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COOK COUNTY  
FILED

08/31/87 FINAL

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## I N D E N T U R E

\$ 28.00

THIS INDENTURE is made and entered into this 10th day of September, 1987 by and between Digital Equipment Corporation, a Massachusetts corporation with its principal offices at 146 Main Street, Maynard, Massachusetts 01754-1418 ("Digital"), and Metropolitan Life Insurance Company, a New York corporation ("Metropolitan") with offices at One Madison Avenue, New York, New York 10010.

## W I T N E S S E T H:

WHEREAS, Digital and Metropolitan entered into that certain Purchase Agreement of even date herewith (the "Purchase Agreement") whereby Digital agreed to purchase and Metropolitan agreed to sell that certain real estate located in Cook County, Illinois consisting of three (3) parcels, the first parcel being legally described in Exhibit A attached hereto and made a part hereof ("Parcel I"), the second parcel being legally described in Exhibit B attached hereto and made a part hereof ("Parcel II"), and the third parcel being legally described in Exhibit C

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attached hereto and made a part hereof ("Parcel III") (Parcel I, Parcel II, and Parcel III are sometimes hereinafter referred to as the "Property"), together with all the buildings and improvements located on the Property, including 100 Northwest Point Office Building (hereinafter referred to as the "Improvements") (the Property and Improvements are sometimes collectively referred to as the "Project");

WHEREAS, Metropolitan has a continued interest in the harmonious development and existence of the Northwest Point Office Park (the "Office Park"), being a 123 acre tract of which the Project is a part; and

WHEREAS, as a condition to Metropolitan's obligation to sell the Project to Digital, Digital agreed to restrict the future use, development and sale of the Project and to grant certain rights of repurchase of Parcel III to Metropolitan, all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the execution of the Purchase Agreement, the premises, covenants, conditions and agreements as herein contained, Ten and No/100 Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Future Development.

Digital covenants and agrees on its own behalf and, except as otherwise provided herein, with respect to a repurchase by

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Metropolitan of Parcel III, on behalf of its successors and assigns, that:

A. In no event shall there ever be constructed on the Property more than 500,000 gross square feet of space (including, without limitation, that located in the Improvements) for the uses hereinafter specified, with parking as hereinafter specified. There are presently 240,000 gross square feet located in the Improvements (the "Existing Square Footage"). In no event shall the number of parking spaces (surface or structural) allocable to the Existing Square Footage (including any reconstruction thereof due to casualty) exceed five spaces per 1,000 gross square feet of space. The future development of the Property (i.e., any development in addition to the Existing Square Footage and parking allocable thereto) shall in no event exceed more than 260,000 gross square feet (whether located in one or more additional buildings) (the "New Space") and parking, whether surface or in a parking structure (the "Additional Parking"), not to exceed five (5) parking spaces for each 1,000 gross square feet of the New Space constructed.

B. Not to undertake any development whatsoever on Parcel III unless such development consists at least of the "Minimum Improvements". As used herein, the term "Minimum Improvements" means: either at least 100,000 square feet of New Space or at least 182 parking spaces.

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## 2. Declaration of Covenants, Easements, Conditions and Restrictions for Northwest Point

Digital confirms and agrees that any development, construction, reconstruction, use, operation and maintenance of the Improvements (and related parking), New Space and the Additional Parking shall be subject to the terms and conditions of the Declaration of Covenants, Easements, Conditions and Restrictions for Northwest Point recorded in the Cook County Recorder's Office on February 3, 1983 as Document No. 26495247 as heretofore or hereafter amended (the "Declaration") as long as the Declaration is and remains in force and effect.

## 3. Use of Improvements and New Building

Digital hereby further covenants and agrees that the Improvements (and related parking), New Space and Additional Parking shall be occupied and used exclusively by Digital and its subsidiaries, parents, resulting corporations from a merger or other corporate reorganization, or joint ventures in which Digital is a joint venturer, for its and their own use and except as otherwise provided herein shall not be leased to unrelated third parties. Notwithstanding the foregoing, Digital shall have the right to enter into leases with third party tenants for space in the New Space as long as (a) the term of said leases do not exceed three (3) years, including any renewal or option extension periods, and (b) the aggregate gross square feet leased to third party tenants does not exceed 50,000 at any point in time.

