

PRECIS INC
Form 8-K
November 09, 2006

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8 K

**Current Report Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934**

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): November 8, 2006

PRECIS, INC.

(Name of business issuer in its Charter)

OKLAHOMA
(State or other jurisdiction of
incorporation or organization)

001-15667
(Commission File
Number)

73-1494382
(I.R.S. Employer
Identification No.)

2040 North Highway 360

Grand Prairie, Texas 75050

(Address of principal executive offices)

(866) 578-1665

(Issuer's telephone number)

n/a

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the obligation of registrant under any of the following provisions (See General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Securities Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

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- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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PRECIS, INC.
Form 8-K
Current Report

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Item 1.01 Entry into a Material Definitive Agreement

Precis, Inc., the Company announced today that it entered into an Agreement and Plan of Merger (the Merger Agreement) with Insurance Capital Management USA Inc (ICM). Peter W. Nauert, the Peter W. Nauert Revocable Trust, and other minority shareholders of ICM. The merger requires shareholder approval and the Company has filed a preliminary Proxy Statement to solicit shareholder approval of the proposed merger.

Other than in respect of the Merger Agreement, there is no relationship between the Company or its affiliates and any of the other parties to the Merger Agreement.

The Merger Agreement was filed as an exhibit to the preliminary Proxy Statement and is incorporated herein by reference.

Under the Merger Agreement, subject to approval by our shareholders, we and the parties to the Merger Agreement agreed as follows.

- The shareholders of ICM will cause ICM to merge with and into us and Insuraco and its subsidiaries will become our wholly-owned subsidiaries.
- At the closing of the merger, we will issue and deliver a number of shares of our common stock to ICM's shareholders determined by a formula that multiplies Insuraco's adjusted earnings, before interest, taxes, depreciation and amortization (Adjusted EBITDA) (as further defined in the merger agreement) for the nine-month period ended September 30, 2006 times 5.4051056 shares per dollar of Adjusted EBITDA.
- We will issue and deliver, as more fully discussed in the preliminary Proxy Statement, additional shares of our common stock to ICM's shareholders provided the acquired companies' Adjusted EBITDA during any four consecutive calendar quarters ending on or prior to December 31, 2007 exceeds the Adjusted EBITDA for the nine-month period ended September 30, 2006.
- The maximum number of shares to be issued and delivered to the ICM shareholders is 6,756,382.

The Company issued a press release announcing its entering into the Merger Agreement. The press release is included in this Current Report on Form 8-K as Exhibit 99.1.

Item 2.02 Results of Operations and Financial Condition

The Company announced its results of operations for the completed fiscal quarter ended September 30, 2006. Details of the announcement are contained in the press release of the Company dated November 9, 2006, included in this Current Report on Form 8-K as Exhibit 99.1

Item 9.01(d) Exhibits

Exhibit 2.1 Agreement and Plan of Merger, dated November 8, 2006, among the Company, Insurance Capital Management USA, Inc., Peter W. Nauert, The Peter W. Nauert Revocable Trust, Ian R. Stuart, Carl F. Fisher, Michael K. Owens and Nancy L. Zalund, incorporated by reference to the Schedule 14A Proxy Statement filed on November 9, 2006 with the U.S. Securities and Exchange Commission.

Exhibit 99.1: Press Release issued by the Company, dated November 9, 2006.

SIGNATURE

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

PRECIS, INC.

By: /s/ Frank Apodaca

Frank Apodaca
President

Dated: November 9, 2006

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directors were in attendance. - 5 - EXECUTIVE COMPENSATION SUMMARY COMPENSATION TABLE The following Summary Compensation Table sets forth summary information as to compensation received by the Company's Chief Executive Officer and all other executive officers of the Company (collectively the "named executive officers"), for the years ended December 31, 2004, 2003 and 2002. Long-Term Compensation Annual Compensation Awards ----- Securities Other Annual Underlying All Other Name and Principal Position Year Salary Bonus Compensation (1) Options Compensation -----
----- Carl E. Berg 2004 \$100,000 \$ -- \$22,500 -- -- Chairman of the Board and Chief 2003 100,000 -- 22,500 -- -- Executive Officer 2002 100,000 -- 22,500 -- -- Raymond V. Marino 2004 200,000 -- 30,000 -- -- President and Chief Operating 2003 200,000 -- 30,000 -- -- Officer 2002 200,000 -- 30,000 -- -- Wayne N. Pham 2004 112,500 -- 16,875 -- -- Vice President and Controller 2003 112,500 -- 16,875 -- -- 2002 94,000 -- 14,100 -- -- (1) Consists of the Company's employer contribution to 401(k) plan. OPTION GRANTS IN LAST FISCAL YEAR The Company did not grant stock options or awards to purchase any shares of Common Stock to any named executive officer with respect to the fiscal year ended December 31, 2004. AGGREGATED OPTION EXERCISES IN LAST FISCAL YEAR AND FISCAL YEAR-END VALUES The following table provides information regarding the number of shares covered by both exercisable and unexercisable stock options as of December 31, 2004 held by the named executive officers and the values of "in-the-money" options, which values represent the positive spread between the exercise price of any such options and the fiscal year-end value of the Company's Common Stock. There were no option exercises by any of the named executive officers during the fiscal year ended December 31, 2004. Number of Securities Value of the Unexercised Underlying Unexercised In-The-Money Options at Shares Options at December 31, 2004 December 31, 2004 (1) Acquired on Value ----- Name Exercise Realized Exercisable Unexercisable Exercisable Unexercisable ----- Carl E. Berg -- N/A N/A N/A N/A N/A Raymond V. Marino -- N/A 229,167 145,833 -- Wayne N. Pham -- N/A 149,000 3,000 \$191,200 - (1) The value of unexercised in-the-money options at fiscal year end assumes a fair market value for

the Company's Common Stock of \$10.64, the closing market price per share of the Company's Common Stock as reported on the American Stock Exchange on December 31, 2004, the last trading day for the year. - 6 - SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLAN The following table provides information as of December 31, 2004 regarding equity compensation plans approved by the Company's security holders. The Company does not have any equity compensation plans that have not been approved by our security holders. Number of Shares Number of Shares of Common of Common Stock Remaining Available Stock to be Issued Weighted-Average for Future Upon Exercise of Exercise Price of Issuance Under Equity Plan Category Outstanding Options Outstanding Options Compensation Plans -----

