

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

AMENDMENT NO. 5 TO

FORM S-11

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

BOSTON PROPERTIES, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS GOVERNING INSTRUMENTS)

8 ARLINGTON STREET
BOSTON, MASSACHUSETTS 02116
(617) 859-2600

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

MORTIMER B. ZUCKERMAN, CHAIRMAN
EDWARD H. LINDE, PRESIDENT AND CHIEF EXECUTIVE OFFICER
BOSTON PROPERTIES, INC.

8 ARLINGTON STREET
BOSTON, MASSACHUSETTS 02116
(617) 859-2600

(NAME AND ADDRESS OF AGENT FOR SERVICE)

COPIES TO:

GILBERT G. MENNA, P.C.
GOODWIN, PROCTER & HOAR LLP
EXCHANGE PLACE
BOSTON, MASSACHUSETTS 02109
(617) 570-1000

WALLACE L. SCHWARTZ, ESQ.
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

APPROXIMATE DATE OF COMMENCEMENT OF THE PROPOSED SALE OF THE SECURITIES TO THE PUBLIC: As soon as practicable after this Registration Statement becomes effective.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

EXPLANATORY NOTE

This Amendment No. 5 to this Registration Statement is an exhibit-only filing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 30. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table itemizes the expenses incurred by the Company in connection with the offering of the shares of Common Stock being registered hereby. All of the amounts shown are estimates, except the Securities and Exchange Commission Registration Fee.

| ITEM ---- | AMOUNT ----- |
|---|-----------------|
| Securities and Exchange Commission Registration Fee..... | \$273,561 |
| NASD Fee..... | 30,500 |
| New York Stock Exchange Listing Fee..... | 210,600 |
| Transfer Agent's and Registrar's Fees..... | * |
| Printing Fees..... | * |
| Legal Fees and Expenses (other than Blue Sky)..... | * |
| Accounting Fees and Expenses..... | * |
| Blue Sky Fees and Expenses (including fees of counsel)..... | * |
| Miscellaneous Expenses..... | * |
| | ----- |
| Total..... | \$ * |
| | ===== |

- - - - -
* To be filed by amendment.

ITEM 31. SALES TO SPECIAL PARTIES.

See Item 32.

ITEM 32. RECENT SALES OF UNREGISTERED SECURITIES.

On April 8, 1997, the Operating Partnership was formed with Boston Properties, Inc., a Massachusetts Corporation ("BP-Massachusetts"), as general partner and an affiliate as a limited partner. The sale of the interests in the Operating Partnership was made in reliance on Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act").

On April 9 and 15, 1997, the Company entered into an Omnibus Option Agreement (or, in the case of one entity, a similar agreement) with a total of 80 individuals (the "Individuals") and entities ("Entities") (including entities such as trusts or limited partnerships in which one or more of the Individuals may have the primary economic or a controlling interest). None of the Entities was formed for the purpose of entering into the Omnibus Option Agreement and acquiring OP Units. Such agreement provides that the Operating Partnership can, at its option and without any further action by such Individuals or Entities, acquire all or any of the interests of the Individuals or Entities in the 74 Properties (collectively, the "Interests"). The right of the Operating Partnership to acquire all or any of the Interests from the Individuals and Entities and to issue OP Units in exchange therefor is subject only to the fulfillment of conditions (principally, the completion of the Offering) beyond the control of the Individuals and Entities. The total number of OP Units that will be issued to the Individuals and Entities will depend on the final offering price of a share of Common Stock in the Offering. Such agreement was entered into and will be consummated in reliance on Section 4(2) of, and Regulation D under, the Securities Act.

On April 11, 1997, BP-Massachusetts and Boston Properties, Inc., a Delaware corporation ("BP-Delaware"), and the Operating Partnership, entered into a number of agreements (including a merger agreement and a contribution agreement) that memorializes (i) the issuance of Common Stock by BP-Delaware to the stockholders of BP-Massachusetts (Messrs. Zuckerman and Linde) upon consummation of a reincorporation merger in connection with the Formation Transactions and (ii) the contribution to the Operating Partnership of

the proceeds of the Offering and the management and development operations currently held by BP-Massachusetts. Such agreements were entered into and will be consummated in reliance on Section 4(2) of the Securities Act.

