepayment Date of the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR

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were set on the Prepayment Date. The present value shall be calculated by using as a discount rate LIBOR quoted on the Prepayment Date. Upon notice to Borrower by the Bank, Borrower shall immediately pay to the Bank the Prepayment Penalty as calculated by the Bank. Exhibit G hereto includes an example of a prepayment calculation and is provided for example purposes only.

2.3.3 VARIABLE RATE LOANS. The following provisions apply to each Variable Rate Loan:

2.3.3.1 INTEREST RATE. Except as otherwise provided herein (including without limitation Section 2.6 relating to the Default Rate), each Variable Rate Loan will bear interest on the unpaid principal amount thereof at the Variable Rate.

2.3.4 BORROWING PROCEDURES FOR REVOLVING LOANS MADE PURSUANT TO NOTICE OF BORROWING.

2.3.4.1 NOTICE OF BORROWING. Whenever Borrower desires to Borrow under Section 2.3, Borrower shall provide to the Bank at 20230 Stevens Creek Boulevard, Cupertino, California 95014, Attention Michael Zukin, or to such other persons or entities as Bank may designate, an original Notice of Borrowing. Such Notice of Borrowing shall be provided by no later than 11:00 A.M. (San Jose, California time) for each Revolving Loan requested and not less than two (2) nor more than five (5) Business Days prior to the noticed Funding Date of each such Revolving Loan. Each Notice of Borrowing shall specify (A) the Funding Date (which shall be a Business Day) in respect of the Revolving Loan, (B) the amount of the proposed Revolving Loan, (C) whether the Borrower selects a LIBOR Loan or a Variable Rate Loan and, if a LIBOR Loan, the applicable LIBOR Period, (D) the deposit account number of Borrower with Bank to which the funds are to be directed, and (E) the proposed use of such Revolving Loan. Any Notice of Borrowing shall be irrevocable. At the time of execution of this Agreement and as a condition to the Bank's obligations hereunder, Borrower shall provide the Bank with written documentation satisfactory to the Bank specifying the names of those employees, officers or agents of Borrower authorized by Borrower to execute and submit Notices of Borrowing to the Bank ("Authorized Agent") and a signature exemplar of each such Authorized Agent, and the Bank shall be entitled to rely on such documentation until notified in writing by Borrower of any change(s) of the persons so authorized. Borrower agrees to indemnify, defend and hold the Bank harmless from and against any and all liabilities, costs (including but not limited to attorneys' fees), claims, damages and demands arising from or related to Bank's acceptance of instructions in any Notice of Borrowing executed and submitted an Authorized Agent, unless caused by the gross negligence or willful misconduct of the Person to be indemnified.

2.3.4.2 BANK OBLIGATIONS. Subject to the terms and conditions of this Agreement including without limitation Section 2.1 and subject to Borrower's performance of and compliance with the terms hereof including without limitation Section 2.3.4.1 herein, the Bank agrees to make the Revolving Loan pursuant

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to a Notice of Borrowing on the Funding Date established by the Notice of Borrowing by crediting the deposit account of the Borrower with the Bank specified in the Notice of Borrowing in the amount of such Revolving Loan.

2.4 AUTOMATIC VARIABLE RATE LOANS AND AUTOMATIC REPAYMENTS. Subject to the terms and conditions of this Agreement including without limitation Section 2.1, the Bank is hereby authorized and shall, without the need for any Notice of Borrowing or other authorization, make Automatic Variable Rate Loans to Borrower and make automatic repayments toward Variable Rate Loans as follows:

2.4.1AUTOMATIC VARIABLE RATE LOANS. If, after close of business on any Business Day (the "Automatic Loan Calculation Time"), the amount on deposit in the Borrower's Deposit Account as defined in Section 6.12 is less than One Million Dollars (\$1,000,000.00), then the Bank shall calculate the amount of the shortfall (the "Deposit Account Shortfall Amount") as of the Automatic Loan Calculation Time, and, by no later than the end of the next Business Day, shall make a Revolving Loan (an "Automatic Variable Rate Loan") in the Deposit Account Shortfall Amount by depositing such amount into the Borrower's Deposit Account. Except as otherwise provided in this Agreement (including without limitation Section 2.6 relating to Default Rate), the Automatic Variable Rate Loan will bear interest at the Variable Rate.

2.4.2AUTOMATIC REPAYMENT OF AUTOMATIC VARIABLE RATE LOANS. If, after close of business on any Business Day (the "Automatic Loan Repayment Time"), the amount on deposit in the Borrower's Deposit Account as defined in Section 6.12 is more than One Million Dollars (\$1,000,000.00) and there is an amount outstanding on the Variable Rate Loans (the "Variable Rate Loans Outstanding Amount"), then the Bank shall calculate, as of the Automatic Loan Repayment Time, the amount of the excess (the "Deposit Account Excess Amount") and the Variable Rate Loans Outstanding Amount, and, by no later than the end of the next Business Day, the Bank shall transfer the Deposit Account Excess Amount, or such lesser amount as may be necessary, from the Borrower's Deposit Account and apply such amount toward repayment of the Variable Rate Loans Outstanding Amount.

2.5 REVOLVING CREDIT NOTE. The Revolving Loans shall be evidenced by the Revolving Credit Note, executed by the Borrower, dated the date of this Agreement, payable to the Bank on the Termination Date (or such earlier date as the Indebtedness is due under the terms of this Agreement whether by reason of acceleration or otherwise), and in the principal amount of the original Commitment Amount. The date and amount of each Revolving Loan made by the Bank and of each repayment of principal thereon

received by the Bank shall be recorded by the Bank in its records. The aggregate unpaid principal amount so recorded by the Bank shall constitute the best evidence of the principal amount owing and unpaid on the Revolving Credit Note, provided, however, that the failure by the Bank so to record any such amount or any error in so recording any such amount shall not limit or otherwise affect the obligations of the Borrower under this Agreement or the Revolving Credit Note to repay the principal amount of all the Revolving Loans together with all interest accrued or accruing thereon.

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- 2.6 DEFAULT INTEREST. Upon the occurrence of an Event of Default, all amounts due and owing by Borrower to the Bank shall bear interest at the Default Rate.
- 2.7 INTEREST PAYMENTS. Interest shall be payable by Borrower to the extent then accrued on the first day of each consecutive calendar month beginning on August 1, 2002, with all remaining interest due and payable on the Termination Date (or such earlier date as the Indebtedness is due under the terms of this Agreement whether by reason of acceleration or otherwise). Any interest not paid when due shall become part of the principal and bear interest as provided in this Agreement.
- 2.8 MAXIMUM RATE. At no time shall the rate of interest payable on the Revolving Loans or pursuant to the Revolving Credit Note pursuant to the terms of this Agreement be deemed to exceed the Legal Rate. In the event any interest is charged or received by the Bank in excess of the Legal Rate, the Borrower acknowledges that any such excess interest shall be the result of an accidental and bona fide error, and such excess shall first be applied to reduce the principal then unpaid hereunder (in inverse order of their maturities if principal amounts are due in installments); second, applied to reduce any obligation for other indebtedness of the Borrower to the Bank; and third, any remaining excess returned to the Borrower.
- 2.9 TERM. The Indebtedness and the outstanding balance of all Revolving Loans and all other accrued and unpaid interest, charges and expenses hereunder and under the Note shall be payable in full on the Termination Date or such earlier date as the Indebtedness is due under the terms of this Agreement whether by reason of acceleration pursuant to Section 8.2 or otherwise.
- 2.10 FEES. Borrower shall pay to Bank the fees described in this Section 2.10. All fees described herein are earned as of the date they are accrued.
- 2.10.1 MINIMUM ANNUAL FEE. The Borrower shall pay to the Bank a minimum annual fee of Thirty Three Thousand Three Hundred Thirty Three Dollars and no cents (\$33,333.00) (the "Minimum Annual Fee"). The Minimum Annual Fee paid by Borrower shall be credited towards Borrower's payment of the Non-Utilization Fee as required by Section 2.10.2 below. The Minimum Annual Fee shall be payable in advance, in the manner provided in Section 2.14 herein, on the Effective Date for the first year hereunder, and on each anniversary of the Effective Date for each subsequent year.
- 2.10.2 NON-UTILIZATION FEE. From and after the Effective Date and until (i) the Indebtedness is paid in full or (ii) the Termination Date, whichever is later, Borrower shall pay to the Bank a fee (the "Non-Utilization Fee") each Fiscal Quarter which shall accrue as follows:
- (i) If the sum of the Commitment Amount minus the average daily principal balance of all Revolving Loans as determined for each Fiscal Quarter (the "Average Line Non-Utilization Amount") is greater than Twenty Million Dollars and no cents (\$20,000,000.00), then the Non-Utilization Fee for such Fiscal Quarter shall equal the sum of the Average Line Non-Utilization Amount multiplied by 0.000375.
  - (ii) If the Average Line Non-Utilization Amount is less than

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or equal to Twenty Million Dollars and no cents (\$20,000,000.00), then the Non-Utilization Fee for such Fiscal Quarter shall equal the sum of the Average Line Non-Utilization Amount multiplied by 0.000625.

The Non-Utilization Fee shall be payable, in the manner provided in Section 2.14 herein, in arrears on the first Business Day in each Fiscal Quarter, beginning with the end of the first Fiscal Quarter after the Effective Date. Exhibit H hereto includes examples of the calculation of the Non-Utilization Fee under Sections 2.10.2 (i) and 2.10.2 (ii), and is provided for example purposes only.

2.10.3 NO FEE AFTER TERMINATION OF BANK OBLIGATIONS. Notwithstanding Sections 2.10.1 and 2.10.2, the Borrower shall not be obligated to pay any Minimum Annual Fee or any Non-Utilization Fee earned by the Bank after the date which is ten (10) days after Borrower has: (i) given written notice to the Bank terminating the Bank's Commitment and any further obligation by the Bank under this Agreement; and (ii) paid the Indebtedness in full.

2.11 PREPARATION FEES. Simultaneously with the execution of this Agreement and as a condition to the Bank's obligations hereunder, the Borrower shall pay to the Bank the amount of the expenses (including without limit attorneys' fees, whether of inside or

outside counsel, and disbursements) incurred by the Bank in connection with the preparation of this Agreement and the Loan Documents in the amount of Fifteen Thousand Dollars (\$15,000.00).

2.12 BASIS OF COMPUTATION. The amount of all interest and fees hereunder shall be computed for the actual number of days elapsed in the period in which interest accrues on the basis of a year consisting of three hundred sixty (360) days.

2.13 MANDATORY PAYMENTS AND PREPAYMENTS.

2.13.1 MANDATORY PAYMENTS. In addition to all other payments required to be made under the Loan Documents, Borrower shall pay to the Bank the amount, if any, by which the aggregate unpaid principal amount of all Revolving Loans from time to time exceeds the Commitment Amount, together with all interest accrued and unpaid on the amount of such excess. Such payment shall be immediately due and owing without notice or demand upon the occurrence of any such excess, provided, however, that any mandatory payment made under this Section 2.13.1 shall not reduce the Commitment Amount.

2.13.2 OPTIONAL PREPAYMENTS AND CONVERSIONS. The Borrower, at any time and from time to time, may prepay the unpaid principal amount of the Variable Rate Loans, including without limitation the Automatic Variable Rate Loans. In addition, the Borrower, at any time and from time to time, may convert all or any portion of the outstanding Variable Rate Loans into LIBOR Loans upon and subject to the terms, conditions, and procedures set forth in Sections 2.3.2 and 2.3.4 applicable to LIBOR Loans made thereunder in which case the Notice of Borrowing shall be modified to request the conversion of a specified amount of the Variable Rate Loans

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to be converted to a LIBOR Loan (rather than the disbursement of proceeds), to specify the date on which the conversion is to be made (rather than a Funding Date), and to delete the requirements in Schedule 1 relating to wire instructions, proposed use of funds, and deposit account. In addition, the Borrower, at any time and from time to time, upon at least one (1) Business Day's prior written notice received by the Bank and subject to the Prepayment Penalty in Section 2.3.2.3 herein, may prepay the unpaid principal amount of the LIBOR Loans in whole or in part, provided, however, as follows: (i) any such optional prepayment under this Section 2.13.2 shall be made in integral multiples of One Hundred Thousand Dollars (\$100,000.00); (ii) to the extent that such optional prepayment repays part but not all of any LIBOR Loan, such LIBOR Loan shall immediately convert to a Variable Rate Loan (but Borrower shall still be liable for the Prepayment Penalty in Section 2.3.2.3 herein); and (iii) any optional prepayment made under this Section 2.13.2 shall not reduce the Commitment Amount.

2.14 BASIS OF PAYMENTS. All sums payable by the Borrower to the Bank under this Agreement or the Loan Documents shall be paid immediately by Borrower when due directly to the Bank at its principal office set forth in Section 9.12 hereof in immediately available United States funds, without condition, set off, deduction or counterclaim. In its sole discretion, the Bank may charge any and all deposit or other accounts (including without limit an account evidenced by a certificate of deposit) of the Borrower with the Bank for all or a part of any Indebtedness when due; provided, however, that this authorization shall not affect the Borrower's obligation to pay, when due, any Indebtedness whether or not account balances are sufficient to pay amounts due. Whenever any payment to be made by Borrower hereunder shall be stated to be due on a day which is not a Business Day, payments 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 and of any of the fees specified in Sections 2.3.2.3 and 2.10, as the case may be. Borrower acknowledges and agrees that the fees described in Section 2.10 represent compensation for services rendered and to be rendered separate and apart from the lending of money or the provision of credit and do not constitute compensation for the use, detention or forbearance of money, and the obligation of Borrower to pay the fees described herein shall be in addition to, and not in lieu of, the obligation of Borrower to pay interest, other fees and expenses otherwise described in this Agreement. If Borrower fails to make any payment of fees or expenses specified or referred to in this Agreement owing to Bank, including without limitation those referred to in Section 2.10, or otherwise under this Agreement, or any separate fee agreement between Borrower or Bank relating to this Agreement, when due, the amount shall bear interest until paid at the Default Rate.

2.15 RECEIPT OF PAYMENTS. Any payment of the Indebtedness made by mail will be deemed tendered and received only upon actual receipt by the Bank at the address designated for such payment, whether or not the Bank has authorized payment by mail or any other manner, and shall not be deemed to have been made in a timely manner unless received on the date due for such payment, time being of the essence. Borrower expressly assumes all risks of loss or liability resulting from non-delivery or delay of delivery of any



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item of payment transmitted by mail or in any other manner. Acceptance by the Bank of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a Default or Event of Default as provided in Section 8.1, and at any time thereafter and until the entire amount then due has been paid, the Bank shall be entitled to exercise any and all rights conferred upon it herein upon the occurrence of a Default or Event of Default as provided in Section 8.1. Borrower waives the right to direct the application of any and all payments at any time or times hereafter received by the Bank from or on behalf of the Borrower. Borrower agrees that the Bank shall have the continuing exclusive right to apply and to reapply any and all payments received at any time or times hereafter against the Indebtedness in such manner as the Bank may deem advisable, notwithstanding any entry by the Bank upon any of its books and records. Borrower expressly agrees that to the extent that the Bank receives any payment of benefit and such payment or benefit, or any part thereof, is

subsequently invalidated, declared to be fraudulent or preferential, set aside or is required to be repaid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then to the extent of such payment or benefit, the Indebtedness or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or benefit had not been made and, further any such repayment by the Bank, to the extent that the Bank did not directly receive a corresponding cash payment, shall be added to and be additional Indebtedness payable upon demand by the Bank.

2.16 LIBOR UNLAWFUL OR UNAVAILABLE. Should the Bank in its sole discretion binding on Borrower determine that the introduction of or any change in any law or the interpretation of any law makes it unlawful for the Bank to make or maintain Revolving Loans bearing interest based on LIBOR or that LIBOR has become unavailable as an index, then, at the Bank's option and upon its exercise of such option: (i) the interest rate on any outstanding Revolving Loans shall thenceforth bear interest at the Prime Variable Rate; and (ii) all additional Revolving Loans shall be Variable Rate Loans except that they shall bear interest at the Prime Variable Rate.

### 3. GUARANTY.

To guaranty full and timely performance of the Borrower's covenants set out in this Agreement and to secure the repayment of the Revolving Credit Note and all other Indebtedness, the Borrower shall have caused to be executed and delivered to the Bank the Guaranty.

### 4. CONDITIONS TO OBLIGATIONS OF BANK.

4.1 CONDITIONS PRECEDENT TO FIRST DISBURSEMENT. The obligations of the Bank under this Agreement to make the first Revolving Loan are subject to the occurrence, prior to or simultaneously with the Funding Date first occurring, of each of the following conditions:

4.1.1 BORROWER DOCUMENTS EXECUTED AND FILED AND FEES PAID. The Borrower shall have executed (or caused to be executed) and delivered to

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the Bank the following in form and substance acceptable to Bank:

- (a) This Agreement;
- (b) The Revolving Credit Note;
- (c) The Non-Encumbrance Agreement;
- (d) Copy of Borrower's Bylaws, including all amendments thereto and restatements thereof, which shall have been certified by the Secretary or Assistant Secretary of the Borrower as of the Funding Date first occurring as being complete, accurate and in effect; and
- (e) A copy of resolutions of the Board of Directors of the Borrower authorizing the execution, delivery and performance of this Agreement, the borrowing hereunder, the Revolving Credit Note and any other documents contemplated by this Agreement, which shall have been certified by the Secretary or Assistant Secretary of the Borrower as of the Funding Date first occurring as being complete, accurate and in effect.

4.1.2 PAYMENT OF FEES. Borrower shall have paid the Minimum Annual Fee and the Preparation Fees in accordance with Sections 2.10.1 and 2.11.

4.1.3 GUARANTOR DOCUMENTS EXECUTED AND FILED. Each Guarantor shall have executed and delivered (or caused to be delivered) to Bank each of the following, in form and substance acceptable to Bank:

- (a) A Guaranty;
- (b) Partnership agreements of each Guarantor and all amendments and modifications thereto, certified as complete, accurate and in effect by the general partner of each Guarantor;
- (c) Bank shall have received preliminary title reports disclosing no notice of any liens or encumbrances filed against any of the properties set forth in the Non-Encumbrance Agreement.

Upon its execution of this Agreement, the Bank acknowledges that it has received the documents described in Sections 4.1.1(d), 4.1.3(b), and 4.1.3(c) above.

4.1.4 OTHER DOCUMENTS EXECUTED AND FILED. The Borrower shall have caused to be executed and delivered to the Bank the Non-Encumbrance Agreement dated as of the date of this Agreement between and among Bank, Borrower, MWP, and MWP II.

4.1.5 CASUALTY INSURANCE. The Borrower shall have furnished to the Bank, in form, content and amounts and with companies satisfactory to the Bank, casualty insurance policies with loss payable clauses in favor of the Bank, relating to the assets and properties of Borrower and relating to the MWP Pool Properties and the MWP II Pool Properties. Upon its execution of this Agreement, Borrower represents, and upon its execution of this Agreement, the Bank acknowledges that Borrower has provided to Bank the foregoing insurance policies.

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4.1.6ENVIRONMENTAL AUDIT. The Borrower shall have provided to the Bank environmental reports satisfactory in form and content to Bank, covering all of the MWP Pool Properties and the MWP II Pool Properties. Upon its execution of this Agreement, Borrower represents, and upon its execution of this Agreement, the Bank acknowledges that Borrower has provided to Bank such environmental reports. Borrower agrees that the Bank may disclose the contents of such reports to such governmental agencies and entities as the Bank deems necessary under applicable law, and the Borrower shall deliver to the Bank the written consent to such disclosure from the environmental consultant and MWP and MWP II.

4.1.7APPROVAL OF BANK COUNSEL. All actions, proceedings, instruments and documents required to carry out the transactions contemplated by this Agreement or incidental thereto and all other related legal matters shall have been satisfactory to and approved by legal counsel for the Bank, and said counsel shall have been furnished with such certified copies of actions and proceedings and such other instruments and documents as they shall have reasonably requested.

4.2 CONDITIONS PRECEDENT TO ALL DISBURSEMENTS. The obligations of the Bank to make any Revolving Loan on any Funding Date, including, but not limited to, the Funding Date first occurring, are subject to the occurrence, prior to or on the Funding Date related to such Revolving Loan, of each of the following conditions:

4.2.1CERTIFICATE. The Bank shall have received a certificate, executed by the chief executive or chief financial officer of Borrower, certified as of the initial Funding Date, and thereafter as the Bank may from time to time require on such date, that:

- (a) No Default or Event of Default has occurred and is continuing;
- (b) The warranties and representations set forth in Section 5 of this Agreement are true and correct on and as of such date; and
- (c) Borrower is Solvent.

4.2.2BANK SATISFACTION. The Bank shall not know or have any reason to believe that, as of such Funding Date:

- (a) Any Default or Event of Default has occurred and is continuing;
- (b) Any warranty or representation set forth in Section 5 of this Agreement shall not be true and correct; or
- (c) Any provision of law, any order of any court or any regulation, rule or interpretation thereof shall have had any Material Adverse Effect on Borrower's financial condition or on any Guarantor's financial condition, or on the validity or enforceability of this Agreement, the Revolving Credit Note, the Guaranty, the Non-Encumbrance Agreement or any other Loan Document.

4.2.3MAXIMUM BORROWER AGGREGATE LOAN-TO-VALUE. The Total Loans of Borrower shall not exceed fifty percent (50%) of Value (Borrower

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Aggregate).

4.2.4 LOAN-TO-VALUE OF MWP POOL PROPERTIES AND MWP II POOL PROPERTIES. The Commitment Amount shall not exceed fifty percent (50%) of the total combined Value of the MWP Pool Properties and the MWP II Pool Properties.

4.3 OTHER DOCUMENTS TO BE PROVIDED BY BORROWER. No later than thirty (30) days after the Effective Date, Borrower shall provide to Bank the following documents:

- (a) Copy of Borrower's Articles of Incorporation including all amendments thereto and restatements thereof, and all other charter documents of the Borrower, all of which shall have been certified by the Maryland Department of Corporations or similar governmental authority in the state in which Borrower is organized and incorporated, as of a date within thirty days of the Funding Date first occurring;
- (b) Certified copy of Borrower's Good Standing certificate from the California Secretary of State, dated as of a date within thirty days of the Funding Date first occurring;
- (c) A copy of the Certificate of Limited Partnership of each Guarantor required to be filed to create a limited partnership, including all amendments thereto and restatements thereof, all of which shall have been certified by the Delaware Department of Corporations or other appropriate filing office as of a date within thirty days of the Funding Date first occurring; and
- (d) Good Standing Certificate for each Guarantor from the Secretary of State of the state in which such Guarantor is formed, dated as of a date within thirty days of the Funding Date first occurring.

### 5. WARRANTIES AND REPRESENTATIONS.

On a continuing basis from the date of this Agreement until the later of (a) the Termination Date or (b) the date on which the Indebtedness is paid in full and the Borrower has performed all of its other obligations hereunder, Borrower represents and warrants to the Bank that:

5.1 CORPORATE EXISTENCE AND POWER. (a) Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland and in good standing under the laws of, and is authorized to do business in, the State of California, (b) Each Guarantor is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the State of California, (c) Borrower and the Guarantors each has the power and authority to own its properties and assets and to carry out its business as now being conducted and is qualified to do business and in good standing in every jurisdiction wherein such qualification is necessary, (d) Borrower has the power and authority to execute, deliver and perform this Agreement, to borrow money in accordance with its terms, to execute, deliver and perform the Revolving Credit Note and other documents contemplated hereby, and to do any and all other things required of it hereunder (e) each Guarantor has the power and authority to execute, deliver and perform its Guaranty in accordance with its terms, (f) MWP and MWP II each has the power and authority to execute, deliver and perform the Non-Encumbrance Agreement in accordance with its terms; (g) Borrower

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is a qualified real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto) and has no knowledge of any circumstance that is likely to lead to its failure to qualify as such a real estate investment trust; (h) the execution, delivery and performance of the Loan Documents will not result in Borrower being disqualified as such a real estate investment trust; and (i) Borrower has made and will timely make all filings with and obtained all consents of the Securities and Exchange Commission required under the Securities Act of 1933 (as amended from time to time) or the Security Exchange Act of 1934 (as amended from time to time) in connection with the execution, delivery and performance by Borrower of the Loan Documents.

- 5.2 AUTHORIZATION AND APPROVALS. The execution, delivery and performance of this Agreement, the borrowings hereunder and the execution, delivery and performance of the Revolving Credit Note, the Guaranty, the Non-Encumbrance Agreement, and other documents contemplated hereby (a) have been duly authorized by all requisite corporate action of the Borrower and all partnership action of each Guarantor and MWP and MWP II, (b) do not require registration with or consent or approval of, or other action by, any federal, state or other governmental authority or regulatory body, or, if such registration, consent or approval is required, the same has been obtained and disclosed in writing to the Bank, (c) will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation and Bylaws of Borrower, the partnership certificates and partnership agreements of each Guarantor, any provision of any indenture, note, agreement or other instrument to which the Borrower is a party, or by which it or any of its properties or assets are bound, (d) will not be in conflict with, result in a breach of or constitute (with or without notice or passage of time) a default under any such indenture, note, agreement or other instrument, and (e) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Borrower (other than in favor of the Bank and as contemplated hereby) or upon the MWP Pool Properties or the MWP II Pool Properties. Reference to the "Borrower" in this Section 5.2 shall instead be deemed to be references to each Guarantor with respect to the Guaranty.
- 5.3 VALID AND BINDING AGREEMENT. This Agreement is, and the Revolving Credit Note, and all other documents contemplated hereby will be, when delivered, valid, binding, and enforceable obligations of the Borrower, and the Guaranty and the Non-Encumbrance Agreement will be, when delivered, valid, binding, and enforceable obligations of the Guarantors and of MWP and MWP II, respectively, in accordance with their terms.
- 5.4 ACTIONS, SUITS OR PROCEEDINGS. There are no actions, suits or proceedings, at law or in equity, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau, or other administrative agency, pending, or, to the

best knowledge of the Borrower, threatened against or affecting the Borrower, any of its Subsidiaries or the Guarantors or any properties or rights of the Borrower, any of its Subsidiaries or the Guarantors, which, if adversely determined, could materially impair the right of the Borrower, any of its Subsidiaries or the Guarantor to carry on business substantially as now conducted or could have a Material Adverse Effect upon the financial condition of the Borrower, any of its Subsidiaries or the Guarantors.

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- 5.5 ACCOUNTING PRINCIPLES. All consolidated and consolidating balance sheets, earnings statements and other financial data furnished to the Bank for the purposes of, or in connection with, this Agreement and the transactions contemplated by this Agreement, have been prepared in accordance with GAAP, and do or will fairly present the financial condition of the Borrower, its Subsidiaries and the Guarantors, as of the dates, and the results of their operations for the periods, for which the same are furnished to the Bank. Without limiting the generality of the foregoing, the Financial Statements have been prepared in accordance with GAAP (except as disclosed therein) and fairly present the financial condition of the Borrower, its Subsidiaries and, if relevant, the Guarantor as of the dates, and the results of its operations for the fiscal periods, for which the same are furnished to the Bank. The Borrower has no material contingent obligations, liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, the Financial Statements.
- 5.6 FINANCIAL CONDITION. The Borrower and the Guarantors is each solvent, able to pay its debts as they mature, has capital sufficient to carry on its business and has assets the fair market value of which exceed its liabilities, and neither the Borrower nor either of the Guarantors will be rendered insolvent, under-capitalized or unable to pay maturing debts by the execution or performance of this Agreement, the Guaranty, the Non-Encumbrance Agreement or the other documents contemplated hereby. There has been no material adverse change in the business, properties or condition (financial or otherwise) of the Borrower, any of its Subsidiaries or the Guarantor since the date of the latest Financial Statements.
- 5.7 CONDITIONS PRECEDENT. As of each Funding Date, all appropriate conditions precedent referred to in Section 4 hereof have been satisfied or, alternatively, have been waived in writing by the Bank.
- 5.8 TAXES. Borrower, its Subsidiaries and the Guarantors has each filed by the due date therefor (including any extensions) all federal, state and local tax returns and other reports it is required by law to file, has paid or caused to be paid all taxes, assessments and other governmental charges that are shown to be due and payable under such returns, and has made adequate provision for the payment of such taxes, assessments or other governmental charges which have accrued but are not yet payable. The Borrower has no knowledge of any material deficiency or assessment in connection with any taxes, assessments or other governmental charges not adequately disclosed in the Financial Statements.
- 5.9 COMPLIANCE WITH LAWS. Borrower, its Subsidiaries and the Guarantors has each complied with all applicable laws, to the extent that failure to comply would materially interfere with the conduct of the business of the Borrower, any of its Subsidiaries or the Guarantor.
- 5.10 INDEBTEDNESS. Except as disclosed in the Financial Statements or other public filings, neither Borrower nor any of its Subsidiaries has any indebtedness for money borrowed or any direct or indirect obligations under any leases (whether or not required to be capitalized under GAAP) or any agreements of guarantee or surety except for the endorsement of negotiable instruments by the Borrower and its Subsidiaries in the ordinary course of business for deposit or collection.
- 5.11 MATERIAL AGREEMENTS. Except as disclosed in the Financial Statements

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or other public filings, neither the Borrower, any of its Subsidiaries nor the Guarantor has any material leases, contracts or commitments of any kind (including, without limitation, employment agreements, collective bargaining agreements, powers of attorney, distribution contracts, patent or trademark licenses, contracts for future purchase or delivery of goods or rendering of services, bonus, pension and retirement plans, or accrued vacation pay, insurance and welfare agreements); to the best knowledge of Borrower, all parties to such agreements have complied with the provisions of such leases, contracts or commitments; and to the best knowledge of the Borrower, no party to such agreements is in default thereunder, nor has there occurred any event which with notice or the passage of time, or both, would constitute such a default.

5.12 MARGIN STOCK. Neither the Borrower nor any of its Subsidiaries 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" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, and no part of the proceeds of any loan hereunder will be used, directly or indirectly, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any other purpose which might violate the provisions of Regulation G, T, U or X of the said Board of Governors. The Borrower does not own any margin stock.

5.13 PENSION FUNDING. Neither the Borrower, any of its Subsidiaries nor the Guarantor has incurred any accumulated funding deficiency within the meaning of ERISA or incurred any liability to the PBGC in connection with any employee benefit plan

established or maintained by the Borrower, any of its Subsidiaries or the Guarantors and no reportable event or prohibited transaction, as defined in ERISA, has occurred with respect to such plans.

5.14 MISREPRESENTATION. No warranty or representation by the Borrower contained herein or in any certificate or other document furnished by the Borrower pursuant hereto contains any untrue statement of material fact or omits to state a material fact necessary to make such warranty or representation not misleading in light of the circumstances under which it was made. There is no fact which the Borrower has not disclosed to the Bank in writing which materially and adversely affects nor, so far as the Borrower can now foresee, is likely to prove to affect materially and adversely the business, operations, properties, prospects, profits or condition (financial or otherwise) of the Borrower, any of its Subsidiaries or the Guarantor or ability of the Borrower to perform this Agreement or the ability of the Guarantor to perform the Guaranty.