Equity Compensation plans approved by security holders 767,000 \$11.44 3,991,089 Equity Compensation plans not approved by security holders N/A N/A N/A Total 767,000 \$11.44 3,991,089 - 7 - SHARE OWNERSHIP The following table sets forth certain information as of March 31, 2005, concerning the ownership of Common Stock by

(i) each stockholder of the Company known by the Company to be the beneficial owner of more than 5% of the outstanding shares of Common Stock, (ii) each current member of the Board of Directors of the Company, (iii) each named executive officer and (iv) all current directors and executive officers of the Company as a group. The Company has relied on information supplied by its officers, directors and certain shareholders and on information contained in filings with the SEC. Percent of All Shares of Common Stock (Assuming Percent of All Number of Shares Percent of Exchange of Shares of Common Beneficially All Shares of Number of O.P Holder's O.P. Stock/O.P. Units Name Owned (1) Common Stock Units Units) (2) (1)(2)

EXECUTIVE OFFICERS AND DIRECTORS: Carl E. Berg ___ * 44,888,441(3)(13) 71.21% 42.76% Chairman of the Board, Chief Executive Officer and Director Raymond V. Marino 274,238 (4) 1.51% ___ 1.51% * President, Chief Operating Officer and Director Wayne N. Pham 152,000 (5) * ___ * * Vice President of Finance and Controller John C. Bolger, Director 54,222 (6) * ___ * * 96 Sutherland Drive Atherton, CA 94027 William A. Hasler, Director 46,000 (7) * ___ * * c/o Apton Corporation 1 Market Street, Spear Tower, Ste. 1850 San Francisco, CA 94105 Lawrence B. Helzel, Director 219,500 (8) 1.21% ___ 1.21% * c/o Helzel Kirshman, LP 5550 Redwood Road, Suite 4 Oakland, CA 94619 5% STOCKHOLDERS: Cohen & Steers Capital Management, Inc. 2,031,400 (9) 11.19% ___ 11.19% 1.93% 757 Third Avenue New York, NY 10017 Neuberger Berman, LLC 2,197,566 (10) 12.11% ___ 12.11% 2.09% Neuberger Berman, Inc. 605 Third Avenue New York, NY 10158 Ingalls & Snyder, LLC 2,815,281 (11) 15.51% ___ 15.51% 2.68% 61 Broadway New York, NY 10006 Clyde J. Berg ___ * 43,478,470(12)(13)70.55% 41.41% c/o Berg & Berg Developers 10050 Bandle Drive Cupertino, CA 95014 Berg & Berg Enterprises, Inc. (15) ___ * 10,789,383 37.29% 10.28% 10050 Bandle Drive Cupertino, CA 95014 Thelmer G. Aalgaard ___ * 1,854,225 9.27% 1.77% c/o Berg & Berg Developers 10050 Bandle Drive Cupertino, CA 95014 John T. Kontrabecki ___ * 1,755,761 8.82% 1.67% 2755 Campus Drive, Suite 100 San Mateo, CA 94403 All Directors and Officers as a group (6 745,960 (14) 4.11% 44,888,441 (12) 72.39% 43.47% persons) ----- * Less than 1%. - 8 - (1)

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission, which generally attribute beneficial ownership of securities to persons who possess sole or shared voting power and/or investment power with respect to those securities and include securities which such person has the right to acquire within 60 days of March 31, 2005. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them. Common Stock percentage ownership interest calculations are based on 18,147,191 shares outstanding as of March 31, 2005 and exclude all shares of Common Stock issuable upon the exercise of outstanding options other than the shares so issuable within 60 days under options held by the named person. Common Stock/O.P. Units percentage ownership interest calculations are based on 104,481,886 shares of Common Stock and O.P. Units exchangeable for Common Stock as of March 31, 2005. (2) Assumes O.P. Units are exchanged for shares of Common Stock without regard to (i) whether such O.P. Units may be exchanged for shares of Common Stock within 60 days of March 31, 2005, and (ii) certain ownership limit provisions set forth in the Company's Articles of Amendment and Restatement. (3) Includes O.P. Units in which Mr. Berg has a pecuniary interest because of his status as a limited partner in the operating partnerships. Also includes an additional 10,789,383, 196,428 and 169,131 shares of Common Stock held by or issuable on exchange of O.P. Units beneficially owned by Berg & Berg Enterprises, Inc., Berg & Berg Enterprises, LLC and West Coast Venture Capital, Inc., respectively. Mr. Berg disclaims beneficial interest in any shares or O.P. Units deemed beneficially owned by Kara Ann Berg, his daughter, and the 1981 Kara Ann Berg Trust. (4) Includes