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## 4. Right of Purchase of Parcel III

Within one hundred twenty (120) days from the date (the "Repurchase Date") which is the first to occur of (x) fifteen (15) years from the date of this Agreement or (y) the date on which 260,000 square feet of the New Space has been substantially completed, Digital shall deliver to Metropolitan "as-built" plans and specifications and an as-built survey of the New Space and Additional Parking ("Evidence of Completion"). In the event that Digital does not deliver the Evidence of Completion within the aforesaid one hundred twenty (120) days period, Metropolitan shall have the right to cause such Evidence of Completion to be prepared and the cost thereof shall be deducted from the purchase price payable by Metropolitan pursuant to this Paragraph 4. In the event the Evidence of Completion reveals that Parcel III does not contain at least the Minimum Improvements, then Metropolitan shall have the right to purchase Parcel III from Digital for the amount of \$200,000.00 upon the terms set forth below:

- (a) Metropolitan shall have the right and option to purchase Parcel III (or to cause the same to be purchased by the designee or designees, corporate or otherwise, of Metropolitan) for the purchase price of \$200,000.00, such right to be exercised in a written notice given by Metropolitan to Digital within one hundred twenty (120) days (the "Option Period") following the receipt by Metropolitan of the Evidence of Completion. In the

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event Metropolitan fails to give a notice specifying its election on or before the last day of the Option Period, Metropolitan shall be deemed to have elected not to purchase Parcel III under this Paragraph 4.

(b) In the event that on or before the last day of the Option Period Metropolitan elects to purchase Parcel III, the time and place for closing such transaction (which shall be not less than thirty (30) and not more than sixty (60) days after the expiration of the Option Period) shall be established by Metropolitan in a written notice given to Digital at least twenty (20) days in advance of such closing date. Digital shall deliver title to Parcel III by a stamped Quitclaim Deed and Digital shall, at Digital's cost, provide Metropolitan with title insurance, with extended coverage, covering title to Parcel III in the amount of \$200,000.00. Metropolitan and Digital shall each assume those closing costs customarily paid by a purchaser and seller respectively. Digital shall also deliver to Metropolitan an assignment of all its right, title and interest in and under paragraphs 9, 10, 11, 14 and 15 of the Annexation Agreement made by and between LaSalle National Bank as Trustee under Trust Agreement dated

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March 15, 1980 and known as Trust Number 102000 and the Village of Elk Grove Village and recorded May 1, 1981 as Document 255857110 ("Annexation Agreement"), solely to the extent such rights relate to the ownership and development of Parcel III. Title to Parcel III shall be subject only to those liens, claims and encumbrances affecting title to which such title was subject when the same was conveyed to Digital, and also any easements of record as of the date hereof, easements for utility, telecommunication and similar facilities for the benefit of Parcels I and II ("Facilities", provided that the location of the Facilities is reasonable and had first been consented to by Metropolitan, such consent not to be unreasonable withheld and delayed), general real estate taxes not yet due and payable, liens or encumbrances arising out of acts of Metropolitan or those claiming by, through or under Metropolitan, and all zoning, building and other laws, ordinances, maps, resolutions and regulations of all governmental authorities having jurisdiction over the Property. This Agreement shall be released and removed of record as it relates to Parcel III. Metropolitan shall pay the purchase price, plus or minus customary prorations and adjustments and

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minus the costs incurred by Metropolitan to obtain the Evidence of Completion if the same is not furnished by Digital to Metropolitan at the closing by wire transfer or certified check. In the event that the Metropolitan elects to purchase Parcel III and fails for any reason (other than the default of Digital) to close such transaction in accordance herewith, then Metropolitan shall be in default of this paragraph 4 only and all terms of this Agreement, except those of this paragraph 4 and of paragraph 5, shall continue to govern. In such event Digital shall have all rights available to it at law or in equity, including the right to specific performance. In the event Metropolitan elects to purchase Parcel III and Digital fails to close such transaction in accordance herewith (other than due to Metropolitan's default), then Metropolitan shall have all rights and remedies available to it at law or in equity including, without limitation, the right to specific performance.