5.15 SHARES AND SHAREHOLDERS. As of May 14, 2002 the Borrower's entire issued and outstanding capital stock consists of 17,463,329 shares of common stock, \$.001 par value. All currently owned Subsidiaries, if any, are set forth in Exhibit 21 in Borrower's SEC Form 10-K dated March 25, 2002 along with the percentage of the outstanding voting stock owned by the Borrower or by a Subsidiary (and identifying that Subsidiary).

5.16 NO CONFLICTING AGREEMENTS. Neither the Borrower, any of its Subsidiaries nor the Guarantors is in default under any shareholder agreement, preferred stock agreement or any other agreement to which

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it is a party or by which it or any of its property is bound, the effect of which might have a Material Adverse Effect on the business or operations of the Borrower, any of its Subsidiaries or the Guarantor. No provision of the Certificate of Incorporation, Articles of Incorporation, By-Laws or preferred stock, if any, of the Borrower, and no provision of any existing mortgage, indenture, note, contract, agreement, statute (including, without limitation, any applicable usury or similar law), rule, regulation, judgment, decree or order binding on the Borrower or affecting the property of the Borrower conflicts with, or requires any consent under, or would in any way prevent the execution, delivery or carrying out of the terms of, this Agreement and the documents contemplated hereby, and the taking of any such action will not constitute a default under, or result in the creation or imposition of, or obligation to create any lien upon the property of the Borrower pursuant to the terms of any such mortgage, indenture, note, contract or agreement.

### 5.17 HAZARDOUS MATERIALS.

- (a) The Borrower has not used Hazardous Materials (as defined hereinafter) on or affecting any of the MWP I Pool Properties or MWP II Pool Properties (collectively and singly the "premises") in any manner which violates federal, state or local laws, ordinances, statutes, rules, regulations or judgments governing the use, storage, treatment, handling, manufacture, transportation, or disposal of Hazardous Materials ("Environmental Laws"), and that, to the best of the Borrower's knowledge, no prior owner of the premises or any current or prior occupant has used Hazardous Materials on or affecting the premises in any manner which violates Environmental Laws. The Borrower covenants and agrees that it shall not use, introduce or maintain and shall use its best efforts to ensure that any occupant shall not use, introduce or maintain Hazardous Materials on the premises in any manner unless done in strict compliance with all Environmental Laws.
- (b) The Borrower shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the premises, whether caused by the Borrower or a third party, in accordance with all Environmental Laws and as required by orders and directives of all federal, state, and local governmental authorities. Additionally, the Borrower shall defend, indemnify and hold harmless the Bank, its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature arising out of or related to (1) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon, (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (3) any lawsuit brought or threatened, settlement reached or governmental order relating to such Hazardous Materials, (4) the cost of removal of all such Hazardous Materials from all or any portions of the premises, (5) taking necessary precautions to protect against the release of Hazardous Materials on or affecting the premises, (6) complying with all Environmental Laws and/or (7) any violation of Environmental Laws, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney's and consultant's fees (said



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attorneys and consultants to be selected by the Bank), investigation and laboratory fees, environmental studies required by the Bank (whether prior to foreclosure or otherwise), court costs and litigation expenses.

- (c) To the best of its knowledge, the Borrower has never received any notice ("Environmental Complaint") of any violations of Environmental Laws (and, within five days of receipt of any Environmental Complaint the Borrower shall give the Bank a copy thereof), and to the best of the Borrower's knowledge, there have been no actions commenced or threatened by any party for noncompliance with any Environmental Laws.
  
- (d) Upon ten (10) days' notice to the Borrower (except in an emergency), without limiting the Bank's other rights under this Agreement or elsewhere, the Bank shall have the right, but not the obligation, to enter on the premises or to take such other actions as it deems appropriate to clean up, remove, resolve or minimize the impact of any Hazardous Material or Environmental Complaint upon the Bank's receipt of any notice from any governmental or reliable source asserting the existence of any Hazardous Material or an Environmental Complaint pertaining to the premises which, if true, could result in an order, suit or other action against the Borrower and/or any part of the premises which, in the sole opinion of the Bank, could jeopardize its rights under this Agreement or any related document. The Bank agrees that, if, prior to the expiration of the ten (10) days' notice given by the Bank under this subsection, Borrower gives notice to the Bank of its desire to replace the property as to which notice was given with other property pursuant to and subject to the terms of the Non-Encumbrance Agreement, the Bank agrees (except in an emergency) to wait an additional thirty (30) days after expiration of any such ten (10) day period to take the actions authorized by this subsection. All reasonable costs and expenses incurred by the Bank in the exercise of any such rights shall be payable by the Borrower to Bank upon demand.
  
- (e) The provisions of this section shall be in addition to any and all other obligations and liabilities the Borrower may have to the Bank at common law or pursuant to any other agreement and, notwithstanding anything in Section 9.15 hereof to the contrary, shall survive (i) the repayment of all sums due under the Note and the other loan documents executed in connection herewith and the repayment of all other Indebtedness, and (ii) the satisfaction of all of the other obligations of the Borrower hereunder and under the other loan documents.
  
- (f) "Hazardous Materials" including, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule, or regulation.

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6. AFFIRMATIVE COVENANTS. On a continuing basis from the date of this Agreement until the later of (a) the Termination Date or (b) the date on which the Indebtedness is paid in full and the Borrower has performed all of its other obligations hereunder, the Borrower covenants and agrees that it will:
- 6.1 FINANCIAL AND OTHER INFORMATION. Borrower shall maintain or cause to be maintained a system of accounting established and administered in accordance with sound business practices and consistent with past practice to permit preparation of quarterly and annual financial statements in conformity with GAAP, and Borrower shall deliver or cause to be delivered to Bank the following information and/or documents:
- 6.1.1 ANNUAL FINANCIAL REPORTS. As soon as practicable and in any event within ninety (90) days after the close of each fiscal year of the Borrower, furnish to the Bank a copy of Borrower's SEC Form 10-K filed or to be filed by Borrower with the Securities and Exchange Commission or, if such statement is not available for any reason, financial statements of the Borrower on a consolidated basis containing the balance sheet of the Borrower as of the close of such fiscal year, statements of income and retained earnings and a statement of cash flows for each such fiscal year, and such other comments and financial details as are usually included in SEC Form 10-K and certified by Borrower's chief financial officer or chief accounting officer. Such reports shall be prepared in accordance with GAAP by independent certified public accountants of recognized standing selected by the Borrower and shall contain unqualified opinions as to the fairness of the statements therein contained. 1.1.1
- 6.1.2 QUARTERLY FINANCIAL STATEMENTS. As soon as practicable and in any event within forty-five (45) days after the close of each Fiscal Quarter of each fiscal year of the Borrower, furnish to Bank a copy of Borrower's SEC Form 10-Q filed or to be filed by Borrower with the Securities and Exchange Commission or, if such statement is not available for any reason, financial statements of the Borrower on a consolidated basis containing the balance sheet of the Borrower as of the end of each such period, statements of income and retained earnings of the Borrower and a statement of cash flows of the Borrower for the portion of the fiscal year up to the end of such period, and such other comments and financial details as are usually included in SEC Form 10-Q and certified by Borrower's chief financial officer or chief accounting officer. These statements shall be prepared in accordance with GAAP and shall be in such detail as the Bank may reasonably require, and the accuracy of the statements shall be certified by the chief executive or financial officer of the Borrower.
- 6.1.3 ADVERSE EVENTS; LITIGATION. Promptly inform the Bank of the occurrence of any Default or Event of Default, or of any other occurrence which has or could reasonably be expected to have a Materially Adverse Effect upon the Borrower or any Guarantor, or upon any of Borrower's Subsidiaries, or upon the Borrower's ability to comply with its obligations hereunder. Borrower shall promptly inform Bank in writing upon obtaining knowledge of (i) the institution of, or threat of, any material action, proceeding, governmental investigation or arbitration against or affecting Borrower or any Guarantor not previously disclosed by Borrower in

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writing to Bank, including but not limited to any eminent domain or other condemnation proceedings affecting any of the MWP Pool Properties or any of the MWP II Pool Properties, or (ii) any material development in any action, suit, proceeding, governmental investigation or arbitration already disclosed, which has a Material Adverse Affect on Borrower or any Guarantor or any of the MWP Pool Properties or the MWP II Pool Properties, and shall provide such information as Bank may reasonably request to enable Bank and its counsel to evaluate such matters.

6.1.4 SHAREHOLDER REPORTS. Promptly furnish to the Bank upon becoming available a copy of all financial statements, reports, notices, proxy statements and other communications sent by the Borrower or any of its Subsidiaries to their stockholders, and all regular and periodic reports filed by the Borrower or any of its Subsidiaries with any securities exchange, the Securities and Exchange Commission, the Corporations and Securities Bureau of the Department of Corporations of the State of California or like agency for the State of Maryland or any governmental authorities succeeding to any or all of the functions of such Commission or Bureau.

6.1.5 MANAGEMENT LETTERS. Furnish to the Bank, promptly upon receipt thereof, copies of all management letters and other reports of substance submitted to the Borrower or any of its Subsidiaries by independent certified public accountants in connection with any annual or interim audit of the financial records of the Borrower or any of its Subsidiaries.

6.1.6 OTHER INFORMATION AS REQUESTED. Promptly furnish to the Bank such other information regarding the operations, business affairs and financial condition of the Borrower and its Subsidiaries as the Bank may reasonably request from time to time including but not limited to all such information necessary to determine Value and Value (Borrower Aggregate) as those terms are defined herein, and permit the Bank, its employees, attorneys and agents, to inspect all of the books, records and properties of the Borrower and its Subsidiaries at any reasonable time.

6.2 INSURANCE. Keep its insurable properties and the insurable properties of its Subsidiaries adequately insured and maintain (a) insurance against fire and other risks customarily insured against under an "all-risk" policy and such additional risks customarily insured against by companies engaged in the same or a similar business to that of the Borrower or its Subsidiaries, as the case may be, (b) necessary worker's compensation insurance, (c) public liability and product liability insurance, and (d) such other insurance as may be required by law or as may be reasonably required in writing by the Bank, all of which insurance shall be in such amounts, containing such terms, in such form, for such purposes, prepaid for such time period, and written by such companies as may be satisfactory to the Bank. Notwithstanding anything to the contrary herein, Borrower is not required, unless otherwise required by applicable law, to maintain earthquake or flood or terrorist insurance. All such policies shall contain a provision whereby they may not be canceled or amended except upon thirty (30) days' prior written notice to the Bank. The Borrower will promptly deliver to the Bank, at the Bank's request, evidence satisfactory to the Bank that such insurance has been so procured and, with respect to casualty insurance relating to the MWP Pool Properties or MWP II Pool Properties, made payable to the Bank. If the Borrower

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fails to maintain satisfactory insurance as herein provided, the Bank shall have the option to do so, and the Borrower agrees to repay the Bank upon demand, with interest at the Variable Rate, all amounts so expended by the Bank. As to the MWP Pool Properties and/or MWP II Pool Properties, the Borrower hereby appoints the Bank or any employee or agent of the Bank as the Borrower's attorney-in-fact, which appointment is coupled with an interest and irrevocable, and authorizes the Bank or any employee or agent of the Bank, on behalf of the Borrower, to adjust and compromise any loss under said insurance and to endorse any check or draft payable to the Borrower in connection with returned or unearned premiums on said insurance or the proceeds of said insurance, and any amount so collected may be applied toward satisfaction of the Indebtedness, provided, however, that the Bank shall not be required hereunder so to act.

- 6.3 TAXES. Pay promptly and within the time that they can be paid without late charge, penalty or interest all taxes, assessments and similar imposts and charges of every kind and nature lawfully levied, assessed or imposed upon the Borrower or its Subsidiaries, and their property, except to the extent being contested in good faith and, if requested by the Bank, bonded in an amount and manner satisfactory to the Bank. If, as to the MWP Pool Properties and/or MWP II Pool Properties, the Borrower shall fail to pay such taxes and assessments within the time they can be paid without penalty, late charge or interest the Bank shall have the option to do so, and the Borrower agrees to repay the Bank upon demand, with interest at the Variable Rate, all amounts so expended by the Bank.
- 6.4 MAINTAIN CORPORATION AND BUSINESS. Do or cause to be done all things necessary to preserve and keep in full force and effect the Borrower's and each of its Subsidiaries' corporate existence, rights and franchises and comply with all applicable laws; maintain its good standing in all states and jurisdictions in which it is currently authorized to conduct business; continue to conduct and operate its and each of its Subsidiaries' business substantially as conducted and operated during the present and preceding calendar year; at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its and its Subsidiaries' property and keep the same in good repair, working order and condition; and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times.
- 6.5 CONTINUED STATUS AS A REIT; PROHIBITED TRANSACTIONS. Borrower will: (i) continue to be a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto), (ii) will not revoke its election to be a real estate investment trust; (iii) will not engage in any "prohibited transactions" as defined in Section 857(b) of the Internal Revenue Code (or any successor provision thereto) that the Bank reasonably believes could lead to Borrower's disqualification as a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto); (iv) will continue to be entitled to a dividend paid deduction meeting the requirements of Section 857 of the Internal Revenue Code; and will otherwise comply with all provisions and requirements of Internal Revenue Code Sections 856 and 857 to maintain its real estate investment trust status under Section 856.

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- 6.6 FAILURE OF BORROWER TO QUALIFY AS REAL ESTATE INVESTMENT TRUST. Borrower shall promptly inform Bank in writing, and in any event within forty eight (48) hours after Borrower has actual knowledge, of the following circumstances or occurrences: (i) Borrower failing to continue to qualify as a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereof); (ii) any act by Borrower causing or which will cause its election to be taxed as a real estate investment trust to be terminated; (iii) any act causing Borrower to be subject to the taxes imposed by Section 857(b)(6) of the Internal Revenue Code (or any successor provision thereto), or (iv) Borrower failing to be entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code.
- 6.7 AMEX LISTED COMPANY. The common stock of Borrower shall at all times be listed for trading and be traded on the American Stock Exchange or any alternative recognized stock exchange.
- 6.8 COMPLIANCE WITH SECURITIES LAWS. Borrower shall comply in all material respects with all rules and regulations with the Securities Exchange Commission and file all reports required by the Securities Exchange Commission relating to Borrower's publicly held securities.
- 6.9 MAINTAIN MINIMUM TANGIBLE NET WORTH. On a consolidated basis, Borrower shall maintain a Minimum Tangible Net Worth of not less than Eighty Million Dollars (\$80,000,000.00), not including minority interests.
- 6.10 MAINTAIN DEBT SERVICE COVERAGE RATIO. On a consolidated basis, maintain a Debt Service Coverage Ratio of at least 2.90 to 1.00.
- 6.11 MAINTAIN INTEREST COVERAGE RATIO. On a consolidated basis, maintain an Interest Coverage Ratio of at least 3.35 to 1.00.
- 6.12 MAINTAIN OPERATING ACCOUNTS AND MINIMUM BALANCE IN DEPOSIT ACCOUNTS. Borrower shall maintain all of its operating accounts with Bank. At all times hereunder, there shall be a combined average daily minimum balance of at least One Million Dollars (\$1,000,000.00) in the non-interest bearing deposit account of Borrower (Cupertino National Bank account no. 1141422) (the "Borrower's Deposit Account").
- 6.13 ERISA. (a) At all times meet and cause each of the Subsidiaries to meet the minimum funding requirements of ERISA with respect to the Borrower's and Subsidiaries' employee benefit plans subject to ERISA; (b) promptly after the Borrower knows or has reason to know (i) of the occurrence of any event, which would constitute a reportable event instituted or will institute proceedings to terminate an employee pension plan, deliver to the Bank a certificate of the chief financial officer of the Borrower setting forth details as to such event or proceedings and the action which the Borrower proposes to take with respect thereto, together with a copy of any notice of such event which may be required to be filed with the PBGC; and (c) furnish to the Bank (or cause the plan administrator to furnish the Bank) a copy of the annual return (including all schedules and attachments) for each plan covered by ERISA, and filed with the Internal Revenue Service by the Borrower not later than ten (10) days after such report has been so filed.
- 6.14 USE OF LOAN PROCEEDS. Use the proceeds of the Revolving Loans hereunder only for the purposes set forth in the recitals to this Agreement and, as to each Revolving Loan made pursuant to a Notice of Borrowing, as set forth in such Notice of Borrowing.

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### 7. NEGATIVE COVENANTS.

On a continuing basis from the date of this Agreement until the later of (a) the Termination Date or (b) the date on which the Indebtedness is paid in full and the Borrower has performed all of its other obligations hereunder, the Borrower covenants and agrees that it will not, and will not permit any Subsidiary to:

- 7.1 STOCK ACQUISITION. Purchase, redeem, retire or otherwise acquire any of the shares of its capital stock, or make any commitment to do so.
- 7.2 INDEBTEDNESS (MAXIMUM BORROWER AGGREGATE LOAN-TO-VALUE) AND LOAN-TO-VALUE OF MWP POOL PROPERTIES AND MWP II POOL PROPERTIES. Permit the Total Loans of Borrower to exceed fifty percent (50%) of Value (Borrower Aggregate) or permit the Commitment Amount to exceed fifty percent (50%) of the total combined Value of the MWP Pool Properties and the MWP II Pool Properties
- 7.3 EXTENSION OF CREDIT. Make loans, advances or extensions of credit to any Person, except for sales on open account and otherwise in the ordinary course of business.
- 7.4 SUBORDINATE INDEBTEDNESS. Subordinate any indebtedness due to Borrower from a Person to indebtedness or other creditors of such Person.
- 7.5 PROPERTY TRANSFER, MERGER OR LEASE-BACK. (a) Sell, transfer or otherwise dispose of properties and assets having an aggregate book value of more than Three Hundred Fifty Million Dollars (\$350,000,000.00) (whether in one transaction or in a series of transactions) except as to the sale of inventory in the ordinary course of business; (b) change its name, consolidate with or merge into any other corporation or entity, permit another corporation or entity to merge into it, enter into any reorganization or recapitalization or reclassify its capital stock, or (c) enter into any sale-leaseback transaction where Borrower is lessee.
- 7.6 PENSION PLAN. (a) Allow any fact, condition or event to occur or exist with respect to any employee pension or profit sharing plans established or maintained by it which might constitute grounds for termination of any such plan or for the court appointment of a trustee to administer any such plan, or (b) permit any such plan to be the subject of termination proceedings (whether voluntary or involuntary) from which termination proceedings there may result a liability of the Borrower or any of its Subsidiaries to the PBGC which, in the opinion of the Bank, will have a materially adverse effect upon the operations, business, property, assets, financial condition or credit of the Borrower or any of its Subsidiaries.
- 7.7 MISREPRESENTATION. Furnish the Bank with any certificate or other document that contains any untrue statement of a material fact or omits to state a material fact necessary to make such certificate or document not misleading in light of the circumstances under which it was furnished.
- 7.8 MARGIN STOCK. Apply any of the proceeds of the Note or of any loan in any manner which might cause the extension of credit or the application of such proceeds to violate Regulation G, U or X (or any regulations, interpretations or rulings thereunder) or any other regulation of the Federal Reserve Board or to violate the Securities Exchange Act of 1934 (as amended to the date hereof and from time to

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time hereafter) or the Securities Act of 1933 (as amended to the date hereof and from time to time hereafter).

- 7.9 AMENDMENT OF CONSTITUENT DOCUMENTS. Amend or re-state its articles of incorporation or by-laws without the prior written consent of Bank, except (i) to increase authorized capital, (ii) as required by applicable law or applicable tax requirements, or (iii) as prudent to maintain qualification as a real estate investment trust as defined in Section 856 of the Internal Revenue Code or any successor provision thereto.
- 7.10 ORGANIZATION OF BORROWER. Cease to remain a Maryland corporation or cease to maintain its position, interests and status as General Partner of MWP and MWP II.
8. EVENTS OF DEFAULT, ENFORCEMENT, APPLICATION OF PROCEEDS
- 8.1 EVENTS OF DEFAULT. The occurrence of any of the following conditions or events shall constitute an Event of Default hereunder if either: (i) the condition or event is continuing for more than ten (10) days after the Bank sends written notice thereof, or (ii) the condition or event is reasonably deemed by the Bank to require immediate action to protect its rights hereunder:
- 8.1.1 FAILURE TO PAY MONIES DUE. If the Borrower shall fail to pay, when due, any principal or interest or other sums due under the Revolving Credit Note or this Agreement or any taxes, insurance or other amount payable by the Borrower under this Agreement or if the Borrower, any of its Subsidiaries or the Guarantor shall fail to pay, when due, any indebtedness, obligation or liability whatsoever of the Borrower, any of its Subsidiaries or the Guarantor to the Bank.
- 8.1.2 BREACH OF COVENANTS. If Borrower shall fail to satisfy or perform any of the covenants in this Agreement including without limitation Section 6 and Section 7.
- 8.1.3 DEFAULTS UNDER THE GUARANTY. If Guarantors or either of them shall fail to perform or observe or purport to revoke or terminate any agreement, covenant, or obligation under the Guaranty; or any representation or warranty made or deemed to be made by any such Guarantor in any Loan Document or in any statement, certificate or financial statement or information of any kind
- at any time given by such Guarantor pursuant to any Loan Document to Bank, shall be false, incorrect or misleading in any material respect as of the date made.
- 8.1.4 DEFAULTS UNDER THE NON-ENCUMBRANCE AGREEMENT. If Borrower, MWP or MWP II or either of them shall fail to perform or observe any agreement, covenant, or obligation under the Non-Encumbrance Agreement; or any representation or warranty made or deemed to be made by Borrower, MWP or MWP II in any Loan Document or in any statement, certificate or financial statement or information of any kind at any time given by MWP or MWP II pursuant to any Loan Document to Bank, shall be false, incorrect or misleading in any material respect as of the date made.
- 8.1.5 MISREPRESENTATION. If any warranty or representation of the

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Borrower in connection with or contained in this Agreement or any Loan Document, or if any financial data or other information now or hereafter furnished to the Bank by or on behalf of the Borrower, shall prove to be false, incorrect or misleading in any material respect.

- 8.1.6 SOLVENCY; MATERIAL ADVERSE CHANGE. If Borrower or any Guarantor shall cease to be Solvent, or there shall have occurred any Material Adverse Effect in the business, operations, properties, assets or condition (financial or otherwise) of Borrower or any Guarantor.
- 8.1.7 OTHER DEFAULTS. If the Borrower, any of its Subsidiaries or the Guarantor shall default in the payment when due of any of its indebtedness (other than to the Bank) or in the observance or performance of any term, covenant or condition in any agreement or instrument evidencing, securing or relating to such indebtedness, and such default be continued for a period sufficient to permit acceleration of the indebtedness, irrespective of whether there has been acceleration by the holder thereof. Notwithstanding the foregoing, such a default shall not constitute an Event of Default hereunder if all persons to whom the indebtedness is owed has fully and completely and in writing waived the default. In addition, if a default occurs and continues to exist on an indebtedness of the Borrower that is secured by real property and is fully non-recourse to the Borrower, such default may not represent a default under this agreement if Bank, in its sole discretion, determines that Borrower is in compliance and can maintain compliance going forward with all the financial covenants of this Agreement.
- 8.1.8 JUDGMENTS. If there shall be rendered against the Borrower, any of its Subsidiaries or the Guarantor one or more judgments or decrees involving an aggregate liability of Five Million Dollars (\$5,000,000.00) or more, which has or have become non-appealable and shall remain undischarged, unsatisfied by insurance and unstayed for more than thirty (30) days, whether or not consecutive; or if a writ of attachment or garnishment against the property of the Borrower, any of its Subsidiaries or the Guarantor shall be issued and levied in an action claiming Five Million Dollars (\$5,000,000.00) or more and not released or appealed and bonded in an amount and manner satisfactory to the Bank within twenty-five (25) days after such issuance and levy.
- 8.1.9 BUSINESS SUSPENSION, BANKRUPTCY, ETC. If the Borrower, any of its Subsidiaries or the Guarantor shall voluntarily suspend transaction of its business; or if the Borrower, any of its Subsidiaries or the Guarantor shall not pay its debts as they mature or shall make a general assignment for the benefit of creditors, or proceedings in bankruptcy, or for reorganization or liquidation of the Borrower, any of its Subsidiaries or the Guarantor under the Bankruptcy Code or under any other state or federal law for the relief of debtors shall be commenced or shall be commenced against the Borrower, any of its Subsidiaries or the Guarantor and shall not be discharged within twenty-five (25) days of commencement; or a receiver, trustee or custodian shall be appointed for the Borrower, any of its Subsidiaries or the Guarantor or for any substantial portion of their respective properties or assets.
- 8.1.10 CHANGE OF MANAGEMENT OR OWNERSHIP. If the Borrower or a controlling portion of its voting stock or a substantial portion



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of its assets comes under the practical, beneficial or effective control of one or more persons other than Carl Berg, whether by reason of death, merger, consolidation, sale or purchase of stock or assets or otherwise; and Ray Marino, who is the President and COO of the Borrower, shall no longer remain in such offices, whether by reason of death, resignation or otherwise; and any such change of control or office holder may adversely affect, in the sole judgment of the Bank, the ability of the Borrower to carry on its business as conducted before such change.

### 8.1.11 INADEQUATE FUNDING OR TERMINATION OF EMPLOYEE BENEFIT PLAN(S).

If the Borrower, any of its Subsidiaries or the Guarantor shall fail to meet its minimum funding requirements under ERISA with respect to any employee benefit plan established or maintained by it, or if any such plan shall be subject of termination proceedings (whether voluntary or involuntary) and there shall result from such termination proceedings a liability of Borrower, any of its Subsidiaries or the guarantor to the PBGC which in the opinion of the Bank will have a materially adverse effect upon the operations, business, property, assets financial condition or credit of the Borrower, any of its Subsidiaries or the Guarantor, as the case may be.

### 8.1.12 OCCURRENCE OF CERTAIN REPORTABLE EVENTS. If there shall occur, with respect to any pension plan maintained by the Borrower, any of its Subsidiaries or the Guarantor any reportable event (within the meaning of Section 4043(b) of ERISA) which the Bank shall determine constitutes a ground for the termination of any such plan, and if such event continues for thirty (30)

days after the Bank gives written notice to the Borrower, provided that termination of such plan or appointment of such trustee would, in the opinion of the Bank, have a materially adverse effect upon the operations, business, property, assets, financial condition or credit of the Borrower, any of its Subsidiaries or the Guarantor, as the case may be.

### 8.2 ACCELERATION OF INDEBTEDNESS; REMEDIES. Upon the occurrence of an Event of Default, at the Bank's option, the Bank shall have no further obligation to advance funds to Borrower and the Commitment shall terminate. Upon the occurrence of an Event of Default, all Indebtedness shall be due and payable in full immediately at the option of the Bank without presentation, demand, protest, notice of dishonor or other notice of any kind, all of which are hereby expressly waived. Upon the occurrence of an Event of Default, the Bank shall have and may exercise any one or more of the rights and remedies for which provision is made hereunder or under any other document contemplated hereby or for which provision is provided by law or in equity, including, without limitation, the right to set off against the Indebtedness any amount owing by the Bank to the Borrower and/or any property of the Borrower in possession of the Bank. Any amounts collected by the Bank after an Event of Default may be applied, at the Bank's option and in any order against outstanding principal, interest, fees and/or costs.

### 8.3 CUMULATIVE REMEDIES. The remedies provided for herein are cumulative to the remedies for collection of the Indebtedness as provided by law, in equity or by any document contemplated hereby. Nothing herein contained is intended, nor shall it be construed, to preclude the Bank from pursuing any other remedy for the recovery of any other sum to

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which the Bank may be or become entitled for the breach of this Agreement by the Borrower.

### 9. MISCELLANEOUS.

- 9.1 EFFECTIVENESS. This Agreement shall become effective when Borrower and Bank have duly executed and delivered signature pages of this Agreement to each other, and Borrower has delivered a Guaranty executed by each Guarantor, and the Non-Encumbrance Agreement executed by MWP and MWP II.
- 9.2 INDEPENDENT RIGHTS. No single or partial exercise of any right, power or privilege hereunder, or any delay in the exercise thereof, shall preclude other or further exercise of the rights of the parties to this Agreement.
- 9.3 COVENANT INDEPENDENCE. Each covenant in this Agreement shall be deemed to be independent of any other covenant, and an exception or illegality of one covenant shall not create an exception or illegality in another covenant.
- 9.4 WAIVERS AND AMENDMENTS. No forbearance, delay or omission on the part of the Bank in enforcing any of its rights under this Agreement or any of the Loan Documents, nor any renewal, extension or rearrangement of any payment or covenant to be made or performed by the Borrower hereunder, shall constitute or be construed as a waiver of any of the terms of, or remedies of Bank under, this Agreement or any of the Loan Documents or of any such right. No Default or Event of Default shall be waived by the Bank except in a writing signed and delivered by an officer of the Bank, and no waiver of any other Default or Event of Default shall operate as a waiver of any Default or Event of Default or of the same Default or Event of Default on a future occasion. No other amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the Note or any other Loan Documents contemplated hereby shall be effective unless the same shall be in writing and signed and delivered by a duly authorized officer of the Bank and the President and CEO of the Borrower.
- 9.5 GOVERNING LAW. This Agreement, and each and every term and provision hereof, shall be governed by and construed in accordance with the internal law of the State of California. If any provisions of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid or unenforceable provisions had never been contained herein.
- 9.6 SURVIVAL OF WARRANTIES, ETC. All of the Borrower's covenants, agreements, representations and warranties made in connection with this Agreement and any document contemplated hereby shall survive the borrowing and the delivery of the Note hereunder and shall be deemed to have been relied upon by the Bank, notwithstanding any investigation heretofore or hereafter made by the Bank. All statements contained in any certificate or other document delivered to the Bank at any time by or on behalf of the Borrower pursuant hereto or in connection with the transactions contemplated hereby shall constitute representations and warranties by the Borrower in connection with this Agreement.
- 9.7 COSTS AND EXPENSES. The Borrower agrees that it will reimburse the Bank, upon demand, for all reasonable fees and out-of-pocket costs incurred by the Bank in connection with (i) collecting or attempting to collect the Indebtedness or any part thereof, (ii) maintaining or

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defending the Bank's security interests or liens, if any (or the priority thereof), (iii) the enforcement of the Bank's rights or remedies under this Agreement or the other documents contemplated hereby, (iv) the preparation or making of any amendments, modifications, waivers or consents with respect to this Agreement or the other documents contemplated hereby, and/or (v) any other matters or proceedings arising out of or in connection with any lending arrangement between the Bank and the Borrower,

which costs and expenses include without limit payments made by the Bank for taxes, insurance, assessments, or other costs or expenses which the Borrower is required to pay under this Agreement or the other documents contemplated hereby; audit expenses; court costs and reasonable attorneys' fees (whether in-house or outside counsel is used, whether legal assistants are used, and whether such costs are incurred in formal or informal collection actions, federal bankruptcy proceedings, of Borrower or Guarantor or affecting any collateral or rights of Bank, whether an involuntary or voluntary bankruptcy case, including, without limitation, all attorneys' fees and costs incurred in connection with motions for relief from stay, cash collateral motions, nondischargeability motions, preferential liability motions, fraudulent conveyance liability motions, fraudulent transfer liability motions and all other motions brought by Borrower, Guarantor, Bank or third parties in any way relating to Bank's rights with respect to such Borrower, Guarantor, or third party and/or affecting any collateral securing any obligation owed to Bank by Borrower, Guarantor, or any third party, probate proceedings, on appeal or otherwise); and all other costs and expenses of the Bank incurred in connection with any of the foregoing.