255,208 shares of Common Stock issuable on exercise of options. Does not include 119,792 unvested shares of Common Stock issuable on exercise of options that are not exercisable within 60 days. (5) Includes 152,000 shares of Common Stock issuable on exercise of options. (6) Includes 32,000 shares of Common Stock issuable on exercise of options. (7) Includes 32,000 shares of Common Stock issuable on exercise of options. (8) Includes 32,000 shares of Common Stock issuable on exercise of options. (9) Cohen & Steers Capital Management, Inc. is the beneficial owner on behalf of other persons. No such person is known to have an interest in more than 5% of the Common Stock reported. Amount based on the filing of Schedule 13G on February 14, 2005. (10) Neuberger Berman, LLC & Neuberger Berman, Inc. is the beneficial owner on behalf of other persons. One employee, Dan McCarthy, has an interest in 5.5% of the Common Stock reported. No other person is known to have an interest in more than 5% of the Common Stock reported. Amount based on information reported by the stockholder. (11) Ingalls & Snyder, LLC is the beneficial owner on behalf of other persons. No such person is known to have an interest in more than 5% of the Common Stock reported. Amount based on the filing of Schedule 13G on February 11, 2005. (12) Includes O.P. Units in which Mr. Berg has a pecuniary interest because of his status as a limited partner in the operating partnerships. Also includes L.P. Units held by Mr. Berg as trustee of the 1981 Kara Ann Berg Trust and an additional 10,789,383 shares of Common Stock held by or issuable on exchange of O.P. Units beneficially owned by Berg & Berg Enterprises, Inc. This does not include any share deemed beneficially owned by Sonya L. Berg and Sherri L. Berg, his daughters, as to which he disclaims beneficial ownership. (13) Carl E. Berg is an executive officer and director and Clyde J. Berg is a director of Berg & Berg Enterprises, Inc. With members of their immediate families, the Messrs. Berg beneficially owns, directly and indirectly, all of the O.P. Units of Berg & Berg Enterprises, Inc. (14) Current officers and directors include Carl E. Berg, Raymond V. Marino, Wayne N. Pham, John C. Bolger, William A. Hasler, and Lawrence B. Helzel. See Notes 3 through 8. - 9 - CONTRACTUAL AND OTHER CONTROL ARRANGEMENTS SPECIAL BOARD VOTING PROVISIONS. The Charter and Bylaws provide substantial control rights for the Berg Group. These rights include a requirement that Mr. Berg or his designee as director approve certain fundamental corporate actions, including amendments to the Charter and Bylaws and any merger, consolidation or sale of all or substantially all of the Company's assets. In addition, the 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 the Company and the Operating Partnerships, beneficially own, in the aggregate, at least 15% of the outstanding shares of common stock on a Fully Diluted basis. In addition, directors representing more than 75% of the entire Board of Directors must approve other significant transactions, such as incurring debt above certain amounts, acquiring assets and conducting business other than through the Operating Partnerships. BOARD OF DIRECTORS REPRESENTATION. The Berg Group members have the right to designate two of the director nominees submitted by the Board of Directors to stockholders for election, as long as the Berg Group members and their affiliates, other than the Company and the Operating Partnerships, beneficially own, in the aggregate, at least 15% of the Company's outstanding shares of common stock on a Fully Diluted basis. If the Fully Diluted ownership of the Berg Group members and their affiliates 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 the 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 the Company. SUBSTANTIAL OWNERSHIP INTEREST. The Berg Group currently owns O.P. Units representing approximately 74.2% of the equity interests in the operating partnerships. The O.P. Units may be converted into shares of Common Stock, subject to limitations set forth in the Charter (including an overall 20% ownership limitation for the Berg Group), and other agreements with the Berg Group. Upon conversion these shares would represent voting control of the Company. 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 the Company. LIMITED PARTNER APPROVAL RIGHTS. Mr. Berg and other limited partners of the Operating Partnerships, including other members of the Berg Group, may restrict the Company's 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 the Company's 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 (i) the amendment, modification or termination of any of the Operating Partnership Agreements; (ii) the transfer of any general partnership interest in the Operating Partnerships, including, with certain exceptions, transfers attendant to any merger, consolidation or liquidation of the Company; (iii)

the admission of any additional or substitute general partners in the Operating Partnerships; (iv) any other change of control of the Operating Partnerships; (v) a general assignment for the benefit of creditors or the appointment of a custodian, receiver or trustee of any of the assets of the Operating Partnerships; and (vi) the institution of any bankruptcy proceeding for any Operating Partnership. In addition, as long as the Berg Group members and their affiliates, 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 (i) 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; (ii) the issuance of limited partnership interests senior to the O.P. Units as to distributions, assets and voting; and (iii) the liquidation of the Operating Partnerships. - 10 - COMPARISON OF SHAREHOLDER RETURN ON INVESTMENT

The following line graph compares the change in the Company's cumulative stockholder return on its shares of Common Stock to the cumulative total return of the NAREIT Equity REIT Total Return Index ("NAREIT Equity Index") and the Standard & Poor's 500 Stock Index ("S & P 500 Index") from December 31, 1999 to December 31, 2004. The line graph starts December 31, 1999. The graph assumes that the value of the investment in the Company's Common Stock was \$100 at December 31, 1999 and that all dividends were reinvested. The Common Stock's price on December 31, 1999 was \$7.75. The Company obtained the information about the NAREIT Equity Index and S & P 500 Index from each entity respectively, and has assumed that the information is reliable, but cannot assume its accuracy. [OBJECT OMITTED] Mission West Properties, Inc. S & P 500 Index NAREIT Equity Index

Year	S & P 500 Index	NAREIT Equity Index	Company's Common Stock
1999	\$100.00	\$100.00	\$100.00
2000	\$189.95	\$90.90	\$126.37
2001	\$187.02	\$80.09	\$143.97
2002	\$158.16	\$62.39	\$149.47
2003	\$224.95	\$80.29	\$204.98
2004	\$199.30	\$89.02	\$269.70

(1) The stock price performance shown in the graph is not necessarily indicative of future performance of the Company's Common Stock. Notwithstanding anything to the contrary set forth in any of the Company's previous or future filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, that might incorporate this Proxy Statement on future filings made by the Company under those statutes, the Audit Committee Report, the Report on Executive Compensation and Stock Performance Graph are not deemed filed with the Securities Exchange Commission and shall not be deemed incorporated by reference into any such filings. - 11 -