5. Restriction on Sale of Parcel III

Digital agrees not to sell, transfer or assign Parcel III (except if said transaction includes Parcel I and Parcel II) to

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any entity other than Metropolitan as long as Metropolitan has the right to purchase Parcel III for \$200,000.00 as set forth in Paragraph 4 above, it being understood and agreed that any such transaction for Parcels I, II and III shall be subject to this Indenture; provided, however, Digital shall have the right to enter into a sale and leaseback financing transaction in connection with the development and construction of the New Space and Additional Parking on Parcels I, II and/or III at any time as long as said financing transaction is subject to Metropolitan's rights hereunder. Digital agrees not to sell, transfer or assign any of its rights in and under paragraphs 9, 10, 11, 14 and 15 of the Annexation Agreement as they relate to Parcel III to any entity other than Metropolitan as long as Metropolitan has the right to purchase Parcel III for \$200,000.00 as set forth in paragraph 4.

6. Notice

Subject to the right of any party to designate a different address for itself by notice similarly given, any notice or demand which any party hereto is required or may desire to give or deliver to or make upon the other party shall be in writing and delivered or given or made by United States, postage prepaid registered or certified mail, return receipt requested, or by commercial overnight carrier, as follows:

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TO DIGITAL:

Digital Equipment Corporation  
111 Powdermill Road  
Maynard, Massachusetts 01754-1418  
Attention: Manager  
Corporate Real Estate  
Department

with a copy to the same address

Attention: General Counsel

TO METROPOLITAN:

Metropolitan Life Insurance Co.  
One Madison Avenue  
New York, New York 10010  
Attention: Senior Vice President  
Real Estate Investments

with a copy to:

Metropolitan Life Insurance Co.  
2021 Spring Road, Suite 300  
Oak Brook, Illinois 60521  
Attention: Vice President  
Real Estate Investments

Any notice or demand so given, delivered or made by United States mail shall be deemed to have been given, delivered or made on the third (3rd) business day after the same is deposited in the United States mail as registered or certified mail, return receipt requested, addressed as above provided, with postage thereon fully prepaid. Any such notice, demand or document so given, delivered or made by commercial overnight carrier shall be deemed to be given, delivered or made on the next business day after delivery of the same to the commercial carrier.

## 7. Waivers; Injunctive and Other Relief

No waiver of any default by any party shall be implied from any omission by any other party to take any action in respect of

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such default if such default continues to be repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and the period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not (unless otherwise expressly stated) be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant contained in this Agreement. The consent or approval by any party to or any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to any party by this Agreement shall be deemed to be cumulative, and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any party shall not impair such party's standing to exercise any other right or remedy. Without limitation of the foregoing, Metropolitan shall have the right to restrain by injunction any breach or threatened breach of this Agreement by Digital, and shall have the right to compel specific performance of the terms of this Agreement.

**8. Separability**

If any one or more of the provisions of this Indenture shall for any reason be held to be inapplicable, invalid, illegal or

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unenforceable in any respect, such inapplicability, invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture, and this Indenture shall be construed as if the inapplicable, invalid, illegal or unenforceable provision had never been contained herein.

## 9. Termination of Indenture

The terms, covenants and agreements contained in paragraphs 1 and 3 of this Indenture, shall terminate and be void and of no further force and effect on and after the 25th anniversary of the date hereof.

## 10. Amendment of Paragraphs 1 and 3

Paragraphs 1 and/or 3 of this Indenture may be amended and such amendment may include deletion of all or any part of said paragraphs. Such amendment shall be effective on and after the date of its recording if duly executed by Digital and Metropolitan.

## 11. Binding on Successors and Assigns

This Indenture shall inure to the benefit of and shall be binding upon the parties, their heirs, legal representatives, successors and assigns.