- 9.8 ATTORNEYS' FEES AND COSTS. Bank may hire or pay someone else to help collect the Note if Borrower does not pay. In such event, Borrower agrees to pay all reasonable fees and out-of-pocket costs incurred by Bank in connection with collecting the Note. In addition, the prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") brought by Bank or any party to this Agreement of any claims brought to enforce the terms of this Agreement or any of the Loan Documents based upon, arising from, or in any way related to this Agreement or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law or statutory claims (collectively, the "Claims"), shall be entitled to recover from such other party all its fees and costs incurred in connection with the Proceeding, including without limitation all its attorneys' fees and costs, whether incurred by in-house counsel or outside counsel, all its expert witness and/or consultant's fees and costs, all its paralegal fees and costs, and all its other costs and expenses, regardless of whether such costs are otherwise statutorily recoverable (collectively, the "Fees and Costs"), and including without limitation all the Fees and Costs incurred by the Prevailing Party in connection with proceedings in bankruptcy for relief from and/or modification of automatic stay, for orders of nondischargeability, and/or regarding use of cash collateral, claims, and/or plans. The Prevailing Party shall also be entitled to recover from such other party all its costs incurred in enforcing the judgment or award giving rise to the Prevailing Party's status as the Prevailing Party. Each party hereto acknowledges that it is on notice that, in the event that the other party retain the services of one or more experts in connection with

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the Proceeding, such other party will seek to recover the fees and costs of such expert or experts hereunder, and that, if such party becomes the Prevailing Party in the Proceeding, such party shall be entitled to recover such fees and costs hereunder, whether such fees and costs are sought before trial, during trial, or by post-trial motion or memorandum of costs. The parties to this Agreement waive the provisions of Civil Code section 1717(b)(2), and agree that, in the event of a unilateral voluntary dismissal, the dismissed party shall be deemed the Prevailing Party entitled to the recovery of all of its Fees and Costs.

- 9.9 PAYMENTS ON SATURDAYS, ETC. Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or any other day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension, if any, shall be included in computing interest in connection with such payment.
- 9.10 BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Bank. Borrower authorizes Bank, without notice or demand and without affecting Borrower's liability hereunder, to assign, without notice, the Loan Documents or the Indebtedness in whole or in part and Bank's rights thereunder to anyone at any time or to transfer one or more participation interests in the Loan Documents or the Indebtedness in whole or in part to one or more purchasers and provide information to prospective purchasers relating to Borrower. The Bank agrees, upon written request by Borrower, to provide the identity of any current participants.
- 9.11 MAINTENANCE OF RECORDS. The Borrower will keep all of its records concerning its business operations and accounting at its principal place of business. The Borrower will give the Bank prompt written notice of any change in its principal place of business, or in the location of its records.
- 9.12 NOTICES. All notices and communications provided for herein or in any document contemplated hereby or required by law to be given shall be in writing and shall be served (i) personally in which case the notice or communication is effective immediately, (ii) by overnight mail by a national, reputable carrier, in which case the notice or communication is effective upon deposit with such carrier, (iii) by certified mail in which case the notice or communication is effective upon mailing, or (iv) by first class mail, postage prepaid in which case the notice or communication is effective two (2) days after mailing, with all notices or communications to be delivered, mailed, or sent as aforesaid as follows: (a) If the Borrower, to: Mission West Properties, Inc., 10050 Bandley Drive, Cupertino, CA 95014, and (b) if to the Bank, to: Cupertino National Bank, 20230 Stevens Creek Boulevard, Cupertino, CA 95014, Attention Mr. Michael Zukin, or to such other address as a party shall have designated to the other in writing in accordance with this section.
- 9.13 COUNTERPARTS. This Agreement may be signed in any number of counterparts with the same effect as if the signatures were upon the same instrument.
- 9.14 HEADINGS. Article and section headings in this Agreement are included for the convenience of reference only and shall not constitute a part

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of this Agreement for any purpose.

9.15 RELEASE AND DISCHARGE. Upon full payment of the Indebtedness and performance by the Borrower of all its other obligations hereunder, except as otherwise provided in this Agreement including without limitation in Sections 2.15 and 5.17(e), the parties shall thereupon automatically each be fully, finally and forever released and discharged from any claim, liability or obligation in connection with this Agreement and the Loan Documents.

9.16 WAIVER OF JURY TRIAL. BANK AND BORROWER EACH HEREBY ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY MAY BE WAIVED. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR ANY LOAN DOCUMENT.

EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW WITH ITS COUNSEL THIS AGREEMENT, AND EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

9.17 FURTHER ASSURANCES. Immediately following reasonable request by the Bank, the Borrower shall provide to the Bank such further documents, instruments, and assurances as may be requested from time to time by Bank in connection with this Agreement or any documents executed in connection herewith.

9.18 INTEGRATED AGREEMENT. This is an integrated agreement. Except as set forth specifically otherwise herein and except for the Loan Documents, it supersedes all prior representations and agreements, if any, between the parties to this Agreement and other respective legal counsel relating to the subject matter hereof. This Agreement and the exhibits hereto and the other Loan Documents when executed contain the entire and only understanding between the parties, and may not be altered, amended or extinguished, except by a writing which expressly refers to this instrument and is signed subsequent to the execution of this instrument by the parties to this Agreement.

IN WITNESS WHEREOF, the Borrower and the Bank have caused this Agreement to be executed by their duly authorized officers as of the day and year first written above.

MISSION WEST PROPERTIES, INC.  
A Maryland corporation

By: /s/ Carl E. Berg

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Its: Chairman & CEO

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By: /s/ Raymond V. Marino  
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Its: President & COO

CUPERTINO NATIONAL BANK

By: /s/ Michael Zukin  
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Its: Vice President

EXHIBIT 10.30

CONTINUING GUARANTY

July 12, 2002

Cupertino National Bank  
20230 Stevens Creek Boulevard  
Cupertino, CA 95014

TO: Cupertino National Bank

For good and valuable consideration the receipt of which is hereby acknowledged, and in order to induce Cupertino National Bank (the "Bank"), to extend and/or continue to extend financial accommodations to Mission West Properties, Inc., a Maryland corporation ("Borrower"), pursuant to the terms and conditions of that certain Revolving Credit Loan Agreement and Revolving Credit Note (individually and collectively, the "Agreement"), dated July 12, 2002, evidencing and otherwise relating to a revolving loan by Bank to Borrower up to the total principal amount of Forty Million Dollars (\$40,000,000.00) (the "Loan") Mission West Properties, L.P., a Delaware limited partnership ("Guarantor"), whose address is 10050 Bandlely Drive, Cupertino, California 95014, hereby, jointly and severally, guarantees, promises, represents, warrants, covenants and undertakes to Bank and its successors and assigns as follows:

1. Guarantor unconditionally, absolutely and irrevocably guarantees and promises to pay to Bank, or order, on demand, in lawful money of the United States, any and all indebtedness and/or obligations of Borrower to Bank and the payment to Bank of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to Bank from Borrower under the Agreement. The terms "indebtedness" and "obligations" (hereinafter collectively referred to as the "Obligations") are used herein in their most comprehensive sense and include, without limitation, the Loan and any and all advances to, or debts, obligations, and liabilities of Borrower, heretofore, now, or hereafter made, incurred, or created, whether voluntarily or involuntarily, and however arising, including, without limitation, (i) indebtedness owing by Borrower to third parties who have granted Bank a security interest in the accounts, chattel paper and/or general intangibles of said third party; (ii) any and all attorneys' fees, expenses, costs, premiums, charges and/or interest owed by

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Borrower to Bank, whether under the Agreement, or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Borrower may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter becomes otherwise unenforceable, and includes Borrower's prompt, full and faithful performance, observance and discharge or each and every term, condition, agreement, representation, warranty undertaking and provision to be performed by Borrower under the Agreement; (iii) any and all obligations or liabilities of Borrower to Bank arising out of any other agreement by Borrower including without limitation any agreement to indemnify Bank for environmental liability or to clean up hazardous waste; (iv) any and all indebtedness, obligations or liabilities for which Borrower would otherwise be liable to Bank were it not for the invalidity, irregularity or unenforceability of them by reason of any bankruptcy, insolvency or other law or order of any kind, including from and after the filing by or against Borrower of a bankruptcy petition, whether an involuntary or voluntary bankruptcy case, and all attorneys' fees related thereto; and (v) any and all amendments, modifications, renewals and/or extensions of any of the above, including without limit amendments, modifications, renewals and/or extensions which are evidenced by new or additional instruments, documents or agreements.

2. This Guaranty ("Guaranty") is a continuing guaranty which shall remain effective until full satisfaction of all of the Obligations to the Bank (including without limitation those which arise under successive transactions under the Agreement), full satisfaction by Guarantor of its obligations under this Guaranty, and the termination of the Bank's obligations under the Agreement.

3. Guarantor agrees that it is directly and primarily liable to Bank, that the obligations hereunder are independent of the obligations of Borrower, and that a separate action or actions may be brought and prosecuted against Guarantor irrespective of whether Borrower is joined in any such action or actions. Guarantor agrees that any releases which may be given by Bank to Borrower or any other guarantor or endorser shall not release it from this Guaranty.

4. In the event that any bankruptcy, insolvency, receivership or similar proceeding is instituted by or against Guarantor and/or Borrower or in the event that either Guarantor or Borrower become insolvent, make an assignment for the benefit of creditors, or attempts to effect a composition with creditors, or if there be any default under the Agreement (whether declared or not),

then, at Bank's election, without notice or demand, the obligations of Guarantor created hereunder shall become due, payable and enforceable against Guarantor whether or not the Obligations are then due and payable.

5. Guarantor agrees to defend, indemnify and hold Bank harmless from and against all obligations, demands, judgments, claims and liabilities, by whomsoever asserted and against all losses, fees, expenses and costs in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to Bank's or Guarantor's transactions with Borrower under the Agreement, and also agrees that this Guaranty shall not be impaired by any modification, supplement, extension, or amendment of any contract or agreement to which Bank and Borrower may hereafter agree, nor by any modification, release, or other alteration of any of the Obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with Borrower or anyone else.

6. Guarantor hereby authorizes Bank, without notice or demand and without

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affecting its liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate, or otherwise change the interest rate, time for payment, or the other terms of the Agreement or of any of the Obligations guaranteed hereby, and exchange, enforce, waive, and release any security therefor; (b) apply any such security and direct the order or manner of sale thereof as Bank in its discretion may determine; (c) release or substitute any one or more endorser(s) or guarantor(s); and (d) assign, without notice, this Guaranty or the Indebtedness in whole or in part and/or Bank's rights thereunder to anyone at any time and/or transfer one or more participation interests in the Obligations or any of them and this Guaranty to one or more purchasers and provide information to prospective purchasers relating to Borrower or Guarantor. The Bank agrees, upon written request by Guarantor, to provide the identity of any current participants. Guarantor agrees that Bank may do any or all of the foregoing in such manner, upon such terms, and at such times as Bank, in its discretion, deems advisable, without, in any way or respect, impairing, affecting, reducing or releasing Guarantor from its undertakings hereunder and Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

7. Guarantor hereby waives any right to assert against Bank as a defense, counterclaim, set-off or cross-claim, any defense (legal or equitable), set-off, counterclaim, and/or claim which Guarantor may now or at any time hereafter have against Borrower and/or any other party liable to Bank in any way or manner.

8. Guarantor hereby waives all defenses, counterclaims and off-sets of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity and/or enforceability of the Agreement, or any security interest granted in connection therewith.

9. Guarantor hereby waives any defense arising by reason of any claim or defense based upon an election of remedies by Bank that in any manner impairs, affects, reduces, releases, destroys and/or extinguishes Guarantor's subrogation rights, rights to proceed against Borrower or any other person for subrogation, reimbursement, exoneration, contribution, indemnification or participation in any claim, right or remedy against Borrower or any other person for any security which Bank now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise, and/or any rights of Guarantor to proceed against Borrower or against any other person or security, including, but not limited to, any defense based upon an election of remedies by Bank. Guarantor expressly waives all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2847, 2848, 2849, 2850, and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726, as those statutory provisions are now in effect and hereafter amended, and under any other similar statutes now and hereafter in effect deemed applicable to this Guaranty and its enforcement.

Guarantor acknowledges that neither the Indebtedness nor the obligations hereunder are secured by an interest in real property, but to the extent that it should ever be determined that either the Indebtedness or the obligations hereunder are so secured or should the Indebtedness or the obligations hereunder be so secured in the future, Guarantor agrees to the following:

The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:

(1) A creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor;

(2) If a creditor forecloses on any real property collateral pledged by the debtor:



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(A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price,

(B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Borrower's debt is or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 6580b, 580d, or 726 of the California Code of Civil Procedure.

The undersigned further understands that, absent this waiver, California law, including without limitation the laws cited above, could afford the undersigned one or more affirmative defenses to any action maintained by Bank against the undersigned on this Guaranty. Notwithstanding any foreclosure of the lien of any security instrument, with respect to any or all property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure, or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Without limiting the generality of the foregoing, Guarantor acknowledges that, but for the waiver of such rights in this Guaranty, Guarantor has or may have rights of subrogation or reimbursement against Borrower arising from Guarantor's status as surety and guarantor of Borrower's obligations to Bank. Therefore, in addition to the above waivers, Guarantor hereby agrees that if now or hereafter Borrower is or shall become insolvent and the Indebtedness or Obligations shall not at all times be fully secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up in favor of Bank and Borrower, and Bank's and Borrower's respective successors and assigns, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by subrogation or otherwise, so that at no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C. section 547(b), or any successor provision of the Federal bankruptcy laws.

Guarantor acknowledges that Guarantor has been provided the opportunity to discuss with Guarantor's counsel the effect and meaning of the waivers set forth in this paragraph. Nothing within this paragraph is to be construed to limit the generality of any other term or provision within this Guaranty.

10. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of default, notices of intent to accelerate or demand payment of any kind, diligence in collecting any Obligations, notices of acceptance of this Guaranty, notices of the existence, creation, or incurring of new or additional indebtedness, notices respecting the terms, time and place of any public or private sale of personal property security held from Borrower or any other person, and all other notices or formalities to which Guarantor may be entitled. Bank may modify the terms of the Agreement or of any Obligations, compromise, extend, increase, accelerate, renew or forbear to enforce payment of any or all Obligations or other sums due under the Agreement, or permit Borrower to incur additional Obligations, all without notice to Guarantor and without affecting in any manner the unconditional obligation of Guarantor under this Guaranty. Guarantor further waives any and all other notices to which Guarantor might otherwise be entitled. Guarantor acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by Bank of any remedy Bank may have against Borrower or any other person or any security. No invalidity, irregularity or unenforceability of any part or all of the Agreement or any other Obligations or any documents evidencing the same, by

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reason of any bankruptcy, insolvency or other law or order of any kind or for any other reason, and no defense or setoff available at any time to Borrower, shall impair, affect or be a defense or setoff to the obligations of Guarantor under this Guaranty.

11. Any and all present and future debts and obligations of Borrower to Guarantor are hereby postponed in favor of and subordinated to the full payment and performance of all present and future debts and obligations of Borrower to Bank. All monies or other property of Guarantor at any time in Bank's possession may be held by Bank as security for any and all obligations of Guarantor to Bank no matter how or when arising, whether absolute or contingent, whether due or to become due, and whether under this Guaranty or otherwise. Guarantor also agrees that Bank's books and records showing the account between Bank and Borrower shall be admissible in any action or proceeding and shall be binding upon Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

12. Based solely on its own independent investigation and not upon any information provided by Bank, Guarantor acknowledges and represents and warrants that it is presently informed of the financial condition of Borrower and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations or non-performance of the Agreement. Guarantor hereby covenants that it will continue to keep itself informed of Borrower's financial condition and of all other circumstances which bear upon the risk of nonpayment. Guarantor hereby waives its rights, if any, to require the disclosure of, and Bank is relieved of any obligation or duty to disclose to Guarantor, any information which Bank may now or hereafter acquire concerning such condition or circumstances. Guarantor agrees that it is not relying upon nor expecting Bank to disclose to Guarantor any fact now or later known by Bank, whether relating to the operations or condition of Borrower, the existence, liabilities or financial condition of any co-guarantor of the Obligations, the occurrence of any default with respect to the Obligations including but not limited to under the Agreement, or otherwise, notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's rights against Borrower. Guarantor knowingly accepts the full range of risk encompassed in this Guaranty, which risk includes without limit the possibility that Borrower may incur Obligations to Bank after the financial condition of Borrower, or its ability to pay its debts as they mature, has deteriorated.

13. On a continuing basis from the date of this Guaranty and at all times during its effectiveness, Guarantor hereby represents and warrants to Bank as follows: (a) Guarantor is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and in good standing under the laws of, and is authorized to do business in, the State of California, (b) Guarantor has the power and authority to own its properties and assets and to carry out its business as now being conducted and is qualified to do business and in good standing in every jurisdiction wherein such qualification is necessary, (c) Guarantor has the power and authority to execute, deliver and perform this Guaranty in accordance with its terms, and to do any and all other things required of it hereunder, (d) the execution, delivery and performance of this Guaranty have been duly authorized by all requisite partnership action and will not violate any provision of Guarantor's partnership or other constituency agreements or partnership certificates or any provision of any indenture, note, agreement or other instrument to which the Guarantor is a party, or by which it or any of Guarantor's properties or assets are bound, (e) there are no actions, suits or proceedings, at law or in equity, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau, or other administrative agency, pending, or, to the best knowledge of the Guarantor, threatened against or affecting Guarantor which, if adversely determined, could materially impair the right of Guarantor

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to carry on business substantially as now conducted or could have a material adverse effect upon the financial condition of Guarantors, (f) upon the Bank's request and Borrower's failure to timely provide to the Bank, Guarantor will provide to the Bank financial and credit information in form acceptable to the Bank, and such information and all consolidated and consolidating balance sheets, earnings statements and other financial data furnished to the Bank for the purposes of, or in connection with, the Agreement and this Guaranty do or will fairly present the financial condition of Guarantor, as of their dates, and the results of Guarantor's operations for the periods, for which the same are furnished to the Bank, and Guarantor has no material contingent obligations, liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, all such financial information provided to Bank, and (g) Guarantor is solvent, able to pay its debts as they mature, has capital sufficient to carry on its business and has assets the fair market value of which exceed its liabilities.

14. Guarantor covenants and agrees that, at all times during the effectiveness of this Guaranty, Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect Guarantor's partnership existence, rights and franchises and comply with all applicable laws; maintain its good standing in all states and jurisdictions in which it is currently authorized to conduct business; continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year; at all times maintain, preserve and protect all franchises, trade names and preserve all the remainder of its property and keep the same in good repair, working order and condition; and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

15. Guarantor covenants and agrees that, at all times during the effectiveness of this Guaranty, it will not transfer all or substantially all of its assets and that it will not dissolve or wind-up its affairs or otherwise cease doing business or transfer its assets in such a way as to impair Guarantor's ability to perform its obligations under this Guaranty.

16. Notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty in whole or part, this Guaranty shall continue in full force and effect until Borrower's Obligations including but not limited to under the Agreement are fully paid, performed and discharged and Bank gives Guarantor written notice of that fact. Borrower's Obligations shall not be considered fully paid, performed and discharged unless and until all payments by Borrower to Bank are no longer subject to any right on the part of any person whomsoever including but not limited to Borrower, Borrower as a debtor-in-possession, and/or any trustee or receiver in bankruptcy, to set aside such payments or seek to recoup the amount of such payments, or any part thereof. In the event that any such payments by Borrower to Bank or on account of Borrower to Bank are set aside after the making thereof, in whole or in part, or settled without litigation, to the extent of such settlement, all of which is within Bank's discretion, Guarantor shall be liable for the full amount Bank is required to repay plus costs, interest, attorneys' fees and any and all expenses which Bank paid or incurred in connection therewith. The foregoing shall include, by way of example and not by way of limitation, all rights to recover preferences voidable under the United States Bankruptcy Code and any liability imposed, or sought to be imposed, against Bank relating to the environmental condition of, or the presence of hazardous or toxic substances on, in or about, any of Borrower's property. For purposes of this Guaranty, "environmental condition" includes, without limitation, conditions existing with respect to the surface or ground water, drinking water supply, land surface or subsurface and the air; and "hazardous or toxic substances" shall include all substances now or subsequently determined by any federal, state or local authority to be hazardous or toxic, or otherwise regulated by any of these authorities.

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17. This Guaranty shall be binding upon the successors and assigns of Guarantor and shall inure to the benefit of Bank's successors and assigns. Guarantor's rights and liability shall not be affected by any changes in the name of Borrower or in the event Borrower merges with or into any other corporation or entity or in the event Borrower transfers, assigns or sells its assets and liabilities to any person.

18. All notices, demands and other communications which Guarantor or Bank may desire, or may be required, to give to the other shall be in writing and shall be sent via registered or certified mail, nationally recognized overnight courier, or personally delivered and shall be addressed to the party at the addresses set forth in the preamble of this Guaranty. Any such notice, demand or communication shall be deemed given when received if personally delivered or sent by overnight courier, or deposited in the United States mail, postage prepaid, if sent by registered or certified mail. The address of either Guarantor or Bank may be changed by notice given in accordance with this paragraph.

19. This is an integrated agreement and is the sole and final agreement with respect to the subject matter hereof, and supersedes all prior negotiations and agreements. No modification of this Guaranty shall be effective for any purpose unless it is in writing and executed by Guarantor and an officer of Bank authorized to do so.

20. Guarantor agrees to pay all costs and fees, including without limitation all reasonable attorneys' fees and out-of-pocket costs, incurred by Bank in enforcing the Agreement or this Guaranty. In addition, the prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") brought by Bank or any party to this Guaranty of any claims brought to enforce the terms of this Guaranty based upon, arising from, or in any way related to this Guaranty or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law or statutory claims (collectively, the "Claims"), shall be entitled to recover from such other party all its fees and costs incurred in connection with the Proceeding, including without limitation all its attorneys' fees and costs, whether incurred by in-house counsel or outside counsel, all its expert witness and/or consultant's fees and costs, all its paralegal fees and costs, and all its other costs and expenses, regardless of whether such costs are otherwise statutorily recoverable (collectively, the "Fees and Costs"), and including without limitation all the Fees and Costs incurred by the Prevailing Party in connection with proceedings in bankruptcy for relief from and/or modification of automatic stay, for orders of nondischargeability, and/or regarding use of cash collateral, claims, and/or plans. The Prevailing Party shall also be entitled to recover from such other party all its costs incurred in enforcing the judgment or award giving rise to the Prevailing Party's status as the Prevailing Party. Guarantor acknowledges that it is on notice that, in the event that the other party retain the services of one or more experts in connection with the Proceeding, such other party will seek to recover the fees and costs of such expert or experts hereunder, and that, if such party becomes the Prevailing Party in the Proceeding, such party shall be entitled to recover such fees and costs hereunder, whether such fees and costs are sought before trial, during trial, or by post-trial motion or memorandum of costs.

21. In all cases where the word "Guarantor" is used in this Guaranty, it shall mean and apply equally to each of and all of the entities which have executed this Guaranty. If any Obligation is guaranteed by two or more guarantors, the obligation of Guarantor shall be several and also joint, each

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with all and also each with any one or more of the others, and may be enforced at the option of Bank against each severally, any two or more jointly, or some severally and some jointly.

22. The term "Borrower" includes any debtor-in-possession or trustee in bankruptcy or court-appointed receiver which succeeds to the interests of Borrower.

23. This Guaranty and all acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without regard to choice of law principles.

24. GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, GUARANTOR AND BANK KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY OR THE OBLIGATIONS.

GUARANTOR ACKNOWLEDGES THAT GUARANTOR HAS HAD THE OPPORTUNITY TO READ AND REVIEW WITH GUARANTOR'S COUNSEL THIS GUARANTY, AND GUARANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

IN WITNESS WHEREOF, the undersigned has/have executed this Guaranty as of the date set forth above.

MISSION WEST PROPERTIES, L.P.  
A Delaware limited partnership

By Mission West Properties, Inc.,  
A Maryland corporation,  
Its General Partner

By: /s/ Carl E. Berg  
-----  
Its: Chairman & CEO

By: /s/ Raymond V. Marino  
-----  
Its: President & COO

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EXHIBIT 10.31

## CONTINUING GUARANTY

July 12, 2002

Cupertino National Bank  
20230 Stevens Creek Boulevard  
Cupertino, CA 95014

TO: Cupertino National Bank

For good and valuable consideration the receipt of which is hereby acknowledged, and in order to induce Cupertino National Bank (the "Bank"), to extend and/or continue to extend financial accommodations to Mission West Properties, Inc., a Maryland corporation ("Borrower"), pursuant to the terms and conditions of that certain Revolving Credit Loan Agreement and Revolving Credit Note (individually and collectively, the "Agreement"), dated July 12, 2002, evidencing and otherwise relating to a revolving loan by Bank to Borrower up to the total principal amount of Forty Million Dollars (\$40,000,000.00) (the "Loan") Mission West Properties, L.P. II, a Delaware limited partnership ("Guarantor"), whose address is 10050 Bandlely Drive, Cupertino, California 95014, hereby, jointly and severally, guarantees, promises, represents, warrants, covenants and undertakes to Bank and its successors and assigns as follows:

1. Guarantor unconditionally, absolutely and irrevocably guarantees and promises to pay to Bank, or order, on demand, in lawful money of the United States, any and all indebtedness and/or obligations of Borrower to Bank and the payment to Bank of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to Bank from Borrower under the Agreement. The terms "indebtedness" and "obligations" (hereinafter collectively referred to as the "Obligations") are used herein in their most comprehensive sense and include, without limitation, the Loan and any and all advances to, or debts, obligations, and liabilities of Borrower, heretofore, now, or hereafter made, incurred, or created, whether voluntarily or involuntarily, and however arising, including, without limitation, (i) indebtedness owing by Borrower to third parties who have granted Bank a security interest in the accounts, chattel paper and/or general intangibles of said third party; (ii) any and all attorneys' fees, expenses, costs, premiums, charges and/or interest owed by Borrower to Bank, whether under the Agreement, or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Borrower may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter becomes otherwise unenforceable, and includes Borrower's prompt, full and faithful performance, observance and discharge or each and every term, condition, agreement, representation, warranty undertaking and provision to be performed by Borrower under the Agreement; (iii) any and all obligations or liabilities of Borrower to Bank arising out of any other agreement by Borrower including without limitation any agreement to indemnify Bank for environmental liability or to clean up hazardous waste; (iv) any and all indebtedness, obligations or liabilities for which Borrower would otherwise be liable to Bank were it not for the invalidity, irregularity or unenforceability of them by reason of any bankruptcy, insolvency or other law or order of any kind, including from and after the filing by or against Borrower of a bankruptcy petition, whether an involuntary or voluntary bankruptcy case, and all attorneys' fees related thereto; and (v) any and all amendments, modifications, renewals and/or extensions of any of the above, including without limit

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amendments, modifications, renewals and/or extensions which are evidenced by new or additional instruments, documents or agreements.

2. This Guaranty ("Guaranty") is a continuing guaranty which shall remain effective until full satisfaction of all of the Obligations to the Bank (including without limitation those which arise under successive transactions under the Agreement), full satisfaction by Guarantor of its obligations under this Guaranty, and the termination of the Bank's obligations under the Agreement.

3. Guarantor agrees that it is directly and primarily liable to Bank, that the obligations hereunder are independent of the obligations of Borrower, and that a separate action or actions may be brought and prosecuted against Guarantor irrespective of whether Borrower is joined in any such action or actions. Guarantor agrees that any releases which may be given by Bank to Borrower or any other guarantor or endorser shall not release it from this Guaranty.

4. In the event that any bankruptcy, insolvency, receivership or similar proceeding is instituted by or against Guarantor and/or Borrower or in the event that either Guarantor or Borrower become insolvent, make an assignment for the benefit of creditors, or attempts to effect a composition with creditors, or if there be any default under the Agreement (whether declared or not),

then, at Bank's election, without notice or demand, the obligations of Guarantor created hereunder shall become due, payable and enforceable against Guarantor whether or not the Obligations are then due and payable.

5. Guarantor agrees to defend, indemnify and hold Bank harmless from and against all obligations, demands, judgments, claims and liabilities, by whomsoever asserted and against all losses, fees, expenses and costs in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to Bank's or Guarantor's transactions with Borrower under the Agreement, and also agrees that this Guaranty shall not be impaired by any modification, supplement, extension, or amendment of any contract or agreement to which Bank and Borrower may hereafter agree, nor by any modification, release, or other alteration of any of the Obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with Borrower or anyone else.

6. Guarantor hereby authorizes Bank, without notice or demand and without affecting its liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate, or otherwise change the interest rate, time for payment, or the other terms of the Agreement or of any of the Obligations guaranteed hereby, and exchange, enforce, waive, and release any security therefor; (b) apply any such security and direct the order or manner of sale thereof as Bank in its discretion may determine; (c) release or substitute any one or more endorser(s) or guarantor(s); and (d) assign, without notice, this Guaranty or the Indebtedness in whole or in part and/or Bank's rights thereunder to anyone at any time and/or transfer one or more participation interests in the Obligations or any of them and this Guaranty to one or more purchasers and provide information to prospective purchasers relating to Borrower or Guarantor. The Bank agrees, upon written request by Guarantor, to provide the identity of any current participants. Guarantor agrees that Bank may do any or all of the foregoing in such manner, upon such terms, and at such times as Bank, in its discretion, deems advisable, without, in any way or respect, impairing, affecting, reducing or releasing Guarantor from its undertakings hereunder and Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

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7. Guarantor hereby waives any right to assert against Bank as a defense, counterclaim, set-off or cross-claim, any defense (legal or equitable), set-off, counterclaim, and/or claim which Guarantor may now or at any time hereafter have against Borrower and/or any other party liable to Bank in any way or manner.