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS PROPERTY ACQUISITIONS AND FINANCIAL TRANSACTIONS BETWEEN THE COMPANY AND THE BERG GROUP FORMATION OF THE COMPANY. Through a series of transactions in 1997 and 1998, the Company became the vehicle for substantially all of the Silicon Valley R&D property activities of the Berg Group, which includes Mr. Berg, his brother Clyde J. Berg, members of their families and a number of entities in which they have controlling or substantial ownership interests. The Company owns these former Berg Group properties, as well as the rest of its properties, through the Operating Partnerships, of which the Company is the sole general partner. Through various property acquisition agreements with the Berg Group, the Company has 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 in the states of California, Oregon and Washington the details of which are set forth above. Since September 1998, the Company has acquired a total of approximately 3,100,000 million rentable square feet of R&D buildings under the Pending Projects Acquisition Agreement and the Berg Land Holdings Option Agreement. The total cost of these properties was approximately \$478 million. The Company issued a total of 27,962,025 O.P. Units and assumed debt totaling approximately \$209 million to acquire them. **RELATED PARTY DEBT.** As of December 31, 2004 and 2003, debt in the amount of \$9.6 million and \$6.3 million, respectively, was due the Berg Group under the \$20 million line of credit, which is collateralized by five of our properties and expires in March 2006. 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, and we may be unable to obtain a similar credit facility on comparable terms. We borrowed and repaid amounts under this line of credit at various times during 2004. Additionally, in 2004 and 2003, the operating partnerships declared distributions of \$0.88 and \$0.96 per O.P. Unit, respectively. Distributions paid to various members of the Berg Group were \$69.1 million and \$75.2 million in 2004 and 2003, respectively. Interest expense incurred in connection with the Berg Group line of credit was \$0.3 million, \$0.2 million and \$2.6 million for the years ended December 31, 2004, 2003 and 2002, respectively. As of December 31, 2004 and 2003, debt in the amount of \$10.4 million and \$10.8 million, 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. Interest expense incurred in connection with the Berg Group mortgage note was \$0.8 million, \$0.8 million and \$0.9 million for the years ended December 31, 2004, 2003 and 2002, respectively. If we are unable to repay our debts to the Berg Group when due, the Berg Group could take action to enforce our payment obligations. Potential actions by the Berg Group to enforce these obligations could result in the foreclosure in one or more of our properties and 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. TRANSFER OF INTEREST TO BERG GROUP IN CONSOLIDATED JOINT VENTURE. In July 2000, the Hellyer Avenue Limited Partnership ("Hellyer LP") was formally organized as a California limited partnership between Mission West Properties, L.P. ("MWP"), of which the Company is the managing general partner, and Republic Properties Group ("RPC"), an unaffiliated third party, as a general partner and limited partner. MWP was designated as the managing general partner of Hellyer LP. For a 50% ownership interest in Hellyer LP, RPC agreed to cause Stellex Microwave Systems, Inc. ("Stellex") to provide a 15-year lease on an approximate 160,000 square foot R&D building to be constructed by Berg & Berg Enterprises, Inc. ("BBE") on land owned by another Berg Group member. As part of the transaction, MWP acquired the underlying land pursuant to the Berg Land Holdings Option Agreement for a price of \$5.7 million by issuing 659,223 O.P. Units to the Berg Group entity that owned the property. Further, under the terms of the Hellyer LP partnership agreement MWP then contributed the land to the partnership at an agreed value of \$9.6 million which amount was to be amortized and paid to MWP in the form of income and cash flow preferences. The transaction was reviewed and approved by the Independent Directors Committee. In connection with the transaction, BBE built and paid for all improvements on the land. The total cost of the R&D building, exclusive of specified tenant improvements obligations, was approximately \$11.4 million. Hellyer LP issued a note for the amount of those construction costs to BBE, which note was secured by the buildings. Because RPC's interest in Hellyer LP was attributable solely to its commitment to obtain Stellex as a tenant for the property, the partnership agreement provided that if a payment default occurred within the first five years of the Stellex lease, RPC would lose 100% of its interest in the partnership, and if a payment default occurred during the second five year period under the lease, RPC would lose 50% of its interest in Hellyer LP. - 12 - Pursuant to RPC's commitment to Hellyer LP, Stellex executed a lease agreement obligating Stellex, among other things, to pay monthly rent starting at \$1.60 per square foot on a triple net basis for 15 years and to reimburse BBE for the tenant improvement obligations, which ultimately totaled approximately \$10.5 million. Under the lease terms, Stellex was obligated to reimburse BBE in full for the tenant improvement costs no later than August 25, 2000. Several days before the due date, representatives of Stellex met with representatives of MSW and informed them that Stellex could not pay the balance due BBE. Stellex requested MSW immediately to draw down the letter of credit as a result of a default on the tenant improvement payment required under the lease. On September 1, 2000, MWP, as the general partner of Hellyer LP, ceased all allocations of income and cash flow to RPC and exercised the right under the partnership agreement to cancel RPC's entire interest in the partnership. Following discussions with and approval by the Independent Directors Committee, the Company authorized the transfer of RPC's interest in Hellyer LP to BBE. Under the Berg Land Holdings Option Agreement and the Acquisition Agreement dated as of May 14, 1998, the Independent Directors Committee had the right, but not the obligation, to reacquire the property interest and the related distributions related to the property interest at any time. The transfer was effective as of September 1, 2000. Stellex filed for bankruptcy protection on September 12, 2000. On November 20, 2000, RPC filed suit in the Circuit Court of Maryland for Baltimore City to recover past distributions and its interest in the Hellyer LP., and the Company counter-sued on behalf of MWP and itself in Superior Court of California for the County of Santa Clara in February 2001. In January 2002, Stellex was acquired through its bankruptcy proceeding by a division of Tyco Corporation. In connection with the acquisition of Stellex, the purchaser assumed the lease with Hellyer LP, agreed to comply with all terms of the lease and reimbursed BBE for the tenant improvements, as required under the lease agreement and the Bankruptcy Court order. Since the inception of Hellyer LP, the Company has accounted for the properties owned by the partnership on a consolidated basis, with reductions for the minority interest held by the minority partner (first RPC and then BBE). In each period, the Company has accrued amounts payable by Hellyer LP to the minority interest partner, including BBE, prior to payment. Through December 31, 2004, accumulated cash flow distributions from Hellyer LP totaling approximately \$2.2 million were accrued, of which \$2.1 million was distributed to BBE, which has been classified on the Company's consolidated balance sheets as an account receivable from BBE with an offsetting account payable to BBE. The Company did not object to that proposed

classification. In April 2004, the Circuit Court of Maryland for Baltimore City issued its decision in the Maryland suit, and awarded damages of approximately \$1.1 million to RPC. The court denied all requests by MWP, including a declaration that all of RPC's interests in Hellyer L.P. were validly converted to limited partnership interests and transferred to MWP or its designee in accordance with the terms of the Hellyer L.P. partnership agreement. The court also denied RPC's request for an injunction ordering the reinstatement of RPC's partnership interests in Hellyer L.P. MWP has appealed the decision to the Maryland Appeals Court. If the litigation with RPC is ultimately decided in RPC's favor, the Company anticipates that BBE may be required to return RPC's former interest in Hellyer LP and all prior distributions to RPC. If the litigation is ultimately decided in the Company's favor, the Independent Directors Committee has the right, but not the obligation, to acquire the former RPC interest and related distributions from BBE under the terms of the Berg Land Holdings Option Agreement and the Acquisition Agreement. In July 2004, RPC attached the Company's bank account for approximately \$1.1 million. Following a July 2004 hearing in the Superior Court of the State of California for the County of Santa Clara the Company posted a \$1.5 million appeal bond in August 2004 and RPC removed the attachment on the Company's bank account until final resolution of the appeal in Maryland. On February 4, 2005, the Maryland Appeals Court heard our appeal. On March 1, 2005, the Maryland Appeals Court ruled in favor of MWP, finding that the Circuit Court of Maryland could not assert personal jurisdiction in the RPC suit. The Maryland Appeals Court will issue its mandate within 30 days, after which RPC will have 15 days to seek a writ of certiorari to the Maryland Appeals Court.