## 12. Run with the Land

The conditions, covenants, restrictions, reservations and standards herein set forth shall operate as covenants running with the land into whosever hands the Property, or any part thereof, shall come and shall be enforceable at the suit of

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Metropolitan and its respective successors and assigns, by a proper proceeding, either in equity or at law, but with no right of reverter, it being understood and agreed that the provisions of this Indenture are for the benefit of Metropolitan only and not for the benefit of any third parties.

### 13. Superiority

This Agreement shall be superior to mortgages or trust deeds that may hereafter be placed upon the Project or any portion of the same and to and any all advances to be made thereunder and all renewals, replacements and extensions thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GRANTOR:

Digital Equipment Corporation,  
a Massachusetts corporation

By:

*Richard Hamm*  
Its *MOB CORP REAL ESTATE ACQUISITION*

GRANTOR:

Metropolitan Life Insurance  
Company, a New York corporation

By:

*William J. [Signature]*  
Its *VICE PRESIDENT*

This instrument prepared by:

Frank L. Winter, 200 East Randolph Drive, Suite 5900, Chicago, IL. 60601

Return to:  
Box 289

**MV**

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COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF Middlesex ) SS.

I, Cheryl A. Moore, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Neal D. Horgan personally known to me to be the Ugr. Corp. Real Estate Acquisition of Digital Equipment Corporation, a Massachusetts corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Ugr. Corp. Real Estate Acquisition of said corporation, he signed and delivered the said instrument, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of said corporation as his free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of September, 1987.

Cheryl A. Moore  
Notary Public

My Commission Expires:

10/8/93

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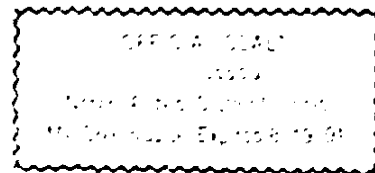
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, JOAN LESSALL, a notary public in and  
for said County, in the State aforesaid, DO HEREBY CERTIFY that  
WILLIAM J. BORNHOFF personally known to me to be the  
VICE-PRESIDENT of Metropolitan Life Insurance Company, a New York  
corporation, and personally known to me to be the same person  
whose name is subscribed to the foregoing instrument, appeared  
before me this day in person and acknowledged that as such  
VICE-PRESIDENT of said corporation, he signed and delivered the  
said instrument, and caused the corporate seal of said  
corporation to be affixed thereto, pursuant to authority given by  
the Board of said corporation as his free and voluntary act and  
as the free and voluntary act of said corporation, for the uses  
and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10th day of  
September, 1987.

Joan Lessall  
Notary Public

My Commission Expires:  
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## EXHIBIT A

Legal Description

## PARCEL I

Lot 5 in The Park At Northwest Point, being a subdivision of parts of Section 15, 16, 21 and 22, all in Township 41 North, Range 11 East of the Third Principal Meridian, in accordance with the plat of subdivision thereof recorded August 5, 1987 as Document No. 87433382, in Cook County, Illinois.

Property of Cook County Clerk's Office



EXHIBIT B

Legal Description

PARCEL II

Lot 6 in The Park At Northwest Point, being a subdivision of parts of Section 15, 16, 21 and 22, all in Township 41 North, Range 11 East of the Third Principal Meridian, in accordance with the Plat of subdivision thereof recorded August 5, 1987 as Document No. 87433382, in Cook County, Illinois.

Property of Cook County Clerk's Office

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EXHIBIT C

Legal Description

PARCEL III

Lot 9 in The Park At Northwest Point, being a subdivision of parts of Sections 15, 16, 21 and 22, all in Township 41 North, Range 11 East of the Third Principal Meridian, in accordance with the plat of subdivision thereof recorded August 5, 1987 as Document No. 87433382, in Cook County, Illinois.

PERMANENT REAL ESTATE INDEX NUMBERS:

08-21-202-067-0000;

08-21-202-068-0000;

08-21-202-069-0000;

08-21-202-070-0000;

08-22-100-008-0000;

08-22-100-009-0000;

08-22-100-010-0000.

*Address:  
100 Northwest Point  
Elk Grove Village*

*AD*

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