8. Guarantor hereby waives all defenses, counterclaims and off-sets of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity and/or enforceability of the Agreement, or any security interest granted in connection therewith.

9. Guarantor hereby waives any defense arising by reason of any claim or defense based upon an election of remedies by Bank that in any manner impairs, affects, reduces, releases, destroys and/or extinguishes Guarantor's subrogation rights, rights to proceed against Borrower or any other person for subrogation, reimbursement, exoneration, contribution, indemnification or participation in any claim, right or remedy against Borrower or any other person for any security which Bank now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise, and/or any rights of Guarantor to proceed against Borrower or against any other person or security, including, but not limited to, any defense based upon an election of remedies by Bank. Guarantor expressly waives all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2847, 2848, 2849, 2850, and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726, as those statutory provisions are now in effect and hereafter amended, and under any other similar statutes now and hereafter in effect deemed applicable to this Guaranty and its enforcement.

Guarantor acknowledges that neither the Indebtedness nor the obligations hereunder are secured by an interest in real property, but to the extent that it should ever be determined that either the Indebtedness or the obligations hereunder are so secured or should the Indebtedness or the obligations hereunder be so secured in the future, Guarantor agrees to the following:

The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:

- (1) A creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor;
- (2) If a creditor forecloses on any real property collateral pledged by the debtor:
  - (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price,
  - (B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Borrower's debt is or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

The undersigned further understands that, absent this waiver, California law, including without limitation the laws cited above, could afford the undersigned one or more affirmative defenses to any action maintained by Bank against the undersigned on this Guaranty. Notwithstanding any foreclosure of the lien of any



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security instrument, with respect to any or all property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure, or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Without limiting the generality of the foregoing, Guarantor acknowledges that, but for the waiver of such rights in this Guaranty, Guarantor has or may have rights of subrogation or reimbursement against Borrower arising from Guarantor's status as surety and guarantor of Borrower's obligations to Bank. Therefore, in addition to the above waivers, Guarantor hereby agrees that if now or hereafter Borrower is or shall become insolvent and the Indebtedness or Obligations shall not at all times be fully secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up in favor of Bank and Borrower, and Bank's and Borrower's respective successors and assigns, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by subrogation or otherwise, so that at no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C. section 547(b), or any successor provision of the Federal bankruptcy laws.

Guarantor acknowledges that Guarantor has been provided the opportunity to discuss with Guarantor's counsel the effect and meaning of the waivers set forth in this paragraph. Nothing within this paragraph is to be construed to limit the generality of any other term or provision within this Guaranty.

10. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of default, notices of intent to accelerate or demand payment of any kind, diligence in collecting any Obligations, notices of acceptance of this Guaranty, notices of the existence, creation, or incurring of new or additional indebtedness, notices respecting the terms, time and place of any public or private sale of personal property security held from Borrower or any other person, and all other notices or formalities to which Guarantor may be entitled. Bank may modify the terms of the Agreement or of any Obligations, compromise, extend, increase, accelerate, renew or forbear to enforce payment of any or all Obligations or other sums due under the Agreement, or permit Borrower to incur additional Obligations, all without notice to Guarantor and without affecting in any manner the unconditional obligation of Guarantor under this Guaranty. Guarantor further waives any and all other notices to which Guarantor might otherwise be entitled. Guarantor acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by Bank of any remedy Bank may have against Borrower or any other person or any security. No invalidity, irregularity or unenforceability of any part or all of the Agreement or any other Obligations or any documents evidencing the same, by reason of any bankruptcy, insolvency or other law or order of any kind or for any other reason, and no defense or setoff available at any time to Borrower, shall impair, affect or be a defense or setoff to the obligations of Guarantor under this Guaranty.

11. Any and all present and future debts and obligations of Borrower to Guarantor are hereby postponed in favor of and subordinated to the full payment and performance of all present and future debts and obligations of Borrower to Bank. All monies or other property of Guarantor at any time in Bank's possession may be held by Bank as security for any and all obligations of Guarantor to Bank no matter how or when arising, whether absolute or contingent, whether due or to become due, and whether under this Guaranty or otherwise. Guarantor also agrees that Bank's books and records showing the account between Bank and Borrower shall be admissible in any action or proceeding and shall be binding upon Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

12. Based solely on its own independent investigation and not upon any information provided by Bank, Guarantor acknowledges and represents and warrants that it is presently informed of the financial condition of Borrower and of all

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other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations or non-performance of the Agreement. Guarantor hereby covenants that it will continue to keep itself informed of Borrower's financial condition and of all other circumstances which bear upon the risk of nonpayment. Guarantor hereby waives its rights, if any, to require the disclosure of, and Bank is relieved of any obligation or duty to disclose to Guarantor, any information which Bank may now or hereafter acquire concerning such condition or circumstances. Guarantor agrees that it is not relying upon nor expecting Bank to disclose to Guarantor any fact now or later known by Bank, whether relating to the operations or condition of Borrower, the existence, liabilities or financial condition of any co-guarantor of the Obligations, the occurrence of any default with respect to the Obligations including but not limited to under the Agreement, or otherwise, notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's rights against Borrower. Guarantor knowingly accepts the full range of risk encompassed in this Guaranty, which risk includes without limit the possibility that Borrower may incur Obligations to Bank after the financial condition of Borrower, or its ability to pay its debts as they mature, has deteriorated.

13. On a continuing basis from the date of this Guaranty and at all times during its effectiveness, Guarantor hereby represents and warrants to Bank as follows: (a) Guarantor is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and in good standing under the laws of, and is authorized to do business in, the State of California, (b) Guarantor has the power and authority to own its properties and assets and to carry out its business as now being conducted and is qualified to do business and in good standing in every jurisdiction wherein such qualification is necessary, (c) Guarantor has the power and authority to execute, deliver and perform this Guaranty in accordance with its terms, and to do any and all other things required of it hereunder, (d) the execution, delivery and performance of this Guaranty have been duly authorized by all requisite partnership action and will not violate any provision of Guarantor's partnership or other constituency agreements or partnership certificates or any provision of any indenture, note, agreement or other instrument to which the Guarantor is a party, or by which it or any of Guarantor's properties or assets are bound, (e) there are no actions, suits or proceedings, at law or in equity, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau, or other administrative agency, pending, or, to the best knowledge of the Guarantor, threatened against or affecting Guarantor which, if adversely determined, could materially impair the right of Guarantor to carry on business substantially as now conducted or could have a material adverse effect upon the financial condition of Guarantors, (f) upon the Bank's request and Borrower's failure to timely provide to the Bank, Guarantor will provide to the Bank financial and credit information in form acceptable to the Bank, and such information and all consolidated and consolidating balance sheets, earnings statements and other financial data furnished to the Bank for the purposes of, or in connection with, the Agreement and this Guaranty do or will fairly present the financial condition of Guarantor, as of their dates, and the results of Guarantor's operations for the periods, for which the same are furnished to the Bank, and Guarantor has no material contingent obligations, liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, all such financial information provided to Bank, and (g) Guarantor is solvent, able to pay its debts as they mature, has capital sufficient to carry on its business and has assets the fair market value of which exceed its liabilities.

14. Guarantor covenants and agrees that, at all times during the

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effectiveness of this Guaranty, Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect Guarantor's partnership existence, rights and franchises and comply with all applicable laws; maintain its good standing in all states and jurisdictions in which it is currently authorized to conduct business; continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year; at all times maintain, preserve and protect all franchises, trade names and preserve all the remainder of its property and keep the same in good repair, working order and condition; and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

15. Guarantor covenants and agrees that, at all times during the effectiveness of this Guaranty, it will not transfer all or substantially all of its assets and that it will not dissolve or wind-up its affairs or otherwise cease doing business or transfer its assets in such a way as to impair Guarantor's ability to perform its obligations under this Guaranty.

16. Notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty in whole or part, this Guaranty shall continue in full force and effect until Borrower's Obligations including but not limited to under the Agreement are fully paid, performed and discharged and Bank gives Guarantor written notice of that fact. Borrower's Obligations shall not be considered fully paid, performed and discharged unless and until all payments by Borrower to Bank are no longer subject to any right on the part of any person whomsoever including but not limited to Borrower, Borrower as a debtor-in-possession, and/or any trustee or receiver in bankruptcy, to set aside such payments or seek to recoup the amount of such payments, or any part thereof. In the event that any such payments by Borrower to Bank or on account of Borrower to Bank are set aside after the making thereof, in whole or in part, or settled without litigation, to the extent of such settlement, all of which is within Bank's discretion, Guarantor shall be liable for the full amount Bank is required to repay plus costs, interest, attorneys' fees and any and all expenses which Bank paid or incurred in connection therewith. The foregoing shall include, by way of example and not by way of limitation, all rights to recover preferences voidable under the United States Bankruptcy Code and any liability imposed, or sought to be imposed, against Bank relating to the environmental condition of, or the presence of hazardous or toxic substances on, in or about, any of Borrower's property. For purposes of this Guaranty, "environmental condition" includes, without limitation, conditions existing with respect to the surface or ground water, drinking water supply, land surface or subsurface and the air; and "hazardous or toxic substances" shall include all substances now or subsequently determined by any federal, state or local authority to be hazardous or toxic, or otherwise regulated by any of these authorities.

17. This Guaranty shall be binding upon the successors and assigns of Guarantor and shall inure to the benefit of Bank's successors and assigns. Guarantor's rights and liability shall not be affected by any changes in the name of Borrower or in the event Borrower merges with or into any other corporation or entity or in the event Borrower transfers, assigns or sells its assets and liabilities to any person.

18. All notices, demands and other communications which Guarantor or Bank may desire, or may be required, to give to the other shall be in writing and shall be sent via registered or certified mail, nationally recognized overnight courier, or

personally delivered and shall be addressed to the party at the addresses set forth in the preamble of this Guaranty. Any such notice, demand or communication

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shall be deemed given when received if personally delivered or sent by overnight courier, or deposited in the United States mail, postage prepaid, if sent by registered or certified mail. The address of either Guarantor or Bank may be changed by notice given in accordance with this paragraph.

19. This is an integrated agreement and is the sole and final agreement with respect to the subject matter hereof, and supersedes all prior negotiations and agreements. No modification of this Guaranty shall be effective for any purpose unless it is in writing and executed by Guarantor and an officer of Bank authorized to do so.

20. Guarantor agrees to pay all costs and fees, including without limitation all reasonable attorneys' fees and out-of-pocket costs, incurred by Bank in enforcing the Agreement or this Guaranty. In addition, the prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") brought by Bank or any party to this Guaranty of any claims brought to enforce the terms of this Guaranty based upon, arising from, or in any way related to this Guaranty or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law or statutory claims (collectively, the "Claims"), shall be entitled to recover from such other party all its fees and costs incurred in connection with the Proceeding, including without limitation all its attorneys' fees and costs, whether incurred by in-house counsel or outside counsel, all its expert witness and/or consultant's fees and costs, all its paralegal fees and costs, and all its other costs and expenses, regardless of whether such costs are otherwise statutorily recoverable (collectively, the "Fees and Costs"), and including without limitation all the Fees and Costs incurred by the Prevailing Party in connection with proceedings in bankruptcy for relief from and/or modification of automatic stay, for orders of nondischargeability, and/or regarding use of cash collateral, claims, and/or plans. The Prevailing Party shall also be entitled to recover from such other party all its costs incurred in enforcing the judgment or award giving rise to the Prevailing Party's status as the Prevailing Party. Guarantor acknowledges that it is on notice that, in the event that the other party retain the services of one or more experts in connection with the Proceeding, such other party will seek to recover the fees and costs of such expert or experts hereunder, and that, if such party becomes the Prevailing Party in the Proceeding, such party shall be entitled to recover such fees and costs hereunder, whether such fees and costs are sought before trial, during trial, or by post-trial motion or memorandum of costs.

21. In all cases where the word "Guarantor" is used in this Guaranty, it shall mean and apply equally to each of and all of the entities which have executed this Guaranty. If any Obligation is guaranteed by two or more guarantors, the obligation of Guarantor shall be several and also joint, each with all and also each with any one or more of the others, and may be enforced at the option of Bank against each severally, any two or more jointly, or some severally and some jointly.

22. The term "Borrower" includes any debtor-in-possession or trustee in bankruptcy or court-appointed receiver which succeeds to the interests of Borrower.

23. This Guaranty and all acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without regard to choice of law principles.

24. GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, GUARANTOR AND BANK

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KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY OR THE OBLIGATIONS.

GUARANTOR ACKNOWLEDGES THAT GUARANTOR HAS HAD THE OPPORTUNITY TO READ AND REVIEW WITH GUARANTOR'S COUNSEL THIS GUARANTY, AND GUARANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

IN WITNESS WHEREOF, the undersigned has/have executed this Guaranty as of the date set forth above.

MISSION WEST PROPERTIES, L.P. II  
A Delaware limited partnership

By Mission West Properties, Inc.,  
A Maryland corporation,  
Its General Partner

By: /s/ Carl E. Berg

-----  
Its: Chairman & CEO

By: /s/ Raymond V. Marino

-----  
Its: President & COO

EXHIBIT 10.32

California  
Loan No. C-332757  
PROMISSORY NOTE

Mission West Properties, L.P.

\$28,868,655.00

January 3, 2003

For value received, the undersigned, herein called "Borrower," promises to pay to the order of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, who, together with any subsequent holder of this note, is hereinafter referred to as "Lender", at 720 E. Wisconsin Avenue, Milwaukee, WI 53202 or at such other place as Lender shall designate in writing, in coin or currency which, at the time or times of payment, is legal tender for public and private debts in the United States, the principal sum of TWENTY-EIGHT MILLION EIGHT HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED FIFTY-FIVE DOLLARS or so much thereof as shall have been advanced from time to time plus interest on the outstanding principal balance at the rate and payable as follows:

Interest shall accrue from the date of advance until maturity at the rate of five and sixty-four hundredths percent (5.64%) per annum (the "Interest Rate").

Accrued interest only on the amount advanced shall be paid on the

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first day of the month following the date of advance ("Amortization Period Commencement Date"). On the first day of the following month and on the first day of each month thereafter until maturity, installments of principal and interest shall be paid in the amount of \$200,874.00. Payments shall be made directly to Lender by electronic transfer of funds using the Automated Clearing House System. All installments shall be applied first in payment of interest, calculated monthly on the unpaid principal balance, and the remainder of each installment shall be applied in payment of principal. The entire unpaid principal balance plus accrued interest thereon shall be due and payable on February 1, 2013 (the "Maturity Date").

DEFINITIONS. For the purpose of this Promissory Note (this "Note"), the following terms shall have the meanings set forth below. Except as otherwise provided herein, any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Lien Instrument.

(a) "Lien Instrument" means that certain first priority Deed of Trust and Security Agreement of even date herewith executed by Borrower as "Grantor" to the benefit of Lender as "Beneficiary" as security for repayment of this Note.

(b) "Other Borrowers" means, collectively, Mission West Properties, L.P. I, a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

(c) "Other Notes" means, collectively, the Promissory Notes executed by the Other Borrowers evidencing the Loan, as more particularly identified on Schedule 1 of this Note.

(d) "Property" means the Property (as defined in the Lien Instrument), together with all real and personal property securing, in whole or in part, this Note, the Indebtedness or the Obligations.

(e) "Transaction" means the loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Borrower and the Other Borrowers on the date hereof and are evidenced by the Note and Other Notes and secured by other lien instruments and collateral documents from Borrower and the Other Borrowers granting liens and creating rights for the benefit of Beneficiary.

(f) "Transaction Documents" means all documents evidencing, securing or related to the payment of amounts owed Lender in connection with the Transaction, with the exception of the Environmental Agreement.

Borrower shall have the right, upon not less than ten (10) business days prior written notice, of paying this note in full with a prepayment fee, but only if the Other Borrowers concurrently pay the Other Notes in full. Borrower's failure to prepay within twenty (20) business days of the date of Borrower's written notice of prepayment shall be deemed a withdrawal of Borrower's notice of prepayment, and Borrower shall be required to submit another written notice of prepayment pursuant to the terms and conditions set forth in this note if Borrower thereafter elects to prepay this note. This prepayment fee represents consideration to Lender for loss of yield and reinvestment costs. The prepayment fee shall be the greater of Yield Maintenance or 1% of the outstanding principal balance

of this note.

"Yield Maintenance" means the amount, if any, by which

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- (i) the present value of the Then Remaining Payments (as hereinafter defined) calculated using a periodic discount rate (corresponding to the payment frequency under this note) which, when compounded for such number of payment periods in a year, equals the linearly interpolated per annum effective yield of the two Most Recently Auctioned United States Treasury Obligations having maturity dates most nearly equivalent to the Maturity Date as reported by The Wall Street Journal one (1) business day preceding the date of prepayment; exceeds
- (ii) the outstanding principal balance of this note (exclusive of all accrued interest).

If such United States Treasury obligation yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, then the periodic discount rate shall be equal to the linearly interpolated per annum effective yield of the two Treasury Constant Maturity Series yields having maturity dates most nearly equivalent to the Maturity Date reported, for the latest day for which such yields shall have been so reported, as of one (1) business day preceding the prepayment date, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded United States Treasury obligations.

"Then Remaining Payments" means payments in such amounts and at such times as would have been payable subsequent to the date of such prepayment in accordance with the terms of this note.

"Most Recently Auctioned United States Treasury Obligations" means the U.S. Treasury bonds, notes and bills with maturities of 30 years, 10 years, 5 years, 2 years and 1 year which, as of the date the prepayment fee is calculated, were most recently auctioned by the United States Treasury.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument) followed by the acceleration of the whole indebtedness evidenced by this note, the payment of such indebtedness will constitute an evasion of the prepayment terms hereunder and be deemed to be a voluntary prepayment hereof and such payment will, therefore, to the extent not prohibited by law, include the prepayment fee required under the prepayment in full privilege recited above.

Notwithstanding the above and provided Borrower is not in default under any provision contained in the Loan Documents, this note may be prepaid in full at any time, without a prepayment fee, during the last 60 days of the term of this note.

By signing immediately below, Borrower hereby acknowledges the provisions of this note relating to prepayments of the indebtedness evidenced by this note and the application of these provisions to prepayments on acceleration of the indebtedness hereunder. Specifically, but without limiting the generality of the foregoing, Borrower has separately signed below in compliance with the provisions of California Civil Code Section 2954.10, to the extent applicable to Borrower. Borrower hereby acknowledges that this waiver is supported by evidence of a course of conduct by Lender of individual weight given to the consideration in the loan transaction evidenced by this note for the waiver and agreement of Borrower contained herein.

Acknowledgment by Borrower of Prepayment Provisions.

SIGNATURE OF BORROWER:

MISSION WEST PROPERTIES, L.P., a  
Delaware limited partnership

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By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

Borrower acknowledges and agrees that the Interest Rate hereunder shall be increased if certain financial statements and other reports are not furnished to Lender, all as described in more detail in the provision of the Lien Instrument entitled "Financial Statements".

This note is secured, among other security, by the Lien Instrument, and certain other deeds of trust executed and delivered by the Other Borrowers on the date hereof, and the other Transaction Documents, which contain provisions for the acceleration of the maturity of this Note upon the occurrence of certain described events.

The occurrence of a default under any of the Other Notes shall constitute a default under this Note, and Lender, at its option may exercise any and all remedies provided for in the Lien Instrument.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument), the whole unpaid principal hereof and accrued interest shall, at the option of Lender, to be exercised at any time thereafter, become due and payable at once without notice, notice of the exercise of, and the intent to exercise, such option being hereby expressly waived.

All parties at any time liable, whether primarily or secondarily, for payment of indebtedness evidenced hereby, for themselves, their heirs, legal representatives, successors and assigns, respectively, expressly waive presentment for payment, notice of dishonor, protest, notice of protest, and diligence in collection; consent to the extension by Lender of the time of said payments or any part thereof; further consent that the real or collateral security or any part thereof may be released by Lender, without in any way modifying, altering, releasing, affecting, or limiting their respective liability or the lien of the Lien Instrument; and agree to pay reasonable attorneys' fees and expenses of collection in case this note is placed in the hands of an attorney for collection or suit is brought hereon and any attorneys' fees and expenses incurred by Lender to enforce or preserve its rights under any of the Loan Documents in any bankruptcy or insolvency proceeding.

All amounts due Lender including principal and, to the extent permitted by applicable law, interest not paid when due (without regard to any notice and/or cure provisions contained in any of the Loan Documents), other than principal becoming due by reason of acceleration by Lender of the unpaid balance of this note, shall bear interest from the due date thereof until paid at the Default Rate. "Default Rate" means the lower of a rate equal to the interest rate in effect at the time of the default as herein provided plus 5% per annum or the maximum rate permitted by law.

No provision of this note shall require the payment or permit the collection of interest, including any fees paid which are construed under applicable law to be interest, in excess of the maximum permitted by law. If any such excess interest is collected or herein provided for, or shall be adjudicated to have been collected or be so provided for herein, the provisions of this paragraph shall govern, and Borrower shall not be obligated to pay the amount of such interest to the extent that it is in excess of the amount



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permitted by law. Any such excess collected shall, at the option of Lender, unless otherwise required by applicable law, be immediately refunded to Borrower or credited on the principal of this note immediately upon Lender's awareness of the collection of such excess.

Nothing herein contained shall limit the rights of Lender under California Code of Civil Procedure Section 726.5 or under any other statute, case or other law which gives Lender the right to waive its lien against environmentally impaired property and pursue the rights of an unsecured creditor or otherwise obtain a money judgment against Borrower.

Notwithstanding any provision contained herein or in the Lien Instrument to the contrary, if Lender shall take action to enforce the collection of the indebtedness evidenced hereby or secured by the Lien Instrument (collectively, the "Indebtedness"), its recourse shall, except as provided below, be limited to the Property or the proceeds from the sale of the Property and the proceeds realized by Lender in exercising its rights and remedies (i) under the Absolute Assignment (as defined in the Lien Instrument), (ii) under the Guarantee of Recourse Obligations of even date herewith executed by Mission West Properties, Inc., a Maryland corporation for the benefit of Lender and under other separate guarantees, if any, (iii) under any of the other Loan Documents (as defined in the Lien Instrument), (iv) under any of the Transaction Documents, and (v) in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Lender will never institute any action, suit, claim or demand in law or in equity against Borrower for or on account of such deficiency; provided, however, that the provisions contained in this paragraph

- (i) shall not in any way affect or impair the validity or enforceability of the Indebtedness or the Lien Instrument; and
- (ii) shall not prevent Lender from seeking and obtaining a judgment against Borrower, and Borrower shall be personally liable, for the Recourse Obligations.

"Recourse Obligations" means

(a) rents and other income from the Property received by Borrower or those acting on behalf of Borrower from and after the date of any default under the Loan Documents remaining uncured prior to the Conveyance Date (as hereinafter defined), which rents and

other income have not been applied to the payment of principal and interest on this note or to reasonable operating expenses of the Property;

(b) amounts necessary to repair any damage to the Property caused by the intentional acts or omissions of Borrower or those acting on behalf of Borrower;

(c) insurance loss and Condemnation Proceeds (as defined in the Lien Instrument) released to Borrower but not applied in accordance with any agreement between Borrower and Lender as to their application;

(d) the amount of insurance loss proceeds which would have been available with respect to a casualty on the Property, but were not available due to the default by Borrower in carrying all insurance required by Lender;

(e) damages suffered by Lender as a result of fraud or misrepresentation in connection with the Indebtedness by Borrower or any other person or entity

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acting on behalf of Borrower;

(f) amounts in excess of any rents or other revenues collected by Lender from operation of the Property from and after acceleration of the Indebtedness until the Conveyance Date, which amounts are necessary to pay real estate taxes, special assessments and insurance premiums with respect to the Property, and amounts required to fulfill Borrower's obligations as lessor under any leases of the Property, in each case, either paid by Lender and not reimbursed prior to, or remaining due or delinquent on the Conveyance Date;

(g) all security deposits under leases of the Property or any portion of the Property collected by Borrower, any agent of Borrower or any predecessor of Borrower, and not refunded to the tenants thereunder in accordance with their respective leases, applied in accordance with such leases or law or delivered to Lender, and all advance rents collected by Borrower, any agent of Borrower or any predecessor of Borrower and not applied in accordance with the leases of the Property or delivered to Lender;

(h) all outstanding amounts due under the Indebtedness, including principal, interest, and other charges if there shall be a violation of any of the provisions in the Lien Instrument following the caption entitled "Prohibition on Transfer".

"Conveyance Date" means (i) the later of (a) the date on which title vests in the purchaser at the foreclosure sale of the Property pursuant to the Lien Instrument or (b) the date on which Borrower's statutory right of redemption shall expire or be waived or (ii) the date of the conveyance of the Property to Lender in lieu of foreclosure.

This Note shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Note shall be brought in a state or federal court located in the State of California, and Lender and Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

MISSION WEST PROPERTIES, L.P., a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

EXHIBIT 10.33

California  
Loan No. C-332757  
PROMISSORY NOTE

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Mission West Properties, L.P. I

\$29,811,369.00

January 3, 2003

For value received, the undersigned, herein called "Borrower," promises to pay to the order of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, who, together with any subsequent holder of this note, is hereinafter referred to as "Lender", at 720 E. Wisconsin Avenue, Milwaukee, WI 53202 or at such other place as Lender shall designate in writing, in coin or currency which, at the time or times of payment, is legal tender for public and private debts in the United States, the principal sum of TWENTY-NINE MILLION EIGHT HUNDRED ELEVEN THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS or so much thereof as shall have been advanced from time to time plus interest on the outstanding principal balance at the rate and payable as follows:

Interest shall accrue from the date of advance until maturity at the rate of five and sixty-four hundredths percent (5.64%) per annum (the "Interest Rate").

Accrued interest only on the amount advanced shall be paid on the first day of the month following the date of advance ("Amortization Period Commencement Date"). On the first day of the following month and on the first day of each month thereafter until maturity, installments of principal and interest shall be paid in the amount of \$207,433.00. Payments shall be made directly to Lender by electronic transfer of funds using the Automated Clearing House System. All installments shall be applied first in payment of interest, calculated monthly on the unpaid principal balance, and the remainder of each installment shall be applied in payment of principal. The entire unpaid principal balance plus accrued interest thereon shall be due and payable on February 1, 2013 (the "Maturity Date").

DEFINITIONS. For the purpose of this Promissory Note (this "Note"), the following terms shall have the meanings set forth below. Except as otherwise provided herein, any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Lien Instrument.

(a) "Lien Instrument" means that certain first priority Deed of Trust and Security Agreement of even date herewith executed by Borrower as "Grantor" to the benefit of Lender as "Beneficiary" as security for repayment of this Note.

(b) "Other Borrowers" means, collectively, Mission West Properties, L.P., a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

(c) "Other Notes" means, collectively, the Promissory Notes executed by the Other Borrowers evidencing the Loan, as more particularly identified on Schedule 1 of this Note.

(d) "Property" means the Property (as defined in the Lien Instrument), together with all real and personal property securing, in whole or in part, this Note, the Indebtedness or the Obligations.

(e) "Transaction" means the loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Borrower and the Other Borrowers on the date hereof and are evidenced by the Note and Other Notes and secured by other lien instruments and collateral documents from Borrower and the Other Borrowers granting liens and creating rights for the benefit of Beneficiary.

(f) "Transaction Documents" means all documents evidencing, securing or related to the payment of amounts owed Lender in connection with the

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Transaction, with the exception of the Environmental Agreement.

Borrower shall have the right, upon not less than ten (10) business days prior written notice, of paying this note in full with a prepayment fee, but only if the Other Borrowers concurrently pay the Other Notes in full. Borrower's failure to prepay within twenty (20) business days of the date of Borrower's written notice of prepayment shall be deemed a withdrawal of Borrower's notice of prepayment, and Borrower shall be required to submit another written notice of prepayment pursuant to the terms and conditions set forth in this note if Borrower thereafter elects to prepay this note. This prepayment fee represents consideration to Lender for loss of yield and reinvestment costs. The prepayment fee shall be the greater of Yield Maintenance or 1% of the outstanding principal balance

of this note.

"Yield Maintenance" means the amount, if any, by which

- (i) the present value of the Then Remaining Payments (as hereinafter defined) calculated using a periodic discount rate (corresponding to the payment frequency under this note) which, when compounded for such number of payment periods in a year, equals the linearly interpolated per annum effective yield of the two Most Recently Auctioned United States Treasury Obligations having maturity dates most nearly equivalent to the Maturity Date as reported by The Wall Street Journal one (1) business day preceding the date of prepayment; exceeds
- (ii) the outstanding principal balance of this note (exclusive of all accrued interest).

If such United States Treasury obligation yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, then the periodic discount rate shall be equal to the linearly interpolated per annum effective yield of the two Treasury Constant Maturity Series yields having maturity dates most nearly equivalent to the Maturity Date reported, for the latest day for which such yields shall have been so reported, as of one (1) business day preceding the prepayment date, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded United States Treasury obligations.

"Then Remaining Payments" means payments in such amounts and at such times as would have been payable subsequent to the date of such prepayment in accordance with the terms of this note.

"Most Recently Auctioned United States Treasury Obligations" means the U.S. Treasury bonds, notes and bills with maturities of 30 years, 10 years, 5 years, 2 years and 1 year which, as of the date the prepayment fee is calculated, were most recently auctioned by the United States Treasury.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument) followed by the acceleration of the whole indebtedness evidenced by this note, the payment of such indebtedness will constitute an evasion of the prepayment terms hereunder and be deemed to be a voluntary prepayment hereof and such payment will, therefore, to the extent not prohibited by law, include the prepayment fee required under the prepayment in full privilege recited above.

Notwithstanding the above and provided Borrower is not in default under any provision contained in the Loan Documents, this note may be prepaid in full at any time, without a prepayment fee, during the last 60 days of the term of this

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note.

By signing immediately below, Borrower hereby acknowledges the provisions of this note relating to prepayments of the indebtedness evidenced by this note and the application of these provisions to prepayments on acceleration of the indebtedness hereunder. Specifically, but without limiting the generality of the foregoing, Borrower has separately signed below in compliance with the provisions of California Civil Code Section 2954.10, to the extent applicable to Borrower. Borrower hereby acknowledges that this waiver is supported by evidence of a course of conduct by Lender of individual weight given to the consideration in the loan transaction evidenced by this note for the waiver and agreement of Borrower contained herein.

Acknowledgment by Borrower of Prepayment Provisions.

SIGNATURE OF BORROWER:

MISSION WEST PROPERTIES, L.P. I, a  
Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

Borrower acknowledges and agrees that the Interest Rate hereunder shall be increased if certain financial statements and other reports are not furnished to Lender, all as described in more detail in the provision of the Lien Instrument entitled "Financial Statements".