BERG COMMITMENT TO COMPLETE FUTURE IMPROVEMENTS AND BUILDING IN CONNECTION WITH CERTAIN ACQUISITIONS FROM THE BERG GROUP UNDER THE BERG LAND HOLDINGS OPTION AGREEMENT. The Berg Group has an approximately \$7.5 million commitment to complete an approximately 75,000 to 90,000 square foot building in connection with the Company's 2001 acquisition of 245 Caspian in Sunnyvale, which consisted of approximately three acres of unimproved land zoned for commercial development. The Berg Group has an approximately \$2.5 million commitment to complete certain tenant improvements in connection with the Company's 2002 acquisition of 5345 Hellyer Avenue in San Jose.

- 13 - BERG CONTROLLED ENTITIES HAVE FINANCIAL INTERESTS IN CERTAIN TENANTS THAT LEASE SPACE FROM THE COMPANY. During December 31, 2004, 2003 and 2002, Carl E. Berg or entities controlled by Mr. Berg have financial interests in several companies that lease space from the operating partnerships, which include three companies where Mr. Berg has a greater than 10% ownership interest. These related tenants occupy approximately 48,000 square feet and contributed \$866,000 \$904,000 and \$748,000 in rental revenue in 2004, 2003 and 2002, respectively. Leasing and Overhead Reimbursements Provided by Berg Controlled Entity. 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 \$90,000 for the years ended December 31, 2004, 2003 and 2002.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE Section 16(a) of the Securities Exchange Act of 1934, as amended, requires the Company's directors, executive officers and persons who own more than 10% of a registered class of the Company's equity securities to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of ours. Directors, executive officers and greater than 10% holders are required by SEC regulation to furnish the Company with copies of all Section 16(a) reports they file. To the Company's knowledge, based solely on review of the copies of the above-mentioned reports furnished to the Company and written representations regarding all reportable transactions, during the fiscal year ended December 31, 2004, all Section 16(a) filing requirements applicable to its directors, officers and greater than ten percent holders were complied with on time.

REPORT ON EXECUTIVE COMPENSATION BY THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS COMPENSATION PHILOSOPHY The Company's executive compensation policy is designed to attract and retain qualified executive personnel by providing executives with a competitive total compensation package based in large part on their contribution to the financial and operational success of the Company, the executive's personal performance and increases in stockholder value as measured by the Company's stock price.

COMPENSATION PROGRAM The compensation package for the Company's executive officers consists of the following three components: **BASE SALARY.** The Compensation Committee determines the base salary of each executive based on the executive's scope of responsibility, past accomplishments and experience and personal performance, internal comparability considerations and data regarding the prevailing compensation levels for comparable positions in relevant competing executive labor markets. The Committee may give different weight to each of these factors for each executive, as it deems appropriate. In selecting comparable companies for the purpose of

setting competitive compensation for the Company's executives, the Compensation Committee considers many factors not directly associated with stock price performance, such as geographic location, annual revenue and profitability, organizational structure, development stage and market capitalization.

ANNUAL INCENTIVE COMPENSATION. At the present time, the Company does not have an annual incentive compensation program in place. However, the Compensation Committee may in the future at the Compensation Committee's discretion institute an annual incentive program.

STOCK OPTIONS AND AWARDS. The Compensation Committee believes that granting stock options and/or awards to executives and other key employees on an ongoing basis gives them a strong incentive to maximize stockholder value and aligns their interests with those of other stockholders. The Compensation Committee determines stock option grants and awards to executives and has authorized the Company's CEO to determine stock option grants and awards for all other employees, subject to the Compensation Committee's approval of total share allocations from the Option Plan. In determining the size of stock option grants and awards, the Compensation Committee considers the executive's current position with and responsibilities to the Company, potential for increased responsibility and promotion over the option term, tenure with the Company and performance in recent periods, as well as the size of - 14 - comparable awards made to executives in similar positions in competing executive labor markets. Generally, each stock option grant allows the executive to purchase shares of Common Stock at a price per share equal to the market price on the date the option is granted, but the Compensation Committee has the power to grant options at a lower price if considered appropriate under the circumstances. Each stock option grant generally becomes exercisable, or vests, in installments over time, or contingent upon the executive's continued employment with the Company. Management did not recommend and the Compensation Committee did not authorize any stock option grants or awards in 2004.

COMPENSATION OF CHIEF EXECUTIVE OFFICER. The annual salary for Mr. Berg was set in 1997 and first became payable in 1998. The Compensation Committee has no plan to adjust his compensation.

COMPLIANCE WITH INTERNAL REVENUE CODE SECTION 162(M). Section 162(m) of the Internal Revenue Code generally disallows a tax deduction to publicly-held companies for compensation paid to certain executive officers, to the extent that compensation paid to the officer exceeds \$1 million during the taxable year. The compensation paid to the Company's executive officers for the year ended December 31, 2004 did not exceed the \$1 million limit per officer. In addition, the Option Plan and executive incentive option grants have been structured so that any compensation deemed paid to an executive officer in connection with the exercise of his or her outstanding options with an exercise price per share equal to the fair market value per share of the common stock on the grant date will qualify as performance-based compensation that will not be subject to the \$1 million limitation. It is very unlikely that the cash compensation payable to any of the Company's executive officers in the foreseeable future will approach the \$1 million limit, and the Compensation Committee does not expect to take any action at this time to modify cash compensation payable to the Company's executive officers to avoid the application of Section 162(m).

The Compensation Committee of the Board of Directors: John C. Bolger William A. Hasler Lawrence B. Helzel - 15 -

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION The Compensation Committee of the Board of Directors was formed in December 1998 and currently is comprised of Messrs. John C. Bolger, William A. Hasler and Lawrence B. Helzel. None of these individuals were at any time during 2004, or at any other time, an officer or employee of the Company. No executive officer of ours serves as a member of the compensation committee of any other entity that has one or more executive officers serving as a member of the Company's Board of Directors or Compensation Committee.

AUDIT COMMITTEE REPORT The Board of Directors adopted an amended Audit Committee Charter on April 28, 2004, which sets forth the responsibilities of the committee. The Company notes, however, that management has primary responsibility for its financial statements and the overall financial reporting process, including its system of internal controls. Furthermore, the Company's independent registered public accounting firm audits management's assessment of the effectiveness of internal control over financial reporting and the financial statements prepared by management, expresses an opinion on whether those financial statements fairly present the financial position, results of operations and cash flows in conformity with accounting principles generally accepted in the United States of America, and discusses with the Audit Committee any issues they believe should be raised with us. The Audit Committee has reviewed and discussed the audited financial statements of the Company for fiscal year 2004 and management's assessment of the effectiveness of internal control over financial reporting with management and the Company's independent registered public accounting firm, BDO Seidman, LLP ("BDO"). The Audit Committee discussed with BDO matters required to be discussed by Statement on Auditing Standards No. 61 (Communication with Audit Committees). The Audit

Committee was also provided by BDO the written disclosures required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and the Audit Committee discussed with BDO that firm's independence. Based on the discussions with BDO concerning the audits, the independence discussions and the financial statement review, and such other matters deemed relevant and appropriate by the Audit Committee, we recommended to the Board of Directors that the Company's financial statements for the fiscal year ended December 31, 2004 be included in its 2004 Annual Report on Form 10-K filed with the SEC. The Audit Committee of the Board of Directors: John C. Bolger William A. Hasler Lawrence B. Helzel - 16 -

----- PROPOSAL NO. 1: ELECTION OF DIRECTORS

----- At the Annual Meeting, five directors (constituting the entire Board of Directors) are to be elected to serve until the next annual meeting of Stockholders and until each director's successor is elected and qualified, or until the death, resignation or removal of such director. There are five nominees, all of whom are currently directors of the Company. NOMINEES Set forth below is information regarding the nominees for election to the Board of Directors: Name Position(s) with the Company First Elected Director -----

----- Carl E. Berg Chairman of the Board, Chief Executive Officer and Director 1997 John C. Bolger Director 1998 William A. Hasler Director 1998 Lawrence B. Helzel Director 1998 Raymond V. Marino President, Chief Operating Officer and Director 2001 In accordance with the Company's Bylaws, it is a qualification of two directors that they be nominated by the Berg Group and that one such director be Carl E. Berg, or the Berg Designee as long as the Berg Group and its affiliates (other than the Company and the Operating Partnership) own at least 15% of the Fully Diluted number of shares. The Company has been advised by Mr. Berg, who represents the Berg Group, that he will be the only Berg Group nominee for election at this meeting. A plurality of the votes cast at the Annual Meeting is required to elect each nominee as a director. Unless authority to vote for any of the nominees named above is withheld, the shares represented by the enclosed proxy will be voted FOR the election as directors of such nominees. Each person nominated has agreed to serve if elected, and the Board of Directors has no reason to believe that any nominee will be unavailable or will decline to serve. In the event, however, that any nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any nominee who is designated by the current Board of Directors to fill the vacancy. THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE ELECTION OF ALL OF THE ABOVE NOMINEES. - 17 - -----

PROPOSAL NO. 2: INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

----- The Audit Committee of our Board of Directors has appointed BDO Seidman, LLP, as our independent registered public accounting firm, to audit the financial statements of the Company for the year ending December 31, 2005. The Board of Directors proposes that the stockholders ratify this appointment. The Company expects that representatives of BDO Seidman, LLP will be present at the Annual Meeting, will have the opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions. In the event that stockholders fail to ratify the appointment, the Audit Committee will reconsider its selection. Even if the selection is ratified, the Audit Committee, in its discretion, may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee determines that such a change would be in the Company's best interests. PRINCIPAL ACCOUNTANT FEES AND SERVICES On January 26, 2004, the Company's independent registered public accounting firm, PricewaterhouseCoopers LLP ("PWC") resigned, did not render an audit opinion on the Company's fiscal year 2003 financial statements and withdrew its audit opinions on the Company's fiscal year 2002 and 2001 financial statements. In May 2004, the Audit Committee appointed BDO as the Company's new independent registered public accounting firm to complete the audit of the Company's financial statements for the years ending December 31, 2003, 2002 and 2001. The aggregate fees billed to the Company by BDO Seidman, LLP for professional services rendered with respect to 2004 and 2003 fiscal years are as follows: BDO 2004 2003 ----- Audit Fees (1) \$350,655 \$151,253 (1) Includes the aggregate fees billed for the audit and review of the Company's annual and quarterly financial statements and the audit of internal controls over financial reporting in 2004. In addition to the 2004 and 2003 audit fees noted above, the Company also paid BDO Seidman, LLP \$302,506 in audit fees in 2004 for the re-audits of the Company's 2002 and 2001 financial statements. There were no other audit related, tax or other fees or any fees for non-audit services accrued by or billed to the Company by BDO Seidman, LLP in 2004 and 2003. The aggregate fees accrued by or billed to the Company by PWC for professional services rendered with respect to fiscal year 2003 is as follows: PWC 2003 ----- Audit Fees (1)

\$121,050 Tax Fees (2) 10,800 ----- Total 131,850 (1) Audit Fees include amounts related to professional services rendered in connection with audits of the Company's annual financial statements and the reviews of its quarterly financial statements. (2) Tax fees include amounts billed for professional services rendered by accountants for tax advisory. There were no other audit related, tax or other fees or any fees for non-audit services accrued by or billed to the Company by PricewaterhouseCoopers, LLP in 2003. - 18 - The Audit Committee pre-approves all annual audit engagement services and fees and all fees for non-audit services (other than non-audit services that are de minimus within the meaning of section 10A(i)(1)(B) of the Securities Exchange Act and non-audit services that the independent accountants are prohibited from providing to us). The Audit Committee requires the independent accountants to submit a detailed proposal and budget for each engagement prior to the commencement of the engagement. Additional services must be pre-approved by the Audit Committee or the Chairman of the Audit Committee to whom pre-approval authority has been delegated. All services of the independent registered public accountants relating to review and attestation of internal controls and procedures are pursuant to section 404 of the Sarbanes Oxley Act. There were no fees paid to independent accountants in the past three fiscal years that were for non-audit services that the Audit Committee or Chairman did not pre-approve.