This note is secured, among other security, by the Lien Instrument, and certain other deeds of trust executed and delivered by the Other Borrowers on the date hereof, and the other Transaction Documents, which contain provisions for the acceleration of the maturity of this Note upon the occurrence of certain described events.

The occurrence of a default under any of the Other Notes shall constitute a default under this Note, and Lender, at its option may exercise any and all remedies provided for in the Lien Instrument.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument), the whole unpaid principal hereof and accrued interest shall, at the option of Lender, to be exercised at any time thereafter, become due and payable at once without notice, notice of the exercise of, and the intent to exercise, such option being hereby expressly waived.

All parties at any time liable, whether primarily or secondarily, for payment of indebtedness evidenced hereby, for themselves, their heirs, legal representatives, successors and assigns, respectively, expressly waive presentment for payment, notice of dishonor, protest, notice of protest, and diligence in collection; consent to the extension by Lender of the time of said payments or any part thereof; further consent that the real or collateral security or any part thereof may be released by Lender, without in any way modifying, altering, releasing, affecting, or limiting their respective liability or the lien of the Lien Instrument; and agree to pay reasonable attorneys' fees and expenses of collection in case this note is placed in the hands of an attorney for collection or suit is brought hereon and any attorneys'

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fees and expenses incurred by Lender to enforce or preserve its rights under any of the Loan Documents in any bankruptcy or insolvency proceeding.

All amounts due Lender including principal and, to the extent permitted by applicable law, interest not paid when due (without regard to any notice and/or cure provisions contained in any of the Loan Documents), other than principal becoming due by reason of acceleration by Lender of the unpaid balance of this note, shall bear interest from the due date thereof until paid at the Default Rate. "Default Rate" means the lower of a rate equal to the interest rate in effect at the time of the default as herein provided plus 5% per annum or the maximum rate permitted by law.

No provision of this note shall require the payment or permit the collection of interest, including any fees paid which are construed under applicable law to be interest, in excess of the maximum permitted by law. If any such excess interest is collected or herein provided for, or shall be adjudicated to have been collected or be so provided for herein, the provisions of this paragraph shall govern, and Borrower shall not be obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law. Any such excess collected shall, at the option of Lender, unless otherwise required by applicable law, be immediately refunded to Borrower or credited on the principal of this note immediately upon Lender's awareness of the collection of such excess.

Nothing herein contained shall limit the rights of Lender under California Code of Civil Procedure Section 726.5 or under any other statute, case or other law which gives Lender the right to waive its lien against environmentally impaired property and pursue the rights of an unsecured creditor or otherwise obtain a money judgment against Borrower.

Notwithstanding any provision contained herein or in the Lien Instrument to the contrary, if Lender shall take action to enforce the collection of the indebtedness evidenced hereby or secured by the Lien Instrument (collectively, the "Indebtedness"), its recourse shall, except as provided below, be limited to the Property or the proceeds from the sale of the Property and the proceeds realized by Lender in exercising its rights and remedies (i) under the Absolute Assignment (as defined in the Lien Instrument), (ii) under the Guarantee of Recourse Obligations of even date herewith executed by Mission West Properties, Inc., a Maryland corporation for the benefit of Lender and under other separate guarantees, if any, (iii) under any of the other Loan Documents (as defined in the Lien Instrument), (iv) under any of the Transaction Documents, and (v) in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Lender will never institute any action, suit, claim or demand in law or in equity against Borrower for or on account of such deficiency; provided, however, that the provisions contained in this paragraph

- (i) shall not in any way affect or impair the validity or enforceability of the Indebtedness or the Lien Instrument; and
- (ii) shall not prevent Lender from seeking and obtaining a judgment against Borrower, and Borrower shall be personally liable, for the Recourse Obligations.

"Recourse Obligations" means

(a) rents and other income from the Property received by Borrower or those acting on behalf of Borrower from and after the date of any default under the Loan Documents remaining uncured prior to the Conveyance Date (as hereinafter defined), which rents and

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other income have not been applied to the payment of principal and interest on this note or to reasonable operating expenses of the Property;

(b) amounts necessary to repair any damage to the Property caused by the intentional acts or omissions of Borrower or those acting on behalf of Borrower;

(c) insurance loss and Condemnation Proceeds (as defined in the Lien Instrument) released to Borrower but not applied in accordance with any agreement between Borrower and Lender as to their application;

(d) the amount of insurance loss proceeds which would have been available with respect to a casualty on the Property, but were not available due to the default by Borrower in carrying all insurance required by Lender;

(e) damages suffered by Lender as a result of fraud or misrepresentation in connection with the Indebtedness by Borrower or any other person or entity acting on behalf of Borrower;

(f) amounts in excess of any rents or other revenues collected by Lender from operation of the Property from and after acceleration of the Indebtedness until the Conveyance Date, which amounts are necessary to pay real estate taxes, special assessments and insurance premiums with respect to the Property, and amounts required to fulfill Borrower's obligations as lessor under any leases of the Property, in each case, either paid by Lender and not reimbursed prior to, or remaining due or delinquent on the Conveyance Date;

(g) all security deposits under leases of the Property or any portion of the Property collected by Borrower, any agent of Borrower or any predecessor of Borrower, and not refunded to the tenants thereunder in accordance with their respective leases, applied in accordance with such leases or law or delivered to Lender, and all advance rents collected by Borrower, any agent of Borrower or any predecessor of Borrower and not applied in accordance with the leases of the Property or delivered to Lender;

(h) all outstanding amounts due under the Indebtedness, including principal, interest, and other charges if there shall be a violation of any of the provisions in the Lien Instrument following the caption entitled "Prohibition on Transfer".

"Conveyance Date" means (i) the later of (a) the date on which title vests in the purchaser at the foreclosure sale of the Property pursuant to the Lien Instrument or (b) the date on which Borrower's statutory right of redemption shall expire or be waived or (ii) the date of the conveyance of the Property to Lender in lieu of foreclosure.

This Note shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Note shall be brought in a state or federal court located in the State of California, and Lender and

Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

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MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

EXHIBIT 10.34

California  
Loan No. C-332757  
PROMISSORY NOTE

Mission West Properties, L.P. II

\$41,319,976.00

January 3, 2003

For value received, the undersigned, herein called "Borrower," promises to pay to the order of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, who, together with any subsequent holder of this note, is hereinafter referred to as "Lender", at 720 E. Wisconsin Avenue, Milwaukee, WI 53202 or at such other place as Lender shall designate in writing, in coin or currency which, at the time or times of payment, is legal tender for public and private debts in the United States, the principal sum of FORTY-ONE MILLION THREE HUNDRED NINETEEN THOUSAND, NINE HUNDRED SEVENTY-SIX DOLLARS or so much thereof as shall have been advanced from time to time plus interest on the outstanding principal balance at the rate and payable as follows:

Interest shall accrue from the date of advance until maturity at the rate of five and sixty-four hundredths percent (5.64%) per annum (the "Interest Rate").

Accrued interest only on the amount advanced shall be paid on the first day of the month following the date of advance ("Amortization Period Commencement Date"). On the first day of the following month and on the first day of each month thereafter until maturity, installments of principal and interest shall be paid in the amount of \$287,512.00. Payments shall be made directly to Lender by electronic transfer of funds using the Automated Clearing House System. All installments shall be applied first in payment of interest, calculated monthly on the unpaid principal balance, and the remainder of each installment shall be applied in payment of principal. The entire unpaid principal balance plus accrued interest thereon shall be due and payable on February 1, 2013 (the "Maturity Date").

DEFINITIONS. For the purpose of this Promissory Note (this "Note"), the following terms shall have the meanings set forth below. Except as otherwise provided herein, any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Lien Instrument.

(a) "Lien Instrument" means that certain first priority Deed of Trust and Security Agreement of even date herewith executed by Borrower as "Grantor" to the benefit of Lender as "Beneficiary" as security for repayment of this Note.

(b) "Other Borrowers" means, collectively, Mission West Properties, L.P., a Delaware limited partnership, and Mission West Properties, L.P. I, a



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Delaware limited partnership.

(c) "Other Notes" means, collectively, the Promissory Notes executed by the Other Borrowers evidencing the Loan, as more particularly identified on Schedule 1 of this Note.

(d) "Property" means the Property (as defined in the Lien Instrument), together with all real and personal property securing, in whole or in part, this Note, the Indebtedness or the Obligations.

(e) "Transaction" means the loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Borrower and the Other Borrowers on the date hereof and are evidenced by the Note and Other Notes and secured by other lien instruments and collateral documents from Borrower and the Other Borrowers granting liens and creating rights for the benefit of Beneficiary.

(f) "Transaction Documents" means all documents evidencing, securing or related to the payment of amounts owed Lender in connection with the Transaction, with the exception of the Environmental Agreement.

Borrower shall have the right, upon not less than ten (10) business days prior written notice, of paying this note in full with a prepayment fee, but only if the Other Borrowers concurrently pay the Other Notes in full. Borrower's failure to prepay within twenty (20) business days of the date of Borrower's written notice of prepayment shall be deemed a withdrawal of Borrower's notice of prepayment, and Borrower shall be required to submit another written notice of prepayment pursuant to the terms and conditions set forth in this note if Borrower thereafter elects to prepay this note. This prepayment fee represents consideration to Lender for loss of yield and reinvestment costs. The prepayment fee shall be the greater of Yield Maintenance or 1% of the outstanding principal balance

of this note.

"Yield Maintenance" means the amount, if any, by which

- (i) the present value of the Then Remaining Payments (as hereinafter defined) calculated using a periodic discount rate (corresponding to the payment frequency under this note) which, when compounded for such number of payment periods in a year, equals the linearly interpolated per annum effective yield of the two Most Recently Auctioned United States Treasury Obligations having maturity dates most nearly equivalent to the Maturity Date as reported by The Wall Street Journal one (1) business day preceding the date of prepayment; exceeds
- (ii) the outstanding principal balance of this note (exclusive of all accrued interest).

If such United States Treasury obligation yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, then the periodic discount rate shall be equal to the linearly interpolated per annum effective yield of the two Treasury Constant Maturity Series yields having maturity dates most nearly equivalent to the Maturity Date reported, for the latest day for which such yields shall have been so reported, as of one (1) business day preceding the prepayment date, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded United States Treasury obligations.

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"Then Remaining Payments" means payments in such amounts and at such times as would have been payable subsequent to the date of such prepayment in accordance with the terms of this note.

"Most Recently Auctioned United States Treasury Obligations" means the U.S. Treasury bonds, notes and bills with maturities of 30 years, 10 years, 5 years, 2 years and 1 year which, as of the date the prepayment fee is calculated, were most recently auctioned by the United States Treasury.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument) followed by the acceleration of the whole indebtedness evidenced by this note, the payment of such indebtedness will constitute an evasion of the prepayment terms hereunder and be deemed to be a voluntary prepayment hereof and such payment will, therefore, to the extent not prohibited by law, include the prepayment fee required under the prepayment in full privilege recited above.

Notwithstanding the above and provided Borrower is not in default under any provision contained in the Loan Documents, this note may be prepaid in full at any time, without a prepayment fee, during the last 60 days of the term of this note.

By signing immediately below, Borrower hereby acknowledges the provisions of this note relating to prepayments of the indebtedness evidenced by this note and the application of these provisions to prepayments on acceleration of the indebtedness hereunder. Specifically, but without limiting the generality of the foregoing, Borrower has separately signed below in compliance with the provisions of California Civil Code Section 2954.10, to the extent applicable to Borrower. Borrower hereby acknowledges that this waiver is supported by evidence of a course of conduct by Lender of individual weight given to the consideration in the loan transaction evidenced by this note for the waiver and agreement of Borrower contained herein.

Acknowledgment by Borrower of Prepayment Provisions.

SIGNATURE OF BORROWER:

MISSION WEST PROPERTIES, L.P. II,  
a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

Borrower acknowledges and agrees that the Interest Rate hereunder shall be increased if certain financial statements and other reports are not furnished to Lender, all as described in more detail in the provision of the Lien Instrument entitled "Financial Statements".

This note is secured, among other security, by the Lien Instrument, and certain other deeds of trust executed and delivered by the Other Borrowers on the date hereof, and the other Transaction Documents, which contain provisions for the acceleration of the maturity of this Note upon the occurrence of certain described events.

The occurrence of a default under any of the Other Notes shall constitute a default under this Note, and Lender, at its option may exercise any and all

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remedies provided for in the Lien Instrument.

Upon the occurrence of an Event of Default (as defined in the Lien Instrument), the whole unpaid principal hereof and accrued interest shall, at the option of Lender, to be exercised at any time thereafter, become due and payable at once without notice, notice of the exercise of, and the intent to exercise, such option being hereby expressly waived.

All parties at any time liable, whether primarily or secondarily, for payment of indebtedness evidenced hereby, for themselves, their heirs, legal representatives, successors and assigns, respectively, expressly waive presentment for payment, notice of dishonor, protest, notice of protest, and diligence in collection; consent to the extension by Lender of the time of said payments or any part thereof; further consent that the real or collateral security or any part thereof may be released by Lender, without in any way modifying, altering, releasing, affecting, or limiting their respective liability or the lien of the Lien Instrument; and agree to pay reasonable attorneys' fees and expenses of collection in case this note is placed in the hands of an attorney for collection or suit is brought hereon and any attorneys' fees and expenses incurred by Lender to enforce or preserve its rights under any of the Loan Documents in any bankruptcy or insolvency proceeding.

All amounts due Lender including principal and, to the extent permitted by applicable law, interest not paid when due (without regard to any notice and/or cure provisions contained in any of the Loan Documents), other than principal becoming due by reason of acceleration by Lender of the unpaid balance of this note, shall bear interest from the due date thereof until paid at the Default Rate. "Default Rate" means the lower of a rate equal to the interest rate in effect at the time of the default as herein provided plus 5% per annum or the maximum rate permitted by law.

No provision of this note shall require the payment or permit the collection of interest, including any fees paid which are construed under applicable law to be interest, in excess of the maximum permitted by law. If any such excess interest is collected or herein provided for, or shall be adjudicated to have been collected or be so provided for herein, the provisions of this paragraph shall govern, and Borrower shall not be obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law. Any such excess collected shall, at the option of Lender, unless otherwise required by applicable law, be immediately refunded to Borrower or credited on the principal of this note immediately upon Lender's awareness of the collection of such excess.

Nothing herein contained shall limit the rights of Lender under California Code of Civil Procedure Section 726.5 or under any other statute, case or other law which gives Lender the right to waive its lien against environmentally impaired property and pursue the rights of an unsecured creditor or otherwise obtain a money judgment against Borrower.

Notwithstanding any provision contained herein or in the Lien Instrument to the contrary, if Lender shall take action to enforce the collection of the indebtedness evidenced hereby or secured by the Lien Instrument (collectively, the "Indebtedness"), its recourse shall, except as provided below, be limited to the Property or the proceeds from the sale of the Property and the proceeds realized by Lender in exercising its rights and remedies (i) under the Absolute Assignment (as defined in the Lien Instrument), (ii) under the Guarantee of Recourse Obligations of even date herewith executed by Mission West Properties, Inc., a Maryland corporation for the benefit of Lender and under other separate guarantees, if any, (iii) under any of the other Loan Documents (as defined in the Lien Instrument), (iv) under any of the Transaction Documents, and (v) in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Lender will never institute any action,

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suit, claim or demand in law or in equity against Borrower for or on account of such deficiency; provided, however, that the provisions contained in this paragraph

- (i) shall not in any way affect or impair the validity or enforceability of the Indebtedness or the Lien Instrument; and
- (ii) shall not prevent Lender from seeking and obtaining a judgment against Borrower, and Borrower shall be personally liable, for the Recourse Obligations.

"Recourse Obligations" means

(a) rents and other income from the Property received by Borrower or those acting on behalf of Borrower from and after the date of any default under the Loan Documents remaining uncured prior to the Conveyance Date (as hereinafter defined), which rents and

other income have not been applied to the payment of principal and interest on this note or to reasonable operating expenses of the Property;

(b) amounts necessary to repair any damage to the Property caused by the intentional acts or omissions of Borrower or those acting on behalf of Borrower;

(c) insurance loss and Condemnation Proceeds (as defined in the Lien Instrument) released to Borrower but not applied in accordance with any agreement between Borrower and Lender as to their application;

(d) the amount of insurance loss proceeds which would have been available with respect to a casualty on the Property, but were not available due to the default by Borrower in carrying all insurance required by Lender;

(e) damages suffered by Lender as a result of fraud or misrepresentation in connection with the Indebtedness by Borrower or any other person or entity acting on behalf of Borrower;

(f) amounts in excess of any rents or other revenues collected by Lender from operation of the Property from and after acceleration of the Indebtedness until the Conveyance Date, which amounts are necessary to pay real estate taxes, special assessments and insurance premiums with respect to the Property, and amounts required to fulfill Borrower's obligations as lessor under any leases of the Property, in each case, either paid by Lender and not reimbursed prior to, or remaining due or delinquent on the Conveyance Date;

(g) all security deposits under leases of the Property or any portion of the Property collected by Borrower, any agent of Borrower or any predecessor of Borrower, and not refunded to the tenants thereunder in accordance with their respective leases, applied in accordance with such leases or law or delivered to Lender, and all advance rents collected by Borrower, any agent of Borrower or any predecessor of Borrower and not applied in accordance with the leases of the Property or delivered to Lender;

(h) all outstanding amounts due under the Indebtedness, including principal, interest, and other charges if there shall be a violation of any of the provisions in the Lien Instrument following the caption entitled "Prohibition on Transfer".

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"Conveyance Date" means (i) the later of (a) the date on which title vests in the purchaser at the foreclosure sale of the Property pursuant to the Lien Instrument or (b) the date on which Borrower's statutory right of redemption shall expire or be waived or (ii) the date of the conveyance of the Property to Lender in lieu of foreclosure.

This Note shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Note shall be brought in a state or federal court located in the State of California, and Lender and Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

Name: Carl E. Berg

Title: CEO

EXHIBIT 10.35

California  
Loan No. C-332757  
RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT (FIRST PRIORITY)  
Mission West Properties, L. P.

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January, 2003 between MISSION WEST PROPERTIES, L.P., a Delaware limited partnership, 10050 Bandley Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

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WITNESSETH, That Grantor, in consideration of the indebtedness herein mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of San Jose, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto.
- D. All Grantor's right, title and interest in and to that certain C.O.E. - 30' Reciprocal Ingress, Egress Easement Agreement filed for record on December 23, 1997, in Book 698 of Maps, Pages 1 & 2, Santa Clara County, California.
- E. All Grantor's right, title and interest in and to that certain C.O.E. - 26' Reciprocal-Ingress, Egress-Easement Agreement filed for record on December 23, 1997, in Book 698 of Maps, Pages 1 and 2, Santa Clara County, California.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- F. cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- G. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and

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- H. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion of the property; and
- I. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the Other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

ABSOLUTE ASSIGNMENT: The Absolute Assignment of Leases and Rents (First Priority) of even date herewith executed by Grantor in favor of Beneficiary.

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 23, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings,

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fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

**GUARANTOR:** Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

**GUARANTEE:** That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the Indebtedness or Obligations hereafter executed by any person.

**INDEBTEDNESS:** The principal of and all other amounts, payments and premiums due under the Note (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Notes or Other Obligations.

**LOAN DOCUMENTS:** The Note, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Absolute Assignment, the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 3, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Guarantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Guarantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Notes and the Environmental Agreement.

**NOTE:** The Promissory Note of even date herewith executed by Grantor in the original principal amount of Twenty Eight Million Eight Hundred Sixty Eight Thousand Six Hundred Fifty-Five Dollars (\$28,868,655.00), payable to Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Note.

**OBLIGATIONS:** Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

**OTHER BORROWERS:** Collectively, Mission West Properties, L.P. I, a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

**OTHER INDEBTEDNESS:** The loans from Beneficiary to the Other Borrowers evidenced by the Other Notes.

**OTHER NOTES:** Those other Promissory Notes, each executed by one of the Other Borrowers and payable to the order of Beneficiary, which Promissory Notes



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are more particularly described in Schedule 1 of the Note.

**OTHER OBLIGATIONS:** As defined in the Granting Paragraph of this Deed of Trust.

**PROPERTY:** As defined in the Granting Paragraph of this Deed of Trust.

**TRANSACTION:** Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Note and Other Notes and secured by lien instruments and collateral documents from Grantor and the Other Borrowers creating liens and rights for the benefit of Beneficiary.

**TRANSACTION DOCUMENTS:** All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:**

**PAYMENT OF DEBT.** Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

**OWNERSHIP.** Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

**MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS.** Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

**TENANTS USING CHLORINATED SOLVENTS.** Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

**BUSINESS RESTRICTION REPRESENTATION AND WARRANTY.** Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on

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OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

INSURANCE. Grantor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the Property;
- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the

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insurance loss proceeds from an insured loss as a Facility are less than the Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage (as hereinafter defined) of at least 1.50 will be produced from the leasing of not more than 189,023 square feet of space to former tenants or approved new tenants with leases satisfactory to

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Beneficiary for terms of at least five (5) years to commence not later than (30) days following completion of such restoration ("Approved Leases").

- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
  
- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
  - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;
  - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;

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- (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
- (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
- (v) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

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(c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

COSTS, FEES AND EXPENSES. Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Note is placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

FAILURE OF GRANTOR TO ACT. If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Note). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

EVENT OF DEFAULT. Any default by Grantor or the Other Borrowers in making any

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required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

NOTICE OF DEFAULT. A default in any payment required in the Note or Other Notes or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note or Other Notes, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

Any other default under the Note or Other Notes or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the Non-Monetary Default is not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

SUBSTITUTION OF TRUSTEE. Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

APPOINTMENT OF RECEIVER. Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

FORECLOSURE. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law

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(ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."



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D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Guarantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion;
- (iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;
- (iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

- (i) an audited balance sheet as of the last day of such fiscal year; and
- (ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

- (i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and
- (ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of

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Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "Financial Statements" and in the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Note and Other Notes during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Note and Other Notes). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Note and Other Notes shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

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(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.

Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost" (as hereinafter defined) and in an amount calculated as follows: (i) the "Loan Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing, under the Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

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DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

MODIFICATION OF TERMS. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

EXERCISE OF OPTIONS. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

NATURE AND SUCCESSION OF AGREEMENTS. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Note.

LEGAL ENFORCEABILITY. No provision of this instrument, the Note or any other

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Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be

adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

LIMITATION OF LIABILITY. Notwithstanding any provision contained herein to the contrary, the personal liability of Grantor shall be limited as provided in the Note.

MISCELLANEOUS. Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

WAIVER OF JURY TRIAL. Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

CAPTIONS. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

GOVERNING LAW. This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

REQUEST FOR NOTICE. Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

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IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

MISSION WEST PROPERTIES, L.P., a Delaware limited partnership

By: Mission West Properties, Inc., a Maryland corporation, its general partner

By: Carl E. Berg
Name: Carl E. Berg
Title: CEO of G.P.

STATE OF California )
)ss.
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott
-----
G.W. Shott
-----
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"

(Mission West LP)

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997, in Book 698 of Maps, Page(s) 1 and 2.

Reserving therefrom an easement for ingress and over that portion of land designated and delineated as "C.O.E.- 30'" Reciprocal-Ingress, Egress- Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

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Parcel Two:

An easement for ingress and egress over those portion of Parcel 2 designated and delineated as "C.O.E.- 30' Reciprocal-Ingress, Egress-Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Parcel Three:

An easement for ingress and egress over those portion of Parcel 3 designated and delineated as "C.O.E-26'Reciprocal-Ingress, Egress-Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Assessors Parcel No: 244-13-015

EXHIBIT 10.36

California  
Loan No. C-332757  
RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT and ASSIGNMENT OF LEASES AND RENTS (SECOND  
PRIORITY)  
Mission West Properties, L. P.

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January, 2003 between MISSION WEST PROPERTIES, L.P., a Delaware limited partnership, 10050 Bandley Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

WITNESSETH, That Grantor, in consideration of the indebtedness herein mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- (A) The land in the City of San Jose, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");

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- (B) All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and
- (C) All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; the rents, issues and profits arising from the Land and improvements subject, however, to any right, power and authority given to Grantor to collect and apply such rents, issues and profits.
- (D) All Grantor's right, title and interest in and to that certain C.O.E. - 30' Reciprocal-Ingress, Egress-Easement Agreement filed for record on December 23, 1997, in Book 698 of Maps, Pages 1 & 2, Santa Clara County, California.
- (E) All Grantor's right, title and interest in and to that certain C.O.E. - 26' Reciprocal-Ingress, Egress-Easement Agreement filed for record on December 23, 1997, in Book 698 of Maps, Pages 1 & 2, Santa Clara County, California.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- (F) cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- (G) surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- (H) accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion



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of the property; and

- (I) present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 28, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings, fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

GUARANTOR: Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

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**GUARANTEE:** That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the Indebtedness or Obligations hereafter executed by any person.

**INDEBTEDNESS:** The principal of and all other amounts, payments and premiums due under the Notes (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Note or Other Obligations.

**LOAN DOCUMENTS:** The Notes, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 3, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Guarantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Guarantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Note and the Environmental Agreement.

**NOTES:** The Promissory Note of even date herewith executed by Mission West Properties, L.P. I, a Delaware limited partnership in the original principal amount of Twenty Nine Million Eight Hundred Eleven Thousand Three Hundred Sixty-Nine Dollars (\$29,811,369.00), payable to Beneficiary or its order, and the Promissory Note of even date herewith executed by Mission West Properties, L.P. II, a Delaware limited partnership in the original principal amount of Forty One Million Three Hundred Nineteen Thousand Nine Hundred Seventy-Six Dollars (\$41,319,976.00), payable to Beneficiary or its order, in each with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Notes.

**OBLIGATIONS:** Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

**OTHER BORROWERS:** Collectively, Mission West Properties, L.P. I, a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

**OTHER INDEBTEDNESS:** The loan from Beneficiary evidenced by the Other Note.

**OTHER NOTE:** The Promissory Note of even date herewith executed by Grantor in the original principal amount of Twenty Eight Million Eight Hundred Sixty-Eight Thousand Six Hundred Fifty-Five Dollars (\$28,868,655.00), payable to Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Note.

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OTHER OBLIGATIONS: As defined in the Granting Paragraph of this Deed of Trust.

PROPERTY: As defined in the Granting Paragraph of this Deed of Trust.

TRANSACTION: Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Notes and Other Note and secured by lien instruments and collateral documents from Grantor and the Other Borrowers creating liens and rights for the benefit of Beneficiary.

TRANSACTION DOCUMENTS: All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:

PAYMENT OF DEBT. Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

OWNERSHIP. Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS. Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

TENANTS USING CHLORINATED SOLVENTS. Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

BUSINESS RESTRICTION REPRESENTATION AND WARRANTY. Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute,

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executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

INSURANCE. Grantor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the property;
- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds from an insured loss as a Facility are less than the

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Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Notes, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage (as hereinafter defined) of at least 1.50 will be produced from the leasing of not more than 189,023 square feet of space to former tenants or approved new tenants with leases satisfactory to Beneficiary for terms of at least five (5) years to commence not later

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than (30) days following completion of such restoration ("Approved Leases").

- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
  
- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
  
- (B) the following:
  - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;
  
  - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;

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- (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
- (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
- (v) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Notes, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Notes or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Notes or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

- (a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.
- (b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

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- (c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.
- (d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

LEASES. Grantor covenants with Beneficiary (a) to observe and perform all the obligations imposed upon the lessor under all leases and not to do or permit to be done anything to impair the same without Beneficiary's prior written consent, (b) not to collect any of the rent or other amounts due under any lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a lease), (c) not to execute any other assignment of rents, issues, or profits arising or accruing from any of the leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Grantor's standard form lease previously approved by Beneficiary, with no substantial modifications thereto, without the prior written consent of Beneficiary, (e) to execute and deliver, at the request of Beneficiary, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific leases or otherwise, as Beneficiary shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Beneficiary, estoppel certificates, in form and substance satisfactory to Beneficiary, confirming the terms of such tenant's lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest



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therein, without the prior written consent of Beneficiary, and any of said acts, if done without the prior written consent of Beneficiary, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take actions described in clause (g) without Beneficiary's prior written consent (but with written notice thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

**COSTS, FEES AND EXPENSES.** Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Notes are placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

**FAILURE OF GRANTOR TO ACT.** If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the

same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Notes). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

**EVENT OF DEFAULT AND CROSS DEFAULT.** Any default by Grantor or the Other Borrowers in making any required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

**NOTICE OF DEFAULT.** A default in any payment required in the Notes or Other Note or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Notes or Other Note, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

Any other default under the Notes or Other Note or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty

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(30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the Non-Monetary Default is not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

**SUBSTITUTION OF TRUSTEE.** Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

**APPOINTMENT OF RECEIVER.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**FORECLOSURE.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the

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legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Notes), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."

D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Guarantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions,

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tenant improvements, capital maintenance, common area renovation, and expansion;

(iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;

(iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

(i) an audited balance sheet as of the last day of such fiscal year; and

(ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

(i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and

(ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "Financial Statements" and in the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate

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(as defined in the Notes) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Notes and Other Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Notes and Other Note). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Notes and Other Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic

Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.

Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost"

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(as hereinafter defined) and in an amount calculated as follows: (i) the "Loan Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing under the Other Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at

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10050 Bandlely Drive, Cupertino, CA 95014 or such other address in the United States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of

being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

MODIFICATION OF TERMS. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Notes, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

EXERCISE OF OPTIONS. Whenever, by the terms of this instrument, of the Notes or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

NATURE AND SUCCESSION OF AGREEMENTS. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Notes.

LEGAL ENFORCEABILITY. No provision of this instrument, the Notes or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

LIMITATION OF LIABILITY. Notwithstanding any provision contained herein to the contrary, the personal liability of Grantor shall be limited as provided in the Notes.

MISCELLANEOUS. Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to

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exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

SURETYSHIP WAIVERS. This instrument is intended to constitute the primary obligation of Grantor with respect to the Obligations, and Grantor is not intended to be a guarantor or surety or otherwise only secondarily liable with respect to matters covered hereby. However, if said Obligations, or any of them, should be determined to not be direct obligations but rather suretyship obligations, Grantor agrees as follows:

Without limiting or lessening the primary liability of Grantor hereunder, Beneficiary may, without notice to Grantor,

- (a) grant extensions of time or any other indulgences on the Indebtedness;
- (b) take, give up, modify, vary, exchange, renew or abstain from perfecting or taking advantage of any security for the Indebtedness; and
- (c) accept or make compositions or other arrangements with Other Borrowers under the Transaction Documents, realize on any security, and otherwise deal with Other Borrowers, other parties and any security as Beneficiary may deem expedient; and

All additional demands, presentments, notices of protest and dishonor, and notices of every kind and nature, including those of any action or no action on the part of Other Borrowers, Beneficiary or Grantor, are expressly waived by Grantor. Grantor hereby waives the right to require Beneficiary to proceed against the Other Borrowers or any other party or to proceed against or apply any security it may hold, waives the right to require Beneficiary to pursue any other remedy for the benefit of Grantor and agrees that Beneficiary may

proceed against Grantor without taking any action against any other party and without proceeding against or applying any security it may hold. Beneficiary may, at its election, foreclose upon any security held by it in one or more judicial or non-judicial sales, whether or not every aspect of such sale is commercially reasonable, without affecting or impairing the liability of Grantor, except to the extent the Indebtedness shall have been paid. Grantor waives any defense arising out of such an election, notwithstanding that such election may operate to impair or extinguish any right or remedy of Grantor against the Other Borrowers or any other security.

Grantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure of the Lien Instrument, has destroyed Grantor's right of subrogation and reimbursement against the Other Borrowers by the operation of Section 580d of the California Code of Civil Procedure or otherwise. Grantor waives all rights and defenses that Grantor may have because the Other Borrowers' debt is secured by real property. This means, among other things, that (i) Beneficiary may foreclose on the real and personal property pledged by Grantor without first



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foreclosing on any real or personal collateral pledged by the Other Borrowers, and (ii) if Beneficiary forecloses on any real property collateral pledged by the Other Borrowers: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) Beneficiary may collect from Grantor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Grantor may have to collect from Other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses Grantor may have because the Other Borrowers' debt is secured by real property. These rights and defenses waived by Grantor include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the foregoing, Grantor hereby waives any and all benefits that might otherwise be available to Grantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433.

SUBORDINATION. Notwithstanding anything to the contrary contained in this Deed of Trust (Second Priority), the terms and provisions of this Deed of Trust (Second Priority) and the lien created hereby shall be subject and subordinate to the terms and provisions of the first and prior lien instrument ("First Lien Instrument") of even date herewith executed and delivered by Grantor to Beneficiary to secure the Other Note, the lien created thereby and all modifications and supplements thereto. The First Lien Instrument and the indebtedness secured thereby, and any increases therein or renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Land prior and superior to the lien or charge of this Deed of Trust (Second Priority).

WAIVER OF JURY TRIAL. Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

CAPTIONS. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

GOVERNING LAW. This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California

REQUEST FOR NOTICE. Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

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MISSION WEST PROPERTIES, L.P., a Delaware limited partnership

By: Mission West Properties, Inc., a Maryland corporation, its general partner

By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

STATE OF California )
COUNTY OF Santa Clara )ss.

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature GW Shott
G.W. Shott
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"

(Mission West LP)

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997, in Book 698 of Maps, Page(s) 1 and 2.

Reserving therefrom an easement for ingress and over that portion of land designated and delineated as "C.O.E.- 30'" Reciprocal-Ingress, Egress- Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Parcel Two:

An easement for ingress and egress over those portion of Parcel 2 designated and delineated as "C.O.E.- 30' Reciprocal-Ingress, Egress-Easement" on that Parcel

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Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Parcel Three:

An easement for ingress and egress over those portion of Parcel 3 designated and delineated as "C.O.E-26'Reciprocal-Ingress, Egress-Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Assessors Parcel No: 244-13-015

EXHIBIT 10.37

California  
Loan No. C-332757  
RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT (FIRST PRIORITY)  
Mission West Properties, L. P. I

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January, 2003 between MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership, 10050 Bandlely Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

WITNESSETH, That Grantor, in consideration of the indebtedness herein mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of Santa Clara and City of Cupertino, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and

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- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto.
- D. All Grantor's right, title and interest in and to that certain 17.5' Ingress and Egress Easement Agreement No. 1 filed for record on April 13, 1979, in Book 439 of Maps, Pages 17 & 18, Santa Clara County, California.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- E. cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- F. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- G. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion of the property; and
- H. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such

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Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the Other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

ABSOLUTE ASSIGNMENT: The Absolute Assignment of Leases and Rents (First Priority) of even date herewith executed by Grantor in favor of Beneficiary.

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 23, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings, fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

GUARANTOR: Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

GUARANTEE: That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the Indebtedness or Obligations hereafter executed by any person.

INDEBTEDNESS: The principal of and all other amounts, payments and premiums due under the Note (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and

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all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Notes or Other Obligations.

LOAN DOCUMENTS: The Note, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Absolute Assignment, the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 3, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Guarantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Guarantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Notes and the Environmental Agreement.

NOTE: The Promissory Note of even date herewith executed by Grantor in the original principal amount of Twenty Nine Million Eight Hundred Eleven Thousand Three Hundred Sixty-Nine Dollars (\$29,811,369.00), payable to Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Note.

OBLIGATIONS: Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

OTHER BORROWERS: Collectively, Mission West Properties, L.P., a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

OTHER INDEBTEDNESS: The loans from Beneficiary to the Other Borrowers evidenced by the Other Notes.

OTHER NOTES: Those other Promissory Notes, each executed by one of the Other Borrowers and payable to the order of Beneficiary, which Promissory Notes are more particularly described in Schedule 1 of the Note.

OTHER OBLIGATIONS: As defined in the Granting Paragraph of this Deed of Trust.

PROPERTY: As defined in the Granting Paragraph of this Deed of Trust.

TRANSACTION: Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Note and Other Notes and secured by lien instruments and collateral documents from Grantor and the Other Borrowers creating liens and rights for the benefit of Beneficiary.

TRANSACTION DOCUMENTS: All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:

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PAYMENT OF DEBT. Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

OWNERSHIP. Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS. Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

TENANTS USING CHLORINATED SOLVENTS. Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

BUSINESS RESTRICTION REPRESENTATION AND WARRANTY. Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

INSURANCE. Grantor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement

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cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the Property;

- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds from an insured loss as a Facility are less than the Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the



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Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.

- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage (as hereinafter defined) of at least 1.50 will be produced from the leasing of not more than 226,950 square feet of space to former tenants or approved new tenants with leases satisfactory to Beneficiary for terms of at least five (5) years to commence not later than (30) days following completion of such restoration ("Approved Leases").
- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the

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Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to

Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
  - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;
  - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;
  - (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
  - (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
  - (v) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof

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(collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon

of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

(c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the

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Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

COSTS, FEES AND EXPENSES. Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Note is placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

FAILURE OF GRANTOR TO ACT. If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Note). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

EVENT OF DEFAULT. Any default by Grantor or the Other Borrowers in making any required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

NOTICE OF DEFAULT. A default in any payment required in the Note or Other Notes or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note or Other Notes, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

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Any other default under the Note or Other Notes or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the

Non-Monetary Default is not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

**SUBSTITUTION OF TRUSTEE.** Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

**APPOINTMENT OF RECEIVER.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**FORECLOSURE.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of

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Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning

purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."

D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Guarantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

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(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion;
- (iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;
- (iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

- (i) an audited balance sheet as of the last day of such fiscal year; and
- (ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

- (i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and
- (ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this

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section entitled "Financial Statements" and in

the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Note and Other Notes during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Note and Other Notes). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Note and Other Notes shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.



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Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost" (as hereinafter defined) and in an amount calculated as follows: (i) the "Loan Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing, under the Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately

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deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

MODIFICATION OF TERMS. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

EXERCISE OF OPTIONS. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

NATURE AND SUCCESSION OF AGREEMENTS. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Note.

LEGAL ENFORCEABILITY. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

LIMITATION OF LIABILITY. Notwithstanding any provision contained herein to the

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contrary, the personal liability of Grantor shall be limited as provided in the Note.

MISCELLANEOUS. Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

WAIVER OF JURY TRIAL. Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

CAPTIONS. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

GOVERNING LAW. This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

REQUEST FOR NOTICE. Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general  
partner

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By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

STATE OF California )
)ss.
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott
-----
G.W. Shott
-----
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"
(Mission West I)

PROPERTY ONE:

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 13, 1979, in Book 439 of Maps, page(s) 17 and 18.

Parcel Two:

A 17.5' ingress and egress Easement No. 1 (appurtenant to Parcel 1) situated at the Northwesterly corner of Parcel 2 and being shown on that certain Parcel Map recorded April 13, 1979 in Book 439 of Maps, pages 17 and 18, Santa Clara County Records.

Assessors Parcel No: 224-44-019

PROPERTY TWO:

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PARCEL ONE:

Parcel 3 as shown on that certain Parcel Map recorded August 9, 1974, in Book 344, Page 10, Santa Clara County.

Excepting therefrom the underground water rights, but without surface rights of entry, as granted to the City of Cupertino by instrument recorded January 3, 1975 in Book B233 of Official Records at Page 276.

PARCEL TWO:

An easement for ingress and egress and for the installation and maintenance of a public utilities over the Westerly 15 feet of Parcels 1 and 2 and the Easterly 15 feet of Parcel 4, as said Parcels are shown on that certain Parcel Map recorded August 9, 1974 in Book 344 at Page 10 of Maps, Records of Santa Clara County, California.

Assessors Parcel No: 326-10-046

EXHIBIT 10.38

California

Loan No. C-332757

RECORDING REQUESTED BY

American Title Company

632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.

720 East Wisconsin Avenue - Rm N16WC

Milwaukee, WI 53202

Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT and ASSIGNMENT OF LEASES AND RENTS (SECOND PRIORITY)

Mission West Properties, L. P. I

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January 2003 between MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership, 10050 Bandlely Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

WITNESSETH, That Grantor, in consideration of the indebtedness herein mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and

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convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of Santa Clara and City of Cupertino, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; the rents, issues and profits arising from the Land and improvements subject, however, to any right, power and authority given to Grantor to collect and apply such rents, issues and profits.
- D. All Grantor's right, title and interest in and to that certain 17.5' Ingress and Egress Easement Agreement No. 1 filed for record on April 13, 1979, in Book 439 of Maps, Pages 17 & 18, Santa Clara County, California.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- E. cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- F. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- G. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in

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each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion of the property; and

- H. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 28, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings, fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

GUARANTOR: Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

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**GUARANTEE:** That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the Indebtedness or

Obligations hereafter executed by any person.

**INDEBTEDNESS:** The principal of and all other amounts, payments and premiums due under the Notes (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Note or Other Obligations.

**LOAN DOCUMENTS:** The Notes, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 3, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Grantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Grantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Note and the Environmental Agreement.

**NOTES:** The Promissory Note of even date herewith executed by Mission West Properties, L.P., a Delaware limited partnership in the original principal amount of Twenty Eight Million Eight Hundred Sixty-Eight Thousand Six Hundred Fifty-Five Dollars (\$28,868,655.00), payable to Beneficiary or its order, and the Promissory Note of even date herewith executed by Mission West Properties, L.P. II, a Delaware limited partnership in the original principal amount of Forty One Million Three Hundred Nineteen Thousand Nine Hundred Seventy-Six Dollars (\$41,319,976.00), payable to Beneficiary or its order, in each with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Notes.

**OBLIGATIONS:** Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

**OTHER BORROWERS:** Collectively, Mission West Properties, L.P., a Delaware limited partnership, and Mission West Properties, L.P. II, a Delaware limited partnership.

**OTHER INDEBTEDNESS:** The loan from Beneficiary evidenced by the Other Note.

**OTHER NOTE:** The Promissory Note of even date herewith executed by Grantor in the original principal amount of Twenty Nine Million Eight Hundred Eleven Thousand Three Hundred Sixty-Nine Dollars (\$29,811,369.00), payable to



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Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Note.

OTHER OBLIGATIONS: As defined in the Granting Paragraph of this Deed of Trust.

PROPERTY: As defined in the Granting Paragraph of this Deed of Trust.

TRANSACTION: Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Notes and Other Note and secured by lien instruments and collateral documents from Grantor and the Other Borrowers creating liens and rights for the benefit of Beneficiary.

TRANSACTION DOCUMENTS: All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:

PAYMENT OF DEBT. Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

OWNERSHIP. Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS. Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

TENANTS USING CHLORINATED SOLVENTS. Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

BUSINESS RESTRICTION REPRESENTATION AND WARRANTY. Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing

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business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

INSURANCE. Grantor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the property;
- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

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Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds from an insured loss as a Facility are less than the Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Notes, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage (as hereinafter defined) of at least 1.50 will be produced from the

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leasing of not more than 226,950 square feet of space to former tenants or approved new tenants with leases satisfactory to Beneficiary for terms of at least five (5) years to commence not later than (30) days following completion of such restoration ("Approved Leases").

- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
  
- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
  - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;
  - (ii) the amount, if any, by which actual gross income during such fiscal

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period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;

- (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
- (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
- (v) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Notes, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Notes or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Notes or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

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(b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

(c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

LEASES. Grantor covenants with Beneficiary (a) to observe and perform all the obligations imposed upon the lessor under all leases and not to do or permit to be done anything to impair the same without Beneficiary's prior written consent, (b) not to collect any of the rent or other amounts due under any lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a lease), (c) not to execute any other assignment of rents, issues, or profits arising or accruing from any of the leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Grantor's standard form lease previously approved by Beneficiary, with no substantial modifications thereto, without the prior written consent of Beneficiary, (e) to execute and deliver, at the request of Beneficiary, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific leases or otherwise, as Beneficiary shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Beneficiary, estoppel certificates, in form and substance satisfactory to Beneficiary, confirming the terms of such tenant's lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest

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therein, without the prior written consent of Beneficiary, and any of said acts, if done without the prior written consent of Beneficiary, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take actions described in clause (g) without Beneficiary's prior written consent (but with written notice thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

**COSTS, FEES AND EXPENSES.** Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Notes are placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

**FAILURE OF GRANTOR TO ACT.** If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Notes). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

**EVENT OF DEFAULT AND CROSS DEFAULT.** Any default by Grantor or the Other Borrowers in making any required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

**NOTICE OF DEFAULT.** A default in any payment required in the Notes or Other Note or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Notes or Other Note, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

Any other default under the Notes or Other Note or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the Non-Monetary Default is

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not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

**SUBSTITUTION OF TRUSTEE.** Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

**APPOINTMENT OF RECEIVER.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**FORECLOSURE.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of

conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and



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attorneys' fees as herein provided, pay to Beneficiary or the legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Notes), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."

D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Grantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions,

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tenant improvements, capital maintenance, common area renovation, and expansion;

(iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;

(iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

(i) an audited balance sheet as of the last day of such fiscal year; and

(ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

(i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and

(ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "Financial Statements" and in the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate

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(as defined in the Notes) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Notes and Other Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Notes and Other Note). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Notes and Other Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic

Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.

Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost"

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(as hereinafter defined) and in an amount calculated as follows: (i) the "Loan Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing under the Other Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at

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10050 Bandlely Drive, Cupertino, CA 95014 or such other address in the United States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of

being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

**MODIFICATION OF TERMS.** Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Notes, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

**EXERCISE OF OPTIONS.** Whenever, by the terms of this instrument, of the Notes or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

**NATURE AND SUCCESSION OF AGREEMENTS.** Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Notes.

**LEGAL ENFORCEABILITY.** No provision of this instrument, the Notes or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

**LIMITATION OF LIABILITY.** Notwithstanding any provision contained herein to the contrary, the personal liability of Grantor shall be limited as provided in the Notes.

**MISCELLANEOUS.** Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to

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exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

SURETYSHIP WAIVERS. This instrument is intended to constitute the primary obligation of Grantor with respect to the Obligations, and Grantor is not intended to be a guarantor or surety or otherwise only secondarily liable with respect to matters covered hereby. However, if said Obligations, or any of them, should be determined to not be direct obligations but rather suretyship obligations, Grantor agrees as follows:

Without limiting or lessening the primary liability of Grantor hereunder, Beneficiary may, without notice to Grantor,

- (a) grant extensions of time or any other indulgences on the Indebtedness;
- (b) take, give up, modify, vary, exchange, renew or abstain from perfecting or taking advantage of any security for the Indebtedness; and
- (c) accept or make compositions or other arrangements with Other Borrowers under the Transaction Documents, realize on any security, and otherwise deal with Other Borrowers, other parties and any security as Beneficiary may deem expedient; and

All additional demands, presentments, notices of protest and dishonor, and notices of every kind and nature, including those of any action or no action on the part of Other Borrowers, Beneficiary or Grantor, are expressly waived by Grantor. Grantor hereby waives the right to require Beneficiary to proceed against the Other Borrowers or any other party or to proceed against or apply any security it may hold, waives the right to require Beneficiary to pursue any other remedy for the benefit of Grantor and agrees that Beneficiary may

proceed against Grantor without taking any action against any other party and without proceeding against or applying any security it may hold. Beneficiary may, at its election, foreclose upon any security held by it in one or more judicial or non-judicial sales, whether or not every aspect of such sale is commercially reasonable, without affecting or impairing the liability of Grantor, except to the extent the Indebtedness shall have been paid. Grantor waives any defense arising out of such an election, notwithstanding that such election may operate to impair or extinguish any right or remedy of Grantor against the Other Borrowers or any other security.

Grantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure of the Lien Instrument, has destroyed Grantor's right of subrogation and reimbursement against the Other Borrowers by the operation of Section 580d of the California Code of Civil Procedure or otherwise. Grantor waives all rights and defenses that Grantor may have because the Other Borrowers' debt is secured by real property. This means, among other things, that (i) Beneficiary may foreclose on the real and personal property pledged by Grantor without first

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foreclosing on any real or personal collateral pledged by the Other Borrowers, and (ii) if Beneficiary forecloses on any real property collateral pledged by the Other Borrowers: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) Beneficiary may collect from Grantor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Grantor may have to collect from Other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses Grantor may have because the Other Borrowers' debt is secured by real property. These rights and defenses waived by Grantor include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the foregoing, Grantor hereby waives any and all benefits that might otherwise be available to Grantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433.

SUBORDINATION. Notwithstanding anything to the contrary contained in this Deed of Trust (Second Priority), the terms and provisions of this Deed of Trust (Second Priority) and the lien created hereby shall be subject and subordinate to the terms and provisions of the first and prior lien instrument ("First Lien Instrument") of even date herewith executed and delivered by Grantor to Beneficiary to secure the Other Note, the lien created thereby and all modifications and supplements thereto. The First Lien Instrument and the indebtedness secured thereby, and any increases therein or renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Land prior and superior to the lien or charge of this Deed of Trust (Second Priority).

WAIVER OF JURY TRIAL. Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

CAPTIONS. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

GOVERNING LAW. This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California

REQUEST FOR NOTICE. Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

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MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership

By: Mission West Properties, Inc., a Maryland corporation, its general partner

By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

STATE OF California )
COUNTY OF Santa Clara )ss.

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott
G.W. Shott
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"
(Mission West I)

PROPERTY ONE:

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 13, 1979, in Book 439 of Maps, page(s) 17 and 18.

Parcel Two:

A 17.5' ingress and egress Easement No. 1 (appurtenant to Parcel 1) situated at the Northwesterly corner of Parcel 2 and being shown on that certain Parcel Map recorded April 13, 1979 in Book 439 of Maps, pages 17 and 18, Santa Clara County Records.



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Assessors Parcel No: 224-44-019

PROPERTY TWO:

PARCEL ONE:

Parcel 3 as shown on that certain Parcel Map recorded August 9, 1974, in Book 344, Page 10, Santa Clara County.

Excepting therefrom the underground water rights, but without surface rights of entry, as granted to the City of Cupertino by instrument recorded January 3, 1975 in Book B233 of Official Records at Page 276.

PARCEL TWO:

An easement for ingress and egress and for the installation and maintenance of a public utilities over the Westerly 15 feet of Parcels 1 and 2 and the Easterly 15 feet of Parcel 4, as said Parcels are shown on that certain Parcel Map recorded August 9, 1974 in Book 344 at Page 10 of Maps, Records of Santa Clara County, California.

Assessors Parcel No: 326-10-046

EXHIBIT 10.39

California  
Loan No. C-332757  
RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT (FIRST PRIORITY)  
Mission West Properties, L. P. II

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January, 2003 between MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership, 10050 Bandley Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

WITNESSETH, That Grantor, in consideration of the indebtedness herein

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mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of San Jose and City of Milpitas, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- D. cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- E. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- F. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion of the property; and
- G. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

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All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the Other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

ABSOLUTE ASSIGNMENT: The Absolute Assignment of Leases and Rents (First Priority) of even date herewith executed by Grantor in favor of Beneficiary.

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 23, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings, fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

GUARANTOR: Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

GUARANTEE: That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the

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Indebtedness or Obligations hereafter executed by any person.

**INDEBTEDNESS:** The principal of and all other amounts, payments and premiums due under the Note (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Notes or Other Obligations.

**LOAN DOCUMENTS:** The Note, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Absolute Assignment, the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 6, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Guarantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Guarantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Notes and the Environmental Agreement.

**NOTE:** The Promissory Note of even date herewith executed by Grantor in the original principal amount of Forty-One Million Three Hundred Nineteen Thousand Nine Hundred Seventy-Six Dollars (\$41,319,976.00), payable to Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Note.

**OBLIGATIONS:** Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

**OTHER BORROWERS:** Collectively, Mission West Properties, L.P. I, a Delaware limited partnership, and Mission West Properties, L.P., a Delaware limited partnership.

**OTHER INDEBTEDNESS:** The loans from Beneficiary to the Other Borrowers evidenced by the Other Notes.

**OTHER NOTES:** Those other Promissory Notes, each executed by one of the Other Borrowers and payable to the order of Beneficiary, which Promissory Notes are more particularly described in Schedule 1 of the Note.

**OTHER OBLIGATIONS:** As defined in the Granting Paragraph of this Deed of Trust.

**PROPERTY:** As defined in the Granting Paragraph of this Deed of Trust.

**TRANSACTION:** Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Note and Other Notes and secured by lien instruments and collateral documents from Grantor and

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the Other Borrowers creating liens and rights for the benefit of Beneficiary.

**TRANSACTION DOCUMENTS:** All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:

**PAYMENT OF DEBT.** Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

**OWNERSHIP.** Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

**MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS.** Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

**TENANTS USING CHLORINATED SOLVENTS.** Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

**BUSINESS RESTRICTION REPRESENTATION AND WARRANTY.** Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

**INSURANCE.** Grantor agrees to keep the Property insured for the protection of

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Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the Property;
- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost; however, Beneficiary has agreed that Grantor can self insure for flood coverage for the two facilities on McCandless Drive in Milpitas, California;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds from an insured loss as a Facility are less than the Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after

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the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.

- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default ----- provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage (as hereinafter defined) of at least 1.50 will be produced from the leasing of not more than 319,495 square feet of space to former tenants or approved new tenants with leases satisfactory to Beneficiary for terms of at least five (5) years to commence not later than (30) days following completion of such restoration ("Approved Leases").
- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be

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obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).

- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to

Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
- (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;
  - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;
  - (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
  - (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
  - (v) the amount, if any, by which total actual operating expenses,



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excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon

of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

(c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of

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transactions, merge into or consolidate with any other entity.

(d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

COSTS, FEES AND EXPENSES. Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Note is placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

FAILURE OF GRANTOR TO ACT. If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Note). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

EVENT OF DEFAULT. Any default by Grantor or the Other Borrowers in making any required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

NOTICE OF DEFAULT. A default in any payment required in the Note or Other Notes

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or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note or Other Notes, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

Any other default under the Note or Other Notes or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the

Non-Monetary Default is not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

**SUBSTITUTION OF TRUSTEE.** Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

**APPOINTMENT OF RECEIVER.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**FORECLOSURE.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to

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foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning

purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."

D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled

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(ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Guarantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion;
- (iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;
- (iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

- (i) an audited balance sheet as of the last day of such fiscal year; and
- (ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

- (i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and
- (ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above,

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shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "Financial Statements" and in

the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Note and Other Notes during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Note and Other Notes). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Note and Other Notes shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

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(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.

Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost" (as hereinafter defined) and in an amount calculated as follows: (i) the "Loan Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing, under the Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

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DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

MODIFICATION OF TERMS. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

EXERCISE OF OPTIONS. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

NATURE AND SUCCESSION OF AGREEMENTS. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Note.

LEGAL ENFORCEABILITY. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in



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excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

**LIMITATION OF LIABILITY.** Notwithstanding any provision contained herein to the contrary, the personal liability of Grantor shall be limited as provided in the Note.

**MISCELLANEOUS.** Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

**WAIVER OF JURY TRIAL.** Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

**CAPTIONS.** The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

**GOVERNING LAW.** This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

**REQUEST FOR NOTICE.** Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

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IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership

By: Mission West Properties, Inc., a Maryland corporation, its general partner

By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

STATE OF California )
)ss.
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature GW Shott
-----
G.W. Shott
-----
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"
(Mission West II)

PROPERTY ONE:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel 2, as shown on the Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on November 26, 1979, in Book 455 of Maps, Page(s) 1 and 2.

Assessors Parcel No: 706-09-023

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PROPERTY TWO:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on May 22, 1980, in Book 463 of Maps, Page(s) 43 and 44.

Assessors Parcel No: 706-02-034

PROPERTY THREE:

Parcel 7, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-33-092

PROPERTY FOUR:

Parcel 3 as shown on that Parcel Map filed for recorded in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-41-017 & 086-41-018

EXHIBIT 10.40

California  
Loan No. C-332757  
RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST and SECURITY AGREEMENT and ASSIGNMENT OF LEASES AND RENTS (SECOND PRIORITY)

Mission West Properties, L. P. II

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 3rd day of January, 2003 between MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership, 10050 Bandley Drive, Cupertino, CA 95014, herein (said Grantor/Trustor, whether one or more in number) called "Grantor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Trustee", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Beneficiary":

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WITNESSETH, That Grantor, in consideration of the indebtedness herein mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto Trustee, in trust, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of San Jose and City of Milpitas, Santa Clara County, California described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges; and
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Grantor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; the rents, issues and profits arising from the Land and improvements subject, however, to any right, power and authority given to Grantor to collect and apply such rents, issues and profits.

Grantor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Grantor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's present and hereafter acquired right, title and interest in and to the Property and any and all

- D. cash and other funds now or at any time hereafter deposited by or for Grantor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- E. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- F. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Grantor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion

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of the property; and

- G. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Grantor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Grantor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD THE SAME UNTO TRUSTEE FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Grantor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Grantor's obligations (the "Other Obligations") under or pursuant to (a) the Environmental Indemnity Agreement of even date herewith executed by Grantor, Guarantor and the other Borrowers in favor of Beneficiary ("Environmental Agreement"), (b) the Other Indebtedness or (c) any Other Note shall be secured by the lien of this Deed of Trust.

FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the County of the State in which the real estate described in Exhibit A is located, with respect to any and all fixtures included within the term "Property" and "fixtures" under this Deed of Trust and to any goods or other personal property that are now or hereafter become a part of the Property as fixtures.

### DEFINITIONS

CERTAIN DEFINED TERMS: As used in this Deed of Trust the following terms shall have the following meanings:

COMMITMENT: The letter from Beneficiary dated November 18, 2002 accepting, subject to modifications stated in the letter, the Loan application executed by Grantor and the Other Borrowers, dated October 31, 2002, which acceptance and modification was agreed to by Grantor and the Other Borrowers on November 28, 2002.

ENVIRONMENTAL AGREEMENT: As defined in the Securing paragraph of this Deed of Trust.

FACILITY: A real property (including, without limitation, all buildings, fixtures and other improvements located thereon) now or hereafter serving as security for the loans which comprise the Transaction. Attached hereto as Exhibit B is a list of all Facilities as of the date hereof.

GUARANTOR: Mission West Properties, Inc., a Maryland corporation, and each other person hereafter guaranteeing any portion of the Indebtedness or Obligations.

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**GUARANTEE:** That certain Guarantee of Recourse Obligations dated as of even date herewith executed by Mission West Properties, Inc., a Maryland corporation, in favor of Beneficiary, and any other guarantee of any portion of the Indebtedness or

Obligations hereafter executed by any person.

**INDEBTEDNESS:** The principal of and all other amounts, payments and premiums due under the Notes (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Grantor to Beneficiary and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Indebtedness, Other Note or Other Obligations.

**LOAN DOCUMENTS:** The Notes, this Deed of Trust, the Commitment (as it relates to the Indebtedness), the Guarantee (as it relates to the Indebtedness), that certain Certification of Borrowers and Carl E. Berg ("Certification") of even date herewith (as it relates to the Indebtedness), that certain Limited Partnership Supplement dated January 6, 2003, any other supplements and authorizations required by Beneficiary, the Fraudulent Conveyance Indemnity Agreement from Grantor (as it relates to the Indebtedness), Certificate Regarding Distribution of Loan Proceeds and Indemnity Agreement among Grantor, Grantor and the Other Borrowers (as it relates to the Indebtedness), and Contribution and Reimbursement Agreement among Grantor and the Other Borrowers (as it relates to the Indebtedness), and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations, with the exception of the Other Note and the Environmental Agreement.

**NOTES:** The Promissory Note of even date herewith executed by Mission West Properties, L.P. I, a Delaware limited partnership in the original principal amount of Twenty Nine Million Eight Hundred Eleven Thousand Three Hundred Sixty-Nine Dollars (\$29,811,369.00), payable to Beneficiary or its order, and the Promissory Note of even date herewith executed by Mission West Properties, L.P., a Delaware limited partnership in the original principal amount of Twenty Eight Million Eight Hundred Sixty-Eight Thousand Six Hundred Fifty-Five Dollars (\$28,868,655.00), payable to Beneficiary or its order, in each with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or extensions of such Promissory Notes.

**OBLIGATIONS:** Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Grantor to or due to Beneficiary under and/or as set forth in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Grantor to each and every other person relating to the Property, exclusive of the Other Obligations.

**OTHER BORROWERS:** Collectively, Mission West Properties, L.P. I, a Delaware limited partnership, and Mission West Properties, L.P., a Delaware limited partnership.

**OTHER INDEBTEDNESS:** The loan from Beneficiary evidenced by the Other Note.

**OTHER NOTE:** The Promissory Note of even date herewith executed by Grantor in the original principal amount of Forty One Million Three Hundred Nineteen Thousand Nine Hundred Seventy-Six Dollars (\$41,319,976.00), payable to Beneficiary or its order, with final maturity no later than February 1, 2013 and with interest as therein expressed, and all modifications, renewals or

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extensions of such Promissory Note.

OTHER OBLIGATIONS: As defined in the Granting Paragraph of this Deed of Trust.

PROPERTY: As defined in the Granting Paragraph of this Deed of Trust.

Transaction: Loans in the aggregate principal amount of One Hundred Million Dollars (\$100,000,000.00), which are made by the Beneficiary to the Grantor and the Other Borrowers on the date hereof, and are evidenced by the Notes and Other Note and secured by lien instruments and collateral documents from Grantor and the Other Borrowers creating liens and rights for the benefit of Beneficiary.

TRANSACTION DOCUMENTS: All documents evidencing, securing, guaranteeing, or related to the payment of amounts owed Beneficiary in connection with the Transaction, with the exception of the Environmental Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR COVENANTS AND AGREES:

PAYMENT OF DEBT. Grantor agrees to pay the Indebtedness hereby secured promptly and in full compliance with the terms of the Loan Documents.