CHANGE OF ACCOUNTANTS On January 26, 2004, PricewaterhouseCoopers, LLP, San Francisco, California ("PWC"), the independent registered public accounting firm previously engaged as the principal accountant to audit the financial statements of Mission West Properties, Inc., (the "Company"), resigned as independent auditors for the Company. PWC did not issue a report of independent auditors' with respect to the Company's 2003 financial statements prior to its resignation. The reports of PWC on the Company's consolidated financial statements for the preceding two fiscal years contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles. In the Company's view there were no disagreements with PWC on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of PWC would have caused them to make reference thereto in their report on the financial statements for such years in connection with PWC's audits for 2001 and 2002 and through January 26, 2004. Also, during fiscal years 2001 and 2002, and through January 26, 2004, there were no "reportable events" (as defined in Regulation S-K Item 304(a)(1)(v)) known to the Company. In connection with the Company's disclosure of PWC's resignation, the Company asked PWC to furnish it with a letter addressed to the SEC stating whether PWC agreed or disagreed with the above statements. In response to that request, PWC submitted the following response to the SEC: Commissioners: We have read the statements made by Mission West Properties, Inc., which we understand has been filed with the Commission, pursuant to Item 4 of Form 8-K, as part of the Company's Form 8-K report dated January 26, 2004. In addition to the events reported in such Form 8-K, with which we agree, additional events that should have been reported by the Company follow: In connection with our review of the Company's interim financial statements for the period ended September 30, 2003, management provided us with oral representations relating to certain related party transactions. We subsequently requested the representations in writing, and management has not been willing to comply with this request. In connection with our audit of the Company's financial statements for the year ended December 31, 2003, we had the following reportable events or disagreements with management as to the nature and extent of our audit procedures: 1. We requested written representations from management relating to the related party transactions referred to above, and we indicated that the requested written representations were necessary for us to complete our audit. The Company and its counsel responded that they were not willing to provide the requested written representations and, further, indicated that the requested representations were not necessary for us to complete our audit. 2. In response to our inquiries regarding subsequent events and other matters that may be significant to our audit, management expressed an unwillingness to respond fully to our inquiries. - 19 - 3. We informed the audit committee that information came to our attention that, if further investigated, may materially impact the fairness or reliability of financial statements previously issued by the Company and, due to our resignation, we did not conduct further investigation. Because of the foregoing circumstances, and the fact that management has made statements that are inconsistent with oral representations made previously, we advised the audit committee that we are no longer willing or able to rely on the representations of management. On February 12, 2004, we informed the Company that our audit reports dated January 21, 2002 and January 28, 2003 on the financial statements of the Company for the years ended December 31, 2001 and 2002 should no longer be relied upon, and that we are no longer willing to be associated with the interim financial statements of the Company for any interim periods within such years or for any interim periods in the period ended September 30, 2003. In reply to PWC's response to the SEC, the Company's

management submitted its response on SEC Form 8-K/A filed February 15, 2004, in which the Company objected strenuously to the assertions contained in PWC's letter. The Company also corresponded with the SEC regarding the Company's objections to PWC's letter. The following are the Company's responses to PWC's letter to the SEC as reported by the Company in the Form 8-K/A filed on February 15, 2004: Response to Items 1 - 3 in PWC's Letter to SEC: 1. William Croteau, the PWC audit engagement partner ("Croteau") resigned during a telephone call at approximately 6:30 PM on Monday, January 26, 2004 with John Bolger the Chairman of the Audit Committee. Prior to that telephone call PWC had not met with the Audit Committee at any time to discuss any of the issues described herein, which PWC was obligated to do under terms of its engagement letter. During the telephone call with Mr. Bolger, Croteau stated he would not attend the regular Audit Committee meeting scheduled for the following day and further stated to Mr. Bolger that no accounting or disclosure issues existed. At no time prior to the telephone conversation with Bolger on the night of January 26, 2004 had Croteau advised the Audit Committee of any issues with any member of management, including Mr. Berg or Mr. Marino, that would lead to PWC's resignation. The representations requested by PWC were related to the proposed management representation letter for the third quarter of 2003 which was not furnished to management until November 19, 2003 more than 30 days after clearance on release of earnings by PWC and the Audit Committee. In addition, the representation letter from PWC was received by management after the PWC had approved the Form 10-Q for the quarter ended September 30, 2003 which was filed by the Company on November 13, 2003. On December 5, 2003 after returning from vacation, Mr. Marino provided the representation letter to Mr. Berg for signature. Mr. Berg believed the representation letter PWC asked management to sign contained (i) inaccurate and potentially misleading statements and (ii) asked management to speculate about future contingent events that were not subject to the control of management. On December 6, 2003 management provided PWC with alternative language that management considered factual and correct. Discussions and email communications on this matter continued between management and PWC until we received an email from Croteau at 5:30 p.m. on January 23, 2004 stating that PWC had reached an "impasse" with management on this matter. Following receipt of Croteau's January 23 email, management expected that this impasse would be resolved by the Audit Committee at the next scheduled meeting on Tuesday, January 27, 2004. If PWC had met with the Audit Committee as scheduled; advised them of PWC's issues and given the Audit Committee the opportunity to resolve such issues, this dispute could have been resolved. 2. Neither the Company's management nor the Audit Committee was ever informed by PWC of any subsequent events or other matters where management had been unwilling to fully respond or cooperate, except as stated above. 3. PWC only informed the Audit Committee after their decision to resign "that information came to our [their] attention that, if further investigated, may materially impact the fairness or reliability of financial statements issued by the company..." The Audit Committee is having the matter outlined in item 1 above independently investigated, since this is the only matter which PWC has informed the Audit Committee would require further investigation. Once again, PWC's statement that they "advised the audit committee that we [they] are no longer willing to rely on representations of management" were not presented by PWC to the Audit Committee prior to PWC's resignation. Management believes that the Audit Committee has been fully apprised of all circumstances that were the subject of the representations referred to above. - 20 - With respect to the pertinent paragraph in PWC's letter, management of the Company denies having made any oral representations to PWC that were the same or substantially similar to the representations in PWC's proposed third quarter 2003 representation letter that management rejected. Furthermore, PWC failed to advise the Audit Committee of any concern that PWC had or any audit issues related to such proposed representations until four days after PWC resigned as independent accountant. Responses to Last Two Paragraphs of PWC's Letter to SEC: Prior to its resignation, PWC had never informed management or the Audit Committee of any inconsistent statements except those disputed above, which would have been resolved, if PWC had not breached its contractual obligations contained in the engagement letter by resigning before allowing the Audit Committee to investigate any such allegations. By resigning without meeting with the Audit Committee and informing them of any management issues was a breach of PWC's engagement letter. Refusing to complete the December 31, 2003 audit and failing to allow their audit reports for December 31, 2001 and 2002 to be relied upon, PWC has acted recklessly, thereby exposing the Company to undetermined costs and damages. Prior to its resignation, PWC had never disclosed to management or the Audit Committee any material issues related to the fairness or reliability of financial statements of the Company. On May 10, 2004, the Audit Committee of the Board of Directors authorized the engagement of BDO Seidman, LLP as the Company's new independent registered public accounting firm for the fiscal years ending December 31, 2003 and December 31, 2004.

BDO completed the audit of the Company's 2001, 2002 and 2003 financial statements and issued its report on July 30, 2004. During the two most recent fiscal years ended December 31, 2003 and 2002 and the subsequent interim period through May 10, 2004, BDO Seidman, LLP had not been engaged as independent accountants to audit the financial statements of the Company, nor had it been consulted regarding the application of accounting principles to any specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's financial statements, or any matter that was the subject of a disagreement or reportable event. THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE PROPOSAL TO RATIFY THE SELECTION OF BDO SEIDMAN, LLP TO SERVE AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE YEAR ENDING DECEMBER 31, 2005. - 21 - STOCKHOLDER PROPOSALS FOR 2006 ANNUAL MEETING To be considered for inclusion in the Company's proxy card and proxy statement relating to the 2006 Annual Meeting of Stockholders, proposals subject to SEC Rule 14a-8 must be received at the Company's principal office no later than January 31, 2006. In addition, if you desire to bring other business, including director nominations, for the 2006 Annual Meeting that will not be included in the Company's proxy card and proxy statement, your notice must be delivered to the Company no earlier than March 1, 2006 and no later than April 1, 2006. For additional requirements, a stockholder should refer to our Bylaws, Article II, Section 12, "Nominations and Proposals by Stockholders," a current copy of which may be obtained from our Secretary. If the Company does not receive timely notice pursuant to the Company's Bylaws, any proposal will be excluded from consideration at the 2006 Annual Meeting. All stockholder proposals should be addressed to the attention of the Secretary at the principal office of the Company. OTHER MATTERS The Board of Directors knows of no other matters to be presented for stockholder action at the Annual Meeting. However, if other matters do properly come before the Annual Meeting or any adjournments or postponements thereof, the Board of Directors intends that the persons named in the proxies will vote upon such matters in accordance with the best judgment of the proxy holders. BY ORDER OF THE BOARD OF DIRECTORS /s/ Raymond V. Marino -----

Raymond V. Marino Secretary Cupertino, California April 26, 2005 - 22 - MISSION WEST PROPERTIES, INC. ----- SOLICITED BY THE BOARD OF DIRECTORS FOR THE 2005 ANNUAL MEETING OF STOCKHOLDERS The undersigned hereby appoints Carl E. Berg and Raymond V. Marino, each with the power to appoint his substitute, and hereby authorizes them to represent and to vote all shares of common stock of Mission West Properties, Inc. (the "Company") held of record by the undersigned in favor of each proposal designated on this Proxy Card and to vote the shares of the undersigned in their discretion with respect to other matters that properly come before the 2005 Annual Meeting of Stockholders (the "Annual Meeting") to be held June 1, 2005 and any adjournment of the Annual Meeting. THIS PROXY WHEN PROPERLY EXECUTED WILL BE VOTED AS DIRECTED. IF NO DIRECTION IS GIVEN WITH RESPECT TO A PARTICULAR PROPOSAL, THIS PROXY WILL BE VOTED FOR EACH OF THE NOMINEES IN PROPOSAL 1 AND FOR PROPOSAL 2. PLEASE MARK, DATE, SIGN, AND RETURN THIS PROXY CARD PROMPTLY, USING THE ENCLOSED ENVELOPE. NO POSTAGE REQUIRED IF MAILED IN THE UNITED STATES.

----- DETACH HERE [X] Please mark vote as in this example 1. Election of Directors 2. Ratify the selection of BDO Seidman, LLP as our Nominees: 01 Carl E. Berg 02 John C. Bolger 03 independent registered public accounting firm for the William A. Hasler 04 Lawrence B. Helzel 05 Raymond V. fiscal year ending December 31, 2005. Marino FOR AGAINST ABSTAIN [] [] [] [] []Vote FOR []Vote WITHHELD all nominees from all nominees (except as marked) 3. In their discretion, the proxies are authorized to vote Instructions: To withhold authority to vote for any upon any other business that may properly come before indicated nominee, write the number(s) of the nominee(s) the meeting. in the box provided below. MARK HERE FOR ----- ADDRESS CHANGE [] Name AND NOTE AT LEFT ----- Street Address Please sign exactly as name appears hereon. Joint owners should each sign. Executors, administrators, trustees, ----- guardians or other fiduciaries should give full title as City State Country Zip Code such. If signing for a corporation or other entity, please sign in full corporate or other entity name by a duly authorized officer. [] Please check here if you plan on attending the 2005 Annual Stockholders Meeting. Signature: Date: Signature: Date: -----