OWNERSHIP. Grantor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Beneficiary. Grantor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

MAINTENANCE OF PROPERTY AND COMPLIANCE WITH LAWS. Grantor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Grantor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

TENANTS USING CHLORINATED SOLVENTS. Grantor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Notwithstanding the above, a tenant's use and storage of a product which contains no more than twelve (12) ounces of chlorinated solvents shall not violate this prohibition if, and only if, (i) each tenant's use, storage, and the ultimate disposal, of said solvents is at all times in compliance with applicable law; (ii) said solvents are acquired and kept in prepackaged containers; and (iii) each tenant keeps no more than one (1) prepackaged container of said solvents on the Property.

BUSINESS RESTRICTION REPRESENTATION AND WARRANTY. Grantor represents and warrants that Grantor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC")

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of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) are not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

INSURANCE. Grantor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents and shall provide Beneficiary with evidence of, and shall maintain, the following types of insurance in amounts and form and with companies all satisfactory to Beneficiary:

- (A) All risk property insurance with a deductible of not greater than \$100,000.00, including Demolition and Increased Cost of Construction (DICC) coverage equal to a minimum of 5% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk property insurance policy contains a terrorism exclusion, then Grantor shall purchase a separate insurance policy acceptable to Beneficiary for terrorism coverage. Notwithstanding the foregoing, however, Grantor shall only be required to carry such insurance coverage for acts of terrorism with a deductible acceptable to Lender if such coverage is customarily required by other institutional lenders on loans secured by property similar to the property;
- (B) Loss of rents insurance equal to twelve months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;
- (C) Flood insurance, if the Property is located in a flood plain (as that term is used in the National Flood Insurance Program) in an amount not less than 25% of the estimated replacement cost; however, Beneficiary has agreed that Grantor can self insure for flood coverage for the two Facilities on McCandless Drive in Milpitas, California;
- (D) Grantor's own commercial general liability insurance policy with Beneficiary, and Beneficiary's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and
- (E) Other insurance as required by Beneficiary.

Grantor agrees to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Beneficiary, which certificates shall provide at least thirty (30) days notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder.

All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness,



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no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds from an insured loss as a Facility are less than the Allocated Loan Amount for the Facility (as shown in Exhibit B attached hereto) and if the casualty occurs prior to the last three years of the term of the Notes, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Grantor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Grantor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Grantor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Transaction Documents and no default with respect to which Beneficiary shall have given Grantor or Other Borrowers notice pursuant to the Notice of Default provision herein or in the documents related to other loans comprising the Transaction. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Grantor shall obtain for the benefit of Beneficiary an endorsement to Beneficiary's title insurance policy insuring Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Grantor shall pay all costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage

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(as hereinafter defined) of at least 1.50 will be produced from the leasing of not more than 319,495 square feet of space to former tenants or approved new tenants with leases satisfactory to Beneficiary for terms of at least five (5) years to commence not later than (30) days following completion of such restoration ("Approved Leases").

- (j) All leases in effect at the time of the casualty with tenants who have entered into Beneficiary's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
  
- (k) Without limiting the Earthquake provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Grantor shall have supplied Beneficiary with a "Seismic Risk Estimate" (in accordance with the Earthquake provisions herein) which show that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one year of the earthquake, (b) prior to commencement of the restoration, Grantor shall have committed in writing to Beneficiary that Grantor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Grantor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service (as hereinafter defined) for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by a first mortgage lien on any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
  - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$1.80 per square foot per annum;

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- (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 85% of the gross leasable area in the Property;
- (iii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
- (iv) the amount, if any, by which the actual real estate taxes are less than \$2.10 per square foot per annum; and
- (v) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

CONDEMNATION. Grantor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds related to a Facility are less than the Allocated Loan Amount for the Facility and such damage or Taking occurs prior to the last three years of the term of the Notes, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Facility to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "Insurance" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Grantor, but such application or release shall not cure or waive any default under any of the Loan Documents.

TAXES AND SPECIAL ASSESSMENTS. Grantor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Notes or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Notes or the Indebtedness, and to procure and deliver to Beneficiary within 30 days after Beneficiary shall have given a written request to Grantor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Grantor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

PERSONAL PROPERTY. With respect to the Personal Property, Grantor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Grantor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

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(b) Except as otherwise provided above, Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.

(c) Grantor is a limited partnership organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Grantor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Beneficiary, Grantor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Grantor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor shall also, at Grantor's expense, take any and all other action requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Grantor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

OTHER LIENS. Grantor agrees to keep the Property or any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument other than liens created by the Transaction Documents. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby or (ii) assignment or pledge by Grantor of its revocable license to collect, use and enjoy rents and profits from the Property, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Grantor may, after the Loan Closing Date (as defined in the Commitment), proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary.

LEASES. Grantor covenants with Beneficiary (a) to observe and perform all the obligations imposed upon the lessor under all leases and not to do or permit to be done anything to impair the same without Beneficiary's prior written consent, (b) not to collect any of the rent or other amounts due under any lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a lease), (c) not to execute any other assignment of rents, issues, or profits arising or accruing from any of the leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Grantor's standard form lease previously approved by Beneficiary, with no substantial modifications thereto, without the prior written consent of Beneficiary, (e) to execute and deliver, at the request of Beneficiary, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific leases or otherwise, as Beneficiary shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Beneficiary, estoppel certificates, in form and substance satisfactory to Beneficiary, confirming the terms of such tenant's lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest

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therein, without the prior written consent of Beneficiary, and any of said acts, if done without the prior written consent of Beneficiary, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take actions described in clause (g) without Beneficiary's prior written consent (but with written notice thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

**COSTS, FEES AND EXPENSES.** Grantor agrees to pay all costs, fees and expenses of this trust; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Notes are placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

**FAILURE OF GRANTOR TO ACT.** If Grantor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation so to do, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Grantor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Notes). All sums so expended by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

**EVENT OF DEFAULT AND CROSS DEFAULT.** Any default by Grantor or the Other Borrowers in making any required payment of the Indebtedness or the Other Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Transaction Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

**NOTICE OF DEFAULT.** A default in any payment required in the Notes or Other Note or any other Transaction Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Notes or Other Note, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) business days after the date on which Beneficiary shall have given such notice to Grantor and Other Borrowers.

Any other default under the Notes or Other Note or under any other Transaction Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Non-Monetary Default to Grantor and the Other Borrowers and Grantor and the Other Borrowers shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Grantor and the Other Borrowers (or, if the Non-Monetary Default is

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not curable within such 30-day period, Grantor and the Other Borrowers shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note and Other Notes).

**SUBSTITUTION OF TRUSTEE.** Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee by written appointment delivered to such new or substitute Trustee without notice to Grantor, without notice to, or the resignation or withdrawal by, the existing Trustee and without recordation of such written appointment unless notice or recordation is required by the laws of the jurisdiction in which the Property is located. Upon delivery of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

**APPOINTMENT OF RECEIVER.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**FORECLOSURE.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Grantor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of

conveyance, all as then may be provided by law; and Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the legal holder of

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the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Notes), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Grantor, the heirs, successors and assigns of Grantor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Grantor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

PROHIBITION ON TRANSFER. A. The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Grantor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Grantor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Grantor shall constitute a default hereunder.

B. For purposes of this instrument, a "Change in the Proportionate Ownership" means any transfer which results in Carl E. Berg and/or Permitted Transferee's (as defined below) collectively, owning less than 49% of Carl E. Berg's direct and indirect ownership interest in Grantor (existing on the date of initial advance of funds, as represented in the Certification) without Beneficiary's approval.

C. Notwithstanding the above, a transfer of Carl E. Berg's ownership in Grantor (i) to and among the Berg Family (as hereinafter defined) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg, and (ii) to any entity owned and controlled (ownership and voting interest in excess of 50% by the Berg Family) shall be permitted for estate planning purposes or upon the death or incompetency of Carl E. Berg. A person or entity holding a direct or indirect ownership interest by virtue of a transfer described in this subpart C. is a "Permitted Transferee."

D. For purposes hereof, the "Berg Family" shall mean Carl E. Berg, his spouse, his descendants and their spouses, Clyde J. Berg, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

E. A conversion of all or part of the ownership interest of Carl E. Berg from limited partnership units ("L.P. Units") of Grantor to common shares of Grantor shall be permitted provided Carl E. Berg's combined interest in common shares and L.P. Units for Grantor satisfies the threshold established in subpart B. this provision.

FINANCIAL STATEMENTS. Grantor agrees to furnish to Beneficiary:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of Grantor (the "Property Financial Statements Due Date"):

- (i) an unaudited balance sheet as of the last day of such fiscal year;
- (ii) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and

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expansion;

(iii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;

(iv) an operating budget for the current fiscal year; and

(B) the following financial statements for Grantor and Guarantor within 90 days after the close of each fiscal year of Grantor and Guarantor, respectively (the "Grantor/Guarantor Financial Statements Due Date")

(i) an audited balance sheet as of the last day of such fiscal year; and

(ii) an audited statement of cash flows for such fiscal year; and

(C) to the extent the following tenants are not publicly traded, Grantor will use its best efforts to obtain the following financial statements for Fujitsu (formerly known as Amdahl), Apple, JDS Uniphase and Nortel Networks within 90 days after the close of each fiscal year of each respective tenant (the "Tenant Financial Statements Due Date"):

(i) an audited, or unaudited if audited is not available, balance sheet as of the last day of such fiscal year; and

(ii) an audited, or unaudited if audited is not available, statement of cash flows for such fiscal period.

The Property Financial Statements Due Date, the Grantor/Guarantors Financial Statements Due Date, and the Tenant Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (C)(i) and (C)(ii) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" accounting firm or, alternatively, a certified public accountant satisfactory to Beneficiary. All unaudited financial statements for Grantor, Property, and Guarantor shall contain a certification by the managing general partner of Grantor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Grantor.

Grantor acknowledges that Beneficiary requires the financial statements to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "Financial Statements" and in the section entitled "Taxes and Special Assessments", within 30 days after Beneficiary shall have given written notice to Grantor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness and the Other Notes shall as of the applicable Financial Statements Due Date or the date such proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Notes) plus one percent (1%) per annum (the "Increased



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Rate"); and

(y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Grantor's expense, and Grantor agrees that it will, upon request, promptly make Grantor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Grantor agrees can be specifically enforced by Beneficiary).

The amount of the payments due under the Notes and Other Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Notes and Other Note). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to Beneficiary as required. Commencing on the date on which the financial statements and proof of payment of property taxes and assessments are received by Beneficiary, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Notes and Other Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

**PROPERTY MANAGEMENT.** The management company for the Property shall be satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument. Beneficiary shall be reasonable in giving its approval, and Beneficiary may require that the new management company, by itself or through its manager, have good character and reputation, and demonstrated ability and experience in the operation and leasing of at least one million square feet of property similar to the Property.

**EARTHQUAKE.** If the Property is damaged by an earthquake during the term of the Indebtedness:

(A) Beneficiary may require a new "Seismic Risk Estimate" (as hereinafter defined) to be performed at Grantor's expense, and

(B) Grantor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) the performance of a subsequent Seismic Risk Estimate verifying that the Property meets "Minimum Seismic

Criteria" (as hereinafter defined). Such work shall be commenced and completed as soon as possible and in any event within one year of the earthquake.

Without limiting the Grantor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Grantor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as hereinafter defined).

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than 5% of the "Replacement Cost" (as hereinafter defined) and in an amount calculated as follows: (i) the "Loan

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Amount" (as hereinafter defined) plus (ii) the "Specified Loss Dollar Amount" (as defined below) plus (iii) 5% of the Replacement Cost minus (iv) 90% of the "Market Value" (as hereinafter defined).

As used herein, "Loan Amount" shall mean the total principal amount advanced at closing under the Other Note.

As used herein, "Loan Plus Specified Loss" means the sum of the Loan Amount and the Specified Loss Dollar Amount (as hereinafter defined).

As used herein, "Market Value" means the estimated fair market value of the Property, determined by Beneficiary in its sole discretion, at the time a Seismic Risk Estimate is performed.

As used herein, "Minimum Seismic Criteria" means that both the Specified Loss Percentage (as hereinafter defined) for the Property is less than or equal to 30% and the Loan Plus Specified Loss is less than or equal to 90% of the Market Value.

As used herein, "Model" means a computer based seismic model selected by Beneficiary, currently the Insurance and Investment Risk Assessment System ("IRAS") program by Risk Management Solutions ("RMS").

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the Improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Seismic Risk Estimate" refers to the results of a seismic risk estimate for the Property produced by the Model. Grantor agrees that it will not rely for its own evaluation purposes on the Seismic Risk Estimate produced by or for Beneficiary.

As used herein, "Specified Loss Dollar Amount" means the "Specified Loss Percentage" (as hereinafter defined) multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by the Model of the earthquake damage to the Property, expressed as a percentage of Replacement Cost. Beneficiary's parameters for the Model are based on a 90% probability that the level of damage predicted will not be exceeded in an earthquake with an expected 475 year return period.

DEPOSITS BY GRANTOR. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Beneficiary shall thence forth have the option to require Grantor to deposit funds with Beneficiary or in an account satisfactory to Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, or in such other account, shall be insufficient to pay any of said expenses, Grantor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness.

NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Grantor by certified mail or reputable courier service shall be addressed to Grantor at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United

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States of America as Grantor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of

being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

MODIFICATION OF TERMS. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Notes, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

EXERCISE OF OPTIONS. Whenever, by the terms of this instrument, of the Notes or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

NATURE AND SUCCESSION OF AGREEMENTS. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Notes.

LEGAL ENFORCEABILITY. No provision of this instrument, the Notes or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Grantor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

LIMITATION OF LIABILITY. Notwithstanding any provision contained herein to the contrary, the personal liability of Grantor shall be limited as provided in the Notes.

MISCELLANEOUS. Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Beneficiary of payment

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of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Grantor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

SURETYSHIP WAIVERS. This instrument is intended to constitute the primary obligation of Grantor with respect to the Obligations, and Grantor is not intended to be a guarantor or surety or otherwise only secondarily liable with respect to matters covered hereby. However, if said Obligations, or any of them, should be determined to not be direct obligations but rather suretyship obligations, Grantor agrees as follows:

Without limiting or lessening the primary liability of Grantor hereunder, Beneficiary may, without notice to Grantor,

- (a) grant extensions of time or any other indulgences on the Indebtedness;
- (b) take, give up, modify, vary, exchange, renew or abstain from perfecting or taking advantage of any security for the Indebtedness; and
- (c) accept or make compositions or other arrangements with Other Borrowers under the Transaction Documents, realize on any security, and otherwise deal with Other Borrowers, other parties and any security as Beneficiary may deem expedient; and

All additional demands, presentments, notices of protest and dishonor, and notices of every kind and nature, including those of any action or no action on the part of Other Borrowers, Beneficiary or Grantor, are expressly waived by Grantor. Grantor hereby waives the right to require Beneficiary to proceed against the Other Borrowers or any other party or to proceed against or apply any security it may hold, waives the right to require Beneficiary to pursue any other remedy for the benefit of Grantor and agrees that Beneficiary may

proceed against Grantor without taking any action against any other party and without proceeding against or applying any security it may hold. Beneficiary may, at its election, foreclose upon any security held by it in one or more judicial or non-judicial sales, whether or not every aspect of such sale is commercially reasonable, without affecting or impairing the liability of Grantor, except to the extent the Indebtedness shall have been paid. Grantor waives any defense arising out of such an election, notwithstanding that such election may operate to impair or extinguish any right or remedy of Grantor against the Other Borrowers or any other security.

Grantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure of the Lien Instrument, has destroyed Grantor's right of subrogation and reimbursement against the Other Borrowers by the operation of Section 580d of the California Code of Civil Procedure or otherwise. Grantor waives all rights and defenses that Grantor may have because the Other Borrowers' debt is secured by real property. This means, among other things, that (i) Beneficiary may foreclose on the real and personal property pledged by Grantor without first foreclosing on any real or personal collateral pledged by the Other Borrowers,

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and (ii) if Beneficiary forecloses on any real property collateral pledged by the Other Borrowers: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) Beneficiary may collect from Grantor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Grantor may have to collect from Other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses Grantor may have because the Other Borrowers' debt is secured by real property. These rights and defenses waived by Grantor include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the foregoing, Grantor hereby waives any and all benefits that might otherwise be available to Grantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433.

SUBORDINATION. Notwithstanding anything to the contrary contained in this Deed of Trust (Second Priority), the terms and provisions of this Deed of Trust (Second Priority) and the lien created hereby shall be subject and subordinate to the terms and provisions of the first and prior lien instrument ("First Lien Instrument") of even date herewith executed and delivered by Grantor to Beneficiary to secure the Other Note, the lien created thereby and all modifications and supplements thereto. The First Lien Instrument and the indebtedness secured thereby, and any increases therein or renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Land prior and superior to the lien or charge of this Deed of Trust (Second Priority).

WAIVER OF JURY TRIAL. Grantor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Grantor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

CAPTIONS. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

GOVERNING LAW. This instrument shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this instrument shall be brought in a state or federal court located in the State of California, and Beneficiary and Grantor hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California

REQUEST FOR NOTICE. Pursuant to California Government Code Section 27321.5(b), Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this instrument be mailed to Grantor at the address set forth herein.

IN WITNESS WHEREOF, this instrument has been executed by the Grantor as of the day and year first above written.

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MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership

By: Mission West Properties, Inc., a Maryland corporation, its general partner

By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

STATE OF California )
COUNTY OF Santa Clara )ss.

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott
G.W. Shott
Name (typed or printed)

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"
(Mission West II)

PROPERTY ONE:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel 2, as shown on the Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on November 26, 1979, in Book 455 of Maps, Page(s) 1 and 2.

Assessors Parcel No: 706-09-023

PROPERTY TWO:

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Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on May 22, 1980, in Book 463 of Maps, Page(s) 43 and 44.

Assessors Parcel No: 706-02-034

PROPERTY THREE:

Parcel 7, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-33-092

PROPERTY FOUR:

Parcel 3 as shown on that Parcel Map filed for recorded in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-41-017 & 086-41-018

EXHIBIT 10.41

RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn  
Loan No. C-332757                   SPACE ABOVE THIS LINE FOR RECORDER'S USE  
-----

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (FIRST PRIORITY)  
Mission West Properties, L.P.  
(With License Back)

THIS Absolute Assignment of Leases and Rents (First Priority) (this "Assignment") is made as of the 3rd day of January, 2003, by and between MISSION WEST PROPERTIES, L.P., a Delaware limited partnership, whose mailing address is 10050 Bandley Drive, Cupertino, CA 95014, (herein called "Borrower") and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is c/o Real Estate Department, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (herein called "Lender").

W I T N E S S E T H

FOR AND IN CONSIDERATION of the indebtedness hereinafter described, Borrower has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto Lender, its successors and assigns forever, all and singular the property hereinafter described (collectively, the

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"Security"), to wit:

(a) All rents, issues and profits arising from or related to the land, situated in the City of San Jose, County of Santa Clara and State of California and described in Exhibit "A" attached hereto and fully incorporated herein by reference for all purposes and all improvements and any other property, whether real, personal or mixed, located thereon (which land, improvements and other property are hereinafter collectively called the "Property");

(b) All of Borrower's rights, titles, interests and privileges, as lessor, in the leases now existing or hereafter made affecting the Property, whether or not made by Borrower and as the same may have been, or may from time to time hereafter be, modified, extended and renewed (hereinafter collectively called the "Leases"), including without limitation that certain lease dated February 3, 1999 and amended on October 7, 1999, between Borrower, as landlord, and E-Tek Dynamics, Inc., as tenant (the interest of the latter is now held by JDS Uniphase Corporation);

(c) All tenant security deposits and other amounts due and becoming due under the Leases;

(d) All guarantees of the Leases, including guarantees of tenant performance;

(e) All insurance proceeds, including rental loss coverage and business interruption coverage with respect to the Leases; and

(f) All judgments and settlements of claims in favor of Borrower (including condemnation proceeds, if any) and all rights, claims and causes of action under any court proceeding, including without limitation any bankruptcy, reorganization or insolvency proceeding, or otherwise arising from the Leases.

TO HAVE AND TO HOLD the Security unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its heirs, legal representatives, successors and assigns, to warrant and forever defend the Security unto Lender, its successors and assigns forever against the claim or claims of all persons whomsoever claiming the same or any part thereof.

### ARTICLE I DEFINITIONS

1.01 TERMS DEFINED ABOVE. As used in this Assignment, the terms "Borrower", "Leases", "Lender", "Property", and "Security" shall have the respective meanings indicated above.

1.02 CERTAIN DEFINITIONS. The following terms shall have the meanings assigned to them below whenever they are used in this Assignment, unless the context clearly otherwise requires. Except where the context otherwise requires, words in the singular form shall include the plural and vice versa.

"Event of Default" shall mean any Event of Default as defined in the Lien Instrument.

"Lien Instrument" shall mean that certain Deed of Trust and Security Agreement (First Priority) of even date herewith, executed by Borrower and granting a lien on the Property to a trustee for the benefit of Lender, as such instrument may be amended, renewed and restated from time to time.



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"Loan Commitment", "Loan Documents", "Note" and "Obligations" shall each have the meaning set forth in the Lien Instrument.

### ARTICLE II ASSIGNMENT

2.01 ABSOLUTE ASSIGNMENT. This Assignment is, and is intended to be, an absolute and present assignment of the Security from Borrower to Lender with a concurrent license back to the Borrower (which license is subject to revocation upon the occurrence of an Event of Default as herein provided) and is not intended as merely the granting of a security interest relating to the Obligations.

2.02 LICENSE. Borrower is hereby granted the license to manage and control the Security and to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, issues and profits from the Property and to retain, use and enjoy the same. The license created and granted hereby shall be revocable upon the terms and conditions contained herein.

2.03 REVOCATION OF LICENSE. Immediately upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option and without regard to the adequacy of the security for the Obligations, either by an authorized representative or agent, with or without bringing or instituting any judicial or other action or proceeding, or by a receiver appointed by a court, immediately revoke the license granted in Section 2.02, as evidenced by a written notice to said effect given to Borrower, and further, at Lender's option (without any obligation to do so), take possession of the Property and the Security and have, hold, manage, lease and operate the Property and the Security on such terms and for such period of time as Lender may deem proper, and, in addition, either with or without taking possession of the Property, demand, sue for or otherwise collect and receive all rents, issues and profits from the Property, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Lender in its sole discretion, and to apply (in such order and priority as Lender shall determine in its sole discretion) such rents, issues and profits to the payment of:

(a) all expenses of (i) managing the Property, including without implied limitation, the salaries, fees and wages of a managing agent and such other employees as Lender may in its sole discretion deem necessary or desirable, (ii) operating and maintaining the Property, including without implied limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which Lender may in its sole discretion deem necessary or desirable, (iii) the cost of any and all alterations, renovations, repairs or replacements of or to the Property, and (iv) any and all expenses incident to taking and retaining possession of the Property and the Security; and

(b) the Obligations.

The exercise by Lender of the rights granted it in this Section 2.03, and the collection and receipt of rents, issues and profits and the application thereof as herein provided, shall not be considered a waiver of any Event of Default.

2.04 TRUST FUNDS. All monies or funds covered by this Assignment paid to, or for the benefit of, Borrower after any default are hereby declared, and shall be deemed to be, trust funds in the hands of Borrower for the sole benefit of Lender, until all defaults have been cured or waived or the Obligations have been paid and performed in full. Borrower, or any officer, director, representative or agent thereof receiving such trust funds or having control or

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direction of same, is hereby made and shall be construed to be a trustee

of such trust funds so received or under its control and direction, and such person shall be under a strict obligation and duty should such persons receive or constructively receive trust funds to (1) remit any and all such trust funds to Lender within twenty-four (24) hours of receipt, upon demand therefor by Lender or (2) to apply such trust funds only to Obligations then due or the operating expenses of the Property.

### ARTICLE III COVENANTS, REPRESENTATIONS AND WARRANTIES

3.01 LIABILITY. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property or the Security after an Event of Default, except for acts constituting gross negligence or willful misconduct. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any Lease, and Borrower shall and does hereby indemnify Lender for, and save and hold Lender harmless from, any and all liability, loss or damages, except so much thereof as shall result from the gross negligence or willful misconduct of Lender, which may or might be incurred under any Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, including without implied limitation, any claims by any tenants of credit for rents for any period paid to and received by Borrower but not delivered to Lender. Should Lender incur any such liability under any Lease in defense of any such claim or demand, the amount thereof, including without implied limitation all costs, expenses and attorneys' fees, shall be added to the principal of the Note and Borrower shall reimburse Lender therefor immediately upon demand. This Assignment shall not operate to place responsibility upon Lender for the control, care, upkeep, management, operation or repair of the Property and the Security or for the carrying out of any of the terms and conditions of any Lease; nor shall this Assignment operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, for any dangerous or defective condition of the Property or for any negligence in the control, care, upkeep, operation, management or repair of the Property resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person whatsoever.

3.02 TERMINATION. Upon payment and performance of the Obligations in full, this Assignment shall become null and void and of no further legal force or effect, but the affidavit, certificate, letter or statement of any officer, agent, authorized representative or attorney of Lender showing any part of the Obligations remaining unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment upon which any person may, and is hereby authorized to, rely. Borrower hereby authorizes and directs all tenants under the Leases, all guarantors of Leases, all insurers providing rental loss or business interruption insurance with respect to the Property, all governmental authorities and all other occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that an Event of Default exists, to pay over to Lender all rents and other amounts due and to become due under the Leases and under guaranties of the Leases and all other issues and profits from the Property and to continue so to do until otherwise notified in writing by Lender. This right may be exercised without Lender taking actual or constructive possession of the Property or any part thereof.

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3.03 SECURITY. Lender may take or release any security for the payment or performance of the Obligations, may release any party primarily or secondarily liable therefor and may apply any security held by it to the satisfaction of all or any portion of the Obligations, without prejudice to any of its rights under this Assignment, the other Loan Documents or otherwise available at law or in equity.

3.04 COVENANTS. Borrower covenants with Lender (a) to observe and perform all the obligations imposed upon the lessor under all Leases and not to do or permit to be done anything to impair the same without Lender's prior written consent, (b) not to collect any of the rent or other amounts due under any Lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a Lease), (c) not to execute any other assignment of rents, issues or profits arising or accruing from the Leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Borrower's standard form lease previously approved by Lender, with no substantial modifications thereto, without the prior written consent of Lender, (e) to execute and deliver, at the request of Lender, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific Leases or otherwise, as Lender shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Lender, estoppel certificates, in form and substance satisfactory to Lender, confirming the terms of such tenant's Lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any Lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest therein, without the prior written consent of Lender, and any of said acts, if done without the prior written consent of Lender, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take the actions described in

clause (g) without Beneficiary's prior written consent (but with written notice thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

3.05 AUTHORITY TO ASSIGN. Borrower represents and warrants that (a) Borrower has full right and authority to execute this Assignment and has no knowledge of any existing defaults under any of the existing Leases, (b) all conditions precedent to the effectiveness of said existing Leases have been satisfied, (c) Borrower has not executed or granted any modification of the existing Leases, either orally or in writing, (d) the existing Leases are in full force and effect according to the terms set forth in the lease instruments heretofore submitted to Lender, and (e) Borrower has not executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment, including any other assignment of the Leases or the rents, issues and profits from the Property.

3.06 CROSS-DEFAULT. Violation or default under any of the covenants, representations, warranties and provisions contained in this Assignment by Borrower shall be deemed a default hereunder as well as under the terms of the other Loan Documents, and any default thereunder shall likewise be a default under this Assignment. Any default by Borrower under any of the terms of any Lease shall be deemed a default hereunder and under the terms of the other Loan

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Documents, and any expenditures made by Lender in curing such default on Borrower's behalf, with interest thereon at the Default Rate (as defined in the Note), shall become part of the Obligations.

3.07 NO MORTGAGEE IN POSSESSION. The acceptance by Lender of this Assignment, with all of the rights, powers, privileges and authority created hereby, shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", or hereafter or at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to any Lease, the Property or the Security, to take any action hereunder, to expend any money, incur any expense, perform or discharge any obligation, duty or liability under any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any tenant and not actually delivered to Lender. Lender shall not be liable in any way for any injury or damage to any person or property sustained in or about the Property.

### ARTICLE IV GENERAL

4.01 REMEDIES. The rights and remedies provided Lender in this Assignment and the other Loan Documents are cumulative. Nothing contained in this Assignment, and no act done or omitted by Lender pursuant hereto, including without implied limitation the collection of any rents, shall be deemed to be a waiver by Lender of any of its rights and remedies under the other Loan Documents or applicable law or a waiver of any default under the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies provided Lender by the other Loan Documents. The right of Lender to collect the principal sum and interest due on the Note and to enforce the other Loan Documents may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

4.02 NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Borrower by certified mail or reputable courier service shall be addressed to Borrower at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Borrower shall designate in a notice to Lender given in the manner described herein. Any notice sent to Lender by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Lender shall designate in a notice given in the manner described herein. Any notice given to Lender shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

4.03 CAPTIONS. The titles and headings of the various Articles and Sections hereof are intended solely for reference and are not intended to modify, explain or affect the meaning of the provisions of this Assignment.

4.04 SEVERABILITY. If any of the provisions of this Assignment or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

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4.05 ATTORNEYS' FEES. In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce any provision of this Assignment or any right of Lender hereunder, Borrower agrees to pay to Lender all costs and expenses, including

reasonable attorneys' fees incurred therein by Lender, whether in preparation for or during any trial, as a result of an appeal from a judgment entered in such litigation or otherwise.

4.06 AMENDMENTS. This Assignment may not be modified, amended or otherwise changed in any manner unless done so by a writing executed by the parties hereto.

4.07 BENEFITS. This Assignment and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

4.08 ASSIGNMENT. Borrower shall have no right to assign or transfer the revocable license granted herein. Any such assignment or transfer shall constitute a default.

4.09 TIME OF ESSENCE. Time is of the essence of this Assignment.

4.10 GOVERNING LAW. This Assignment shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Assignment shall be brought in a state or federal court located in the State of California, and Lender and Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

4.11 LIMITATION OF LIABILITY. Notwithstanding any provision contained in this Assignment, the personal liability of Borrower shall be limited as provided in the Note.

IN WITNESS WHEREOF, this Assignment has been entered into as of the day and year first-above written.

BORROWER: MISSION WEST PROPERTIES, L.P.,  
a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general partner

By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

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LENDER: THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation

By: Northwestern Investment Management Company, LLC, a Delaware limited liability company, its wholly-owned affiliate and authorized representative

By: /s/ ER Skagg

-----  
E.R. Skaggs, Managing Director

Attest: /s/ Richard A. Schnell

-----  
Richard A. Schnell, Assistant Secretary

STATE OF California )  
 )ss.  
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott  
-----  
G.W. Shott  
-----  
Name (typed or printed)

STATE OF WISCONSIN )  
 )ss.  
COUNTY OF MILWAUKEE )

The foregoing instrument was acknowledged before me this 3rd day of January, 2003, by E.R. Skaggs and Richard A. Schnell, the Managing Director and Assistant Secretary respectively, of Northwestern Investment Management Company, LLC, on behalf of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY and acknowledged the execution of the foregoing instrument as the act and deed of said corporation.

My commission expires: May 9, 2004

Janet M. Szukalski, Notary Public

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This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"

(Mission West LP)

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997, in Book 698 of Maps, Page(s) 1 and 2.

Reserving therefrom an easement for ingress and over that portion of land designated and delineated as "C.O.E.- 30'" Reciprocal-Ingress, Egress- Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Parcel Two:

An easement for ingress and egress over those portion of Parcel 2 designated and delineated as "C.O.E.- 30' Reciprocal-Ingress, Egress-Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Parcel Three:

An easement for ingress and egress over those portion of Parcel 3 designated and delineated as "C.O.E.-26'Reciprocal-Ingress, Egress-Easement" on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 23, 1997 in Book 698 of Maps, Pages 1 and 2.

Assessors Parcel No: 244-13-015

EXHIBIT 10.42

RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

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Loan No. C-332757                      SPACE ABOVE THIS LINE FOR RECORDER'S USE

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ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (FIRST PRIORITY)  
Mission West Properties, L.P. I  
(With License Back)

THIS Absolute Assignment of Leases and Rents (First Priority) (this "Assignment") is made as of the 3rd day of January, 2003, by and between MISSION WEST PROPERTIES, L.P. I, a Delaware limited partnership, whose mailing address is 10050 Bandley Drive, Cupertino, CA 95014, (herein called "Borrower") and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is c/o Real Estate Department, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (herein called "Lender").

W I T N E S S E T H

FOR AND IN CONSIDERATION of the indebtedness hereinafter described, Borrower has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto Lender, its successors and assigns forever, all and singular the property hereinafter described (collectively, the "Security"), to wit:

(a) All rents, issues and profits arising from or related to the land, situated in the Cities of Santa Clara and Cupertino, County of Santa Clara and State of California and described in Exhibit "A" attached hereto and fully incorporated herein by reference for all purposes and all improvements and any other property, whether real, personal or mixed, located thereon (which land, improvements and other property are hereinafter collectively called the "Property");

(b) All of Borrower's rights, titles, interests and privileges, as lessor, in the leases now existing or hereafter made affecting the Property, whether or not made by Borrower and as the same may have been, or may from time to time hereafter be, modified, extended and renewed (hereinafter collectively called the "Leases"), including without limitation that certain lease dated July 1, 2002 between Borrower, as landlord, and Apple Computer, Inc., as tenant;

(c) All tenant security deposits and other amounts due and becoming due under the Leases;

(d) All guarantees of the Leases, including guarantees of tenant performance;

(e) All insurance proceeds, including rental loss coverage and business interruption coverage with respect to the Leases; and

(f) All judgments and settlements of claims in favor of Borrower (including condemnation proceeds, if any) and all rights, claims and causes of action under any court proceeding, including without limitation any bankruptcy, reorganization or insolvency proceeding, or otherwise arising from the Leases.

TO HAVE AND TO HOLD the Security unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its heirs, legal representatives, successors and assigns, to warrant and forever defend the Security unto Lender, its successors and assigns forever against the claim or claims of all persons whomsoever claiming the same or any part thereof.



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### ARTICLE I DEFINITIONS

1.01 TERMS DEFINED ABOVE. As used in this Assignment, the terms "Borrower", "Leases", "Lender", "Property", and "Security" shall have the respective meanings indicated above.

1.02 CERTAIN DEFINITIONS. The following terms shall have the meanings assigned to them below whenever they are used in this Assignment, unless the context clearly otherwise requires. Except where the context otherwise requires, words in the singular form shall include the plural and vice versa.

"Event of Default" shall mean any Event of Default as defined in the Lien Instrument.

"Lien Instrument" shall mean that certain Deed of Trust and Security Agreement (First Priority) of even date herewith, executed by Borrower and granting a lien on the Property to a trustee for the benefit of Lender, as such instrument may be amended, renewed and restated from time to time.

"Loan Commitment", "Loan Documents", "Note" and "Obligations" shall each have the meaning set forth in the Lien Instrument.

### ARTICLE II ASSIGNMENT

2.01 ABSOLUTE ASSIGNMENT. This Assignment is, and is intended to be, an absolute and present assignment of the Security from Borrower to Lender with a concurrent license back to the Borrower (which license is subject to revocation upon the occurrence of an Event of Default as herein provided) and is not intended as merely the granting of a security interest relating to the Obligations.

2.02 LICENSE. Borrower is hereby granted the license to manage and control the Security and to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, issues and profits from the Property and to retain, use and enjoy the same. The license created and granted hereby shall be revocable upon the terms and conditions contained herein.

2.03 REVOCATION OF LICENSE. Immediately upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option and without regard to the adequacy of the security for the Obligations, either by an authorized representative or agent, with or without bringing or instituting any judicial or other action or proceeding, or by a receiver appointed by a court, immediately revoke the license granted in Section 2.02, as evidenced by a written notice to said effect given to Borrower, and further, at Lender's option (without any obligation to do so), take possession of the Property and the Security and have, hold, manage, lease and operate the Property and the Security on such terms and for such period of time as Lender may deem proper, and, in addition, either with or without taking possession of the Property, demand, sue for or otherwise collect and receive all rents, issues and profits from the Property, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Lender in its sole discretion, and to apply (in such order and priority as Lender shall determine in its sole discretion) such rents, issues and profits to the payment of:

(a) all expenses of (i) managing the Property, including without implied limitation, the salaries, fees and wages of a managing agent and

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such other employees as Lender may in its sole discretion deem necessary or desirable, (ii) operating and maintaining the Property, including without implied limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which Lender may in its sole discretion deem necessary or desirable, (iii) the cost of any and all alterations, renovations, repairs or replacements of or to the Property, and (iv) any and all expenses incident to taking and retaining possession of the Property and the Security; and

(b) the Obligations.

The exercise by Lender of the rights granted it in this Section 2.03, and the collection and receipt of rents, issues and profits and the application thereof as herein provided, shall not be considered a waiver of any Event of Default.

2.04 TRUST FUNDS. All monies or funds covered by this Assignment paid to, or for the benefit of, Borrower after any default are hereby declared, and shall be deemed to be, trust funds in the hands of Borrower for the sole benefit of Lender, until all defaults have been cured or waived or the Obligations have been paid and performed in full. Borrower, or any officer, director, representative or agent thereof receiving such trust funds or having control or direction of same, is hereby made and shall be construed to be a trustee

of such trust funds so received or under its control and direction, and such person shall be under a strict obligation and duty should such persons receive or constructively receive trust funds to (1) remit any and all such trust funds to Lender within twenty-four (24) hours of receipt, upon demand therefor by Lender or (2) to apply such trust funds only to Obligations then due or the operating expenses of the Property.

### ARTICLE III COVENANTS, REPRESENTATIONS AND WARRANTIES

3.01 LIABILITY. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property or the Security after an Event of Default, except for acts constituting gross negligence or willful misconduct. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any Lease, and Borrower shall and does hereby indemnify Lender for, and save and hold Lender harmless from, any and all liability, loss or damages, except so much thereof as shall result from the gross negligence or willful misconduct of Lender, which may or might be incurred under any Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, including without implied limitation, any claims by any tenants of credit for rents for any period paid to and received by Borrower but not delivered to Lender. Should Lender incur any such liability under any Lease in defense of any such claim or demand, the amount thereof, including without implied limitation all costs, expenses and attorneys' fees, shall be added to the principal of the Note and Borrower shall reimburse Lender therefor immediately upon demand. This Assignment shall not operate to place responsibility upon Lender for the control, care, upkeep, management, operation or repair of the Property and the Security or for the carrying out of any of the terms and conditions of any Lease; nor shall this Assignment operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, for any dangerous or defective condition of the Property or for any negligence in the control, care, upkeep, operation, management or repair of the Property resulting in loss or

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injury or death to any tenant, licensee, employee, stranger or other person whatsoever.

3.02 TERMINATION. Upon payment and performance of the Obligations in full, this Assignment shall become null and void and of no further legal force or effect, but the affidavit, certificate, letter or statement of any officer, agent, authorized representative or attorney of Lender showing any part of the Obligations remaining unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment upon which any person may, and is hereby authorized to, rely. Borrower hereby authorizes and directs all tenants under the Leases, all guarantors of Leases, all insurers providing rental loss or business interruption insurance with respect to the Property, all governmental authorities and all other occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that an Event of Default exists, to pay over to Lender all rents and other amounts due and to become due under the Leases and under guaranties of the Leases and all other issues and profits from the Property and to continue so to do until otherwise notified in writing by Lender. This right may be exercised without Lender taking actual or constructive possession of the Property or any part thereof.

3.03 SECURITY. Lender may take or release any security for the payment or performance of the Obligations, may release any party primarily or secondarily liable therefor and may apply any security held by it to the satisfaction of all or any portion of the Obligations, without prejudice to any of its rights under this Assignment, the other Loan Documents or otherwise available at law or in equity.

3.04 COVENANTS. Borrower covenants with Lender (a) to observe and perform all the obligations imposed upon the lessor under all Leases and not to do or permit to be done anything to impair the same without Lender's prior written consent, (b) not to collect any of the rent or other amounts due under any Lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a Lease), (c) not to execute any other assignment of rents, issues or profits arising or accruing from the Leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Borrower's standard form lease previously approved by Lender, with no substantial modifications thereto, without the prior written consent of Lender, (e) to execute and deliver, at the request of Lender, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific Leases or otherwise, as Lender shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Lender, estoppel certificates, in form and substance satisfactory to Lender, confirming the terms of such tenant's Lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any Lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest therein, without the prior written consent of Lender, and any of said acts, if done without the prior written consent of Lender, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take the actions described in

clause (g) without Beneficiary's prior written consent (but with written notice

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thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

3.05 AUTHORITY TO ASSIGN. Borrower represents and warrants that (a) Borrower has full right and authority to execute this Assignment and has no knowledge of any existing defaults under any of the existing Leases, (b) all conditions precedent to the effectiveness of said existing Leases have been satisfied, (c) Borrower has not executed or granted any modification of the existing Leases, either orally or in writing, (d) the existing Leases are in full force and effect according to the terms set forth in the lease instruments heretofore submitted to Lender, and (e) Borrower has not executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment, including any other assignment of the Leases or the rents, issues and profits from the Property.

3.06 CROSS-DEFAULT. Violation or default under any of the covenants, representations, warranties and provisions contained in this Assignment by Borrower shall be deemed a default hereunder as well as under the terms of the other Loan Documents, and any default thereunder shall likewise be a default under this Assignment. Any default by Borrower under any of the terms of any Lease shall be deemed a default hereunder and under the terms of the other Loan Documents, and any expenditures made by Lender in curing such default on Borrower's behalf, with interest thereon at the Default Rate (as defined in the Note), shall become part of the Obligations.

3.07 NO MORTGAGEE IN POSSESSION. The acceptance by Lender of this Assignment, with all of the rights, powers, privileges and authority created hereby, shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", or hereafter or at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to any Lease, the Property or the Security, to take any action hereunder, to expend any money, incur any expense, perform or discharge any obligation, duty or liability under any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any tenant and not actually delivered to Lender. Lender shall not be liable in any way for any injury or damage to any person or property sustained in or about the Property.

### ARTICLE IV GENERAL

4.01 REMEDIES. The rights and remedies provided Lender in this Assignment and the other Loan Documents are cumulative. Nothing contained in this Assignment, and no act done or omitted by Lender pursuant hereto, including without implied limitation the collection of any rents, shall be deemed to be a waiver by Lender of any of its rights and remedies under the other Loan Documents or applicable law or a waiver of any default under the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies provided Lender by the other Loan Documents. The right of Lender to collect the principal sum and interest due on the Note and to enforce the other Loan Documents may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

4.02 NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Borrower by certified mail or reputable courier service shall be addressed to Borrower at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Borrower shall designate in a notice to Lender given in the manner described herein. Any notice sent to Lender by certified mail or reputable courier service shall be addressed to The Northwestern Mutual

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Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Lender shall designate in a notice given in the manner described herein. Any notice given to Lender shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

4.03 CAPTIONS. The titles and headings of the various Articles and Sections hereof are intended solely for reference and are not intended to modify, explain or affect the meaning of the provisions of this Assignment.

4.04 SEVERABILITY. If any of the provisions of this Assignment or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

4.05 Attorneys' Fees. In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce any provision of this Assignment or any right of Lender hereunder, Borrower agrees to pay to Lender all costs and expenses, including

reasonable attorneys' fees incurred therein by Lender, whether in preparation for or during any trial, as a result of an appeal from a judgment entered in such litigation or otherwise.

4.06 AMENDMENTS. This Assignment may not be modified, amended or otherwise changed in any manner unless done so by a writing executed by the parties hereto.

4.07 BENEFITS. This Assignment and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

4.08 ASSIGNMENT. Borrower shall have no right to assign or transfer the revocable license granted herein. Any such assignment or transfer shall constitute a default.

4.09 TIME OF ESSENCE. Time is of the essence of this Assignment.

4.10 GOVERNING LAW. This Assignment shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Assignment shall be brought in a state or federal court located in the State of California, and Lender and Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

4.11 LIMITATION OF LIABILITY. Notwithstanding any provision contained in this Assignment, the personal liability of Borrower shall be limited as provided in the Note.

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IN WITNESS WHEREOF, this Assignment has been entered into as of the day and year first-above written.

BORROWER: MISSION WEST PROPERTIES, L.P. I,  
a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general partner

By: Carle E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

LENDER: THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,  
a Wisconsin corporation

By: Northwestern Investment Management Company, LLC,  
a Delaware limited liability company, its wholly-  
owned affiliate and authorized representative

By: /s/ ER Skaggs

-----  
E.R. Skaggs, Managing Director

Attest: /s/ Richard A. Schnell

-----  
Richard A. Schnell, Assistant Secretary

STATE OF California )  
 )ss.  
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott  
-----  
G.W. Shott  
-----  
Name (typed or printed)

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STATE OF WISCONSIN )  
 )ss.  
COUNTY OF MILWAUKEE )

The foregoing instrument was acknowledged before me this 3RD day of January, 2003, by and between E.R. Skaggs and Richard A. Schnell, the Managing Director and Assistant Secretary respectively, of Northwestern Investment Management Company, LLC, on behalf of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY and acknowledged the execution of the foregoing instrument as the act and deed of said corporation.

My commission expires: May 9, 2004

Janet M. Szukalski, Notary Public

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"  
(Mission West I)

PROPERTY ONE:

Parcel One:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 13, 1979, in Book 439 of Maps, page(s) 17 and 18.

Parcel Two:

A 17.5' ingress and egress Easement No. 1 (appurtenant to Parcel 1) situated at the Northwesterly corner of Parcel 2 and being shown on that certain Parcel Map recorded April 13, 1979 in Book 439 of Maps, pages 17 and 18, Santa Clara County

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Records.

Assessors Parcel No: 224-44-019

PROPERTY TWO:

PARCEL ONE:

Parcel 3 as shown on that certain Parcel Map recorded August 9, 1974, in Book 344, Page 10, Santa Clara County.

Excepting therefrom the underground water rights, but without surface rights of entry, as granted to the City of Cupertino by instrument recorded January 3, 1975 in Book B233 of Official Records at Page 276.

PARCEL TWO:

An easement for ingress and egress and for the installation and maintenance of a public utilities over the Westerly 15 feet of Parcels 1 and 2 and the Easterly 15 feet of Parcel 4, as said Parcels are shown on that certain Parcel Map recorded August 9, 1974 in Book 344 at Page 10 of Maps, Records of Santa Clara County, California.

Assessors Parcel No: 326-10-046

EXHIBIT 10.43

RECORDING REQUESTED BY

American Title Company  
632004LZ

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Nadine T. Hansohn

Loan No. C-332757                      SPACE ABOVE THIS LINE FOR RECORDER'S USE

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ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (FIRST PRIORITY)  
Mission West Properties, L.P. II  
(With License Back)

THIS Absolute Assignment of Leases and Rents (First Priority) (this "Assignment") is made as of the 3rd day of January, 2003, by and between MISSION WEST PROPERTIES, L.P. II, a Delaware limited partnership, whose mailing address is 10050 Bandle Drive, Cupertino, CA 95014, (herein called "Borrower") and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is c/o Real Estate Department, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (herein called "Lender").



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## W I T N E S S E T H

FOR AND IN CONSIDERATION of the indebtedness hereinafter described, Borrower has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto Lender, its successors and assigns forever, all and singular the property hereinafter described (collectively, the "Security"), to wit:

(a) All rents, issues and profits arising from or related to the land, situated in the Cities of San Jose and Milpitas, County of Santa Clara and State of California and described in Exhibit "A" attached hereto and fully incorporated herein by reference for all purposes and all improvements and any other property, whether real, personal or mixed, located thereon (which land, improvements and other property are hereinafter collectively called the "Property");

(b) All of Borrower's rights, titles, interests and privileges, as lessor, in the leases now existing or hereafter made affecting the Property, whether or not made by Borrower and as the same may have been, or may from time to time hereafter be, modified, extended and renewed (hereinafter collectively called the "Leases");

(c) All tenant security deposits and other amounts due and becoming due under the Leases;

(d) All guarantees of the Leases, including guarantees of tenant performance;

(e) All insurance proceeds, including rental loss coverage and business interruption coverage with respect to the Leases; and

(f) All judgments and settlements of claims in favor of Borrower (including condemnation proceeds, if any) and all rights, claims and causes of action under any court proceeding, including without limitation any bankruptcy, reorganization or insolvency proceeding, or otherwise arising from the Leases.

TO HAVE AND TO HOLD the Security unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its heirs, legal representatives, successors and assigns, to warrant and forever defend the Security unto Lender, its successors and assigns forever against the claim or claims of all persons whomsoever claiming the same or any part thereof.

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"Event of Default" shall mean any Event of Default as defined in the Lien Instrument.

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"Lien Instrument" shall mean that certain Deed of Trust and Security Agreement (First Priority) of even date herewith, executed by Borrower and granting a lien on the Property to a trustee for the benefit of Lender, as such instrument may be amended, renewed and restated from time to time.

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2.02 LICENSE. Borrower is hereby granted the license to manage and control the Security and to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, issues and profits from the Property and to retain, use and enjoy the same. The license created and granted hereby shall be revocable upon the terms and conditions contained herein.

2.03 REVOCATION OF LICENSE. Immediately upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option and without regard to the adequacy of the security for the Obligations, either by an authorized representative or agent, with or without bringing or instituting any judicial or other action or proceeding, or by a receiver appointed by a court, immediately revoke the license granted in Section 2.02, as evidenced by a written notice to said effect given to Borrower, and further, at Lender's option (without any obligation to do so), take possession of the Property and the Security and have, hold, manage, lease and operate the Property and the Security on such terms and for such period of time as Lender may deem proper, and, in addition, either with or without taking possession of the Property, demand, sue for or otherwise collect and receive all rents, issues and profits from the Property, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Lender in its sole discretion, and to apply (in such order and priority as Lender shall determine in its sole discretion) such rents, issues and profits to the payment of:

(a) all expenses of (i) managing the Property, including without implied limitation, the salaries, fees and wages of a managing agent and such other employees as Lender may in its sole discretion deem necessary or desirable, (ii) operating and maintaining the Property, including without implied limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which Lender may in its sole discretion deem necessary or desirable, (iii) the cost of any and all alterations, renovations, repairs or replacements of or to the Property, and (iv) any and all expenses incident to taking and retaining possession of the Property and the Security; and

(b) the Obligations.

The exercise by Lender of the rights granted it in this Section 2.03, and the collection and receipt of rents, issues and profits and the application thereof as herein provided, shall not be considered a waiver of any Event of Default.

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2.04 TRUST FUNDS. All monies or funds covered by this Assignment paid to, or for the benefit of, Borrower after any default are hereby declared, and shall be deemed to be, trust funds in the hands of Borrower for the sole benefit of Lender, until all defaults have been cured or waived or the Obligations have been paid and performed in full. Borrower, or any officer, director, representative or agent thereof receiving such trust funds or having control or direction of same, is hereby made and shall be construed to be a trustee

of such trust funds so received or under its control and direction, and such person shall be under a strict obligation and duty should such persons receive or constructively receive trust funds to (1) remit any and all such trust funds to Lender within twenty-four (24) hours of receipt, upon demand therefor by Lender or (2) to apply such trust funds only to Obligations then due or the operating expenses of the Property.

### ARTICLE III COVENANTS, REPRESENTATIONS AND WARRANTIES

3.01 LIABILITY. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property or the Security after an Event of Default, except for acts constituting gross negligence or willful misconduct. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any Lease, and Borrower shall and does hereby indemnify Lender for, and save and hold Lender harmless from, any and all liability, loss or damages, except so much thereof as shall result from the gross negligence or willful misconduct of Lender, which may or might be incurred under any Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, including without implied limitation, any claims by any tenants of credit for rents for any period paid to and received by Borrower but not delivered to Lender. Should Lender incur any such liability under any Lease in defense of any such claim or demand, the amount thereof, including without implied limitation all costs, expenses and attorneys' fees, shall be added to the principal of the Note and Borrower shall reimburse Lender therefor immediately upon demand. This Assignment shall not operate to place responsibility upon Lender for the control, care, upkeep, management, operation or repair of the Property and the Security or for the carrying out of any of the terms and conditions of any Lease; nor shall this Assignment operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, for any dangerous or defective condition of the Property or for any negligence in the control, care, upkeep, operation, management or repair of the Property resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person whatsoever.

3.02 TERMINATION. Upon payment and performance of the Obligations in full, this Assignment shall become null and void and of no further legal force or effect, but the affidavit, certificate, letter or statement of any officer, agent, authorized representative or attorney of Lender showing any part of the Obligations remaining unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment upon which any person may, and is hereby authorized to, rely. Borrower hereby authorizes and directs all tenants under the Leases, all guarantors of Leases, all insurers providing rental loss or business interruption insurance with respect to the Property, all governmental authorities and all other occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that an Event of Default exists, to

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pay over to Lender all rents and other amounts due and to become due under the Leases and under guaranties of the Leases and all other issues and profits from the Property and to continue so to do until otherwise notified in writing by Lender. This right may be exercised without Lender taking actual or constructive possession of the Property or any part thereof.

3.03 SECURITY. Lender may take or release any security for the payment or performance of the Obligations, may release any party primarily or secondarily liable therefor and may apply any security held by it to the satisfaction of all or any portion of the Obligations, without prejudice to any of its rights under this Assignment, the other Loan Documents or otherwise available at law or in equity.

3.04 COVENANTS. Borrower covenants with Lender (a) to observe and perform all the obligations imposed upon the lessor under all Leases and not to do or permit to be done anything to impair the same without Lender's prior written consent, (b) not to collect any of the rent or other amounts due under any Lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus tenant contributions toward operating expenses plus the security deposit, if any, at the time of execution of a Lease), (c) not to execute any other assignment of rents, issues or profits arising or accruing from the Leases or from the Property, except the Transaction Documents, (d) not to enter into any lease agreement affecting the Property, except those leases entered into in the ordinary course of business and utilizing Borrower's standard form lease previously approved by Lender, with no substantial modifications thereto, without the prior written consent of Lender, (e) to execute and deliver, at the request of Lender, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific Leases or otherwise, as Lender shall from time to time require, (f) to obtain from any tenant at the Property, from time to time as requested by Lender, estoppel certificates, in form and substance satisfactory to Lender, confirming the terms of such tenant's Lease and the absence of default thereunder, and (g) not to cancel, surrender or terminate any Lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder or to the assignment of the lessee's interest therein, without the prior written consent of Lender, and any of said acts, if done without the prior written consent of Lender, shall be null and void. Notwithstanding clause (g) of the preceding sentence, with respect to all leases (other than leases as to which Beneficiary, Grantor and tenant have executed a separate non-disturbance and attornment agreement), Grantor may take the actions described in

clause (g) without Beneficiary's prior written consent (but with written notice thereof to Beneficiary), if and only if such action is consistent with the usual and customary operation of the Property.

3.05 AUTHORITY TO ASSIGN. Borrower represents and warrants that (a) Borrower has full right and authority to execute this Assignment and has no knowledge of any existing defaults under any of the existing Leases, (b) all conditions precedent to the effectiveness of said existing Leases have been satisfied, (c) Borrower has not executed or granted any modification of the existing Leases, either orally or in writing, (d) the existing Leases are in full force and effect according to the terms set forth in the lease instruments heretofore submitted to Lender, and (e) Borrower has not executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment, including any other assignment of the Leases or the rents, issues and profits from the Property.

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3.06 CROSS-DEFAULT. Violation or default under any of the covenants, representations, warranties and provisions contained in this Assignment by Borrower shall be deemed a default hereunder as well as under the terms of the other Loan Documents, and any default thereunder shall likewise be a default under this Assignment. Any default by Borrower under any of the terms of any Lease shall be deemed a default hereunder and under the terms of the other Loan Documents, and any expenditures made by Lender in curing such default on Borrower's behalf, with interest thereon at the Default Rate (as defined in the Note), shall become part of the Obligations.

3.07 NO MORTGAGEE IN POSSESSION. The acceptance by Lender of this Assignment, with all of the rights, powers, privileges and authority created hereby, shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", or hereafter or at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to any Lease, the Property or the Security, to take any action hereunder, to expend any money, incur any expense, perform or discharge any obligation, duty or liability under any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any tenant and not actually delivered to Lender. Lender shall not be liable in any way for any injury or damage to any person or property sustained in or about the Property.

### ARTICLE IV GENERAL

4.01 REMEDIES. The rights and remedies provided Lender in this Assignment and the other Loan Documents are cumulative. Nothing contained in this Assignment, and no act done or omitted by Lender pursuant hereto, including without implied limitation the collection of any rents, shall be deemed to be a waiver by Lender of any of its rights and remedies under the other Loan Documents or applicable law or a waiver of any default under the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies provided Lender by the other Loan Documents. The right of Lender to collect the principal sum and interest due on the Note and to enforce the other Loan Documents may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

4.02 NOTICES. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Borrower by certified mail or reputable courier service shall be addressed to Borrower at 10050 Bandle Drive, Cupertino, CA 95014 or such other address in the United States of America as Borrower shall designate in a notice to Lender given in the manner described herein. Any notice sent to Lender by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Lender shall designate in a notice given in the manner described herein. Any notice given to Lender shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

4.03 CAPTIONS. The titles and headings of the various Articles and Sections hereof are intended solely for reference and are not intended to modify, explain or affect the meaning of the provisions of this Assignment.

4.04 SEVERABILITY. If any of the provisions of this Assignment or the

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application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

4.05 ATTORNEYS' FEES. In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce any provision of this Assignment or any right of Lender hereunder, Borrower agrees to pay to Lender all costs and expenses, including

reasonable attorneys' fees incurred therein by Lender, whether in preparation for or during any trial, as a result of an appeal from a judgment entered in such litigation or otherwise.

4.06 AMENDMENTS. This Assignment may not be modified, amended or otherwise changed in any manner unless done so by a writing executed by the parties hereto.

4.07 BENEFITS. This Assignment and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

4.08 ASSIGNMENT. Borrower shall have no right to assign or transfer the revocable license granted herein. Any such assignment or transfer shall constitute a default.

4.09 TIME OF ESSENCE. Time is of the essence of this Assignment.

4.10 GOVERNING LAW. This Assignment shall be governed by and construed in all respects in accordance with the laws of the State of California without regard to any conflict of law principles. Any action, lawsuit or other legal proceeding concerning any dispute arising under or related to this Assignment shall be brought in a state or federal court located in the State of California, and Lender and Borrower hereby irrevocably consent to the jurisdiction of the courts located in the State of California and irrevocably waive any defense of improper venue, forum nonconveniens or lack of personal jurisdiction in any such action, lawsuit or other legal proceeding brought in any court located in the State of California.

4.11 LIMITATION OF LIABILITY. Notwithstanding any provision contained in this Assignment, the personal liability of Borrower shall be limited as provided in the Note.

IN WITNESS WHEREOF, this Assignment has been entered into as of the day and year first-above written.

BORROWER: MISSION WEST PROPERTIES, L.P. II,  
a Delaware limited partnership

By: Mission West Properties, Inc., a  
Maryland corporation, its general partner

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By: Carl E. Berg

Name: Carl E. Berg

Title: CEO of G.P.

LENDER: THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,  
a Wisconsin corporation

By: Northwestern Investment Management Company, LLC,  
a Delaware limited liability company, its wholly-  
owned affiliate and authorized representative

By: /s/ ER Skaggs

-----  
E.R. Skaggs, Managing Director

Attest: /s/ Richard A. Schnell

-----  
Richard A. Schnell, Assistant Secretary

STATE OF California )  
 )ss.  
COUNTY OF Santa Clara )

On January 7th, 2003, before me, G.W. Shott, a notary for the state, personally appeared Carl E. Berg, CEO of G.P., personally known to me to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature /s/ GW Shott  
-----  
G.W. Shott  
-----  
Name (typed or printed)

STATE OF WISCONSIN )  
 )ss.  
COUNTY OF MILWAUKEE )

The foregoing instrument was acknowledged before me this 3rd day of January, 2003, by and between E.R. Skaggs and Richard A. Schnell, the Managing Director and Assistant Secretary respectively, of Northwestern Investment Management Company, LLC, on behalf of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY and acknowledged the execution of the foregoing instrument as the act and deed of

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said corporation.

My commission expires: May 9, 2004

Janet M. Szukalski, Notary Public

This instrument was prepared by Sally J. Lewis, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"  
(Mission West II)

PROPERTY ONE:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel 2, as shown on the Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on November 26, 1979, in Book 455 of Maps, Page(s) 1 and 2.

Assessors Parcel No: 706-09-023

PROPERTY TWO:

Parcel 1, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on May 22, 1980, in Book 463 of Maps, Page(s) 43 and 44.

Assessors Parcel No: 706-02-034

PROPERTY THREE:

Parcel 7, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-33-092

PROPERTY FOUR:

Parcel 3 as shown on that Parcel Map filed for recorded in the Office of the



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Recorder of the County of Santa Clara, State of California on December 5, 1984,  
in Book 536 of Maps, Page(s) 41, 42 and 43.

Assessors Parcel No: 086-41-017 & 086-41-018

EXHIBIT 23.1

Consent of Independent Accountants

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 No. 333-80369 of Mission West Properties, Inc. of our reports dated January 28, 2003 relating to the financial statements and financial statement schedules, which appear in this Form 10-K.

PricewaterhouseCoopers LLP

San Francisco, California  
March 26, 2003