ITEM 33. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Company's Certificate, as amended, and Bylaws provide certain limitations on the liability of the Company's directors and officers for monetary damages to the Company. The Certificate and Bylaws obligate the Company to indemnify its directors and officers, and permit the Company to indemnify its employees and other agents, against certain liabilities incurred in connection with their service in such capacities. These provisions could reduce the legal remedies available to the Company and the stockholders against these individuals. See "Certain Provisions of Delaware Law and The Company's Certificate and Bylaws--Limitation of Liability and Indemnification."

The Company's Certificate limits the liability of the Company's directors and officers to the Company to the fullest extent permitted from time to time by Delaware law. The DGCL permits, but does not require, a corporation to indemnify its directors, officers, employees or agents and expressly provides that the indemnification provided for under the DGCL shall not be deemed exclusive of any indemnification right under any bylaw, vote of stockholders or disinterested directors, or otherwise. The DGCL permits indemnification against expenses and certain other liabilities arising out of legal actions brought or threatened against such persons for their conduct on behalf of the corporation, provided that each such person acted in good faith and in a manner that he reasonably believed was in or not opposed to the corporation's best interests and in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The DGCL does not allow indemnification of directors in the case of an action by or in the right of the corporation (including stockholder derivative suits) unless the directors successfully defend the action or indemnification is ordered by the court.

The Company has entered into indemnification agreements with each of its directors and executive officers. The indemnification agreements require, among other matters, that the Company indemnify its directors and officers to the fullest extent permitted by law and advance to the directors and officers all related expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted. Under these agreements, the Company must also indemnify and advance all expenses incurred by directors and officers seeking to enforce their rights under the indemnification agreements and may cover directors and officers under the Company's directors' and officers' liability insurance. Although the form of indemnification agreement offers substantially the same scope of coverage afforded by law, it provides additional assurance to directors and officers that indemnification will be available because, as a contract, it cannot be modified unilaterally in the future by the Board of Directors or the Stockholders to eliminate the rights it provides. It is the position of the SEC that indemnification of directors and officers for liabilities under the Securities Act of 1933, as amended (the "Securities Act") is against public policy and unenforceable pursuant to Section 14 of the Securities Act.

ITEM 34. TREATMENT OF PROCEEDS FROM STOCK BEING REGISTERED.

Not applicable.

ITEM 35. FINANCIAL STATEMENTS AND EXHIBITS.

(b) Exhibits. The following is a complete list of Exhibits filed or incorporated by reference as part of this Registration Statement.

EXHIBIT NO. DESCRIPTION

- *1.1 --Form of U.S. Purchase Agreement
- *1.2 --Form of International Purchase Agreement

EXHIBIT NO.

DESCRIPTION

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- *1.1 --Form of U.S. Purchase Agreement
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 - +3.1 --Form of Amended and Restated Certificate of Incorporation of the Company
 - +3.2 --Form of Amended and Restated Bylaws of the Company
 - 4.1 --Form of Shareholder Rights Agreement dated as of June , 1997 between the Company and BankBoston, N.A., as Rights Agent.
 - 4.2 --Form of Certificate of Designation for Series X Junior Participating Cumulative Preferred Stock, par value \$.01 per share
 - 4.3 --Form of Common Stock Certificate
 - 5.1 --Opinion of Goodwin, Procter & Hoar LLP regarding legality of the shares of the Common Stock issued
 - 8.1 --Opinion of Goodwin, Procter & Hoar LLP regarding tax matters
 - 10.1 --Form of Amended and Restated Agreement of Limited Partnership of the Operating Partnership
 - 10.2 --1997 Stock Option and Incentive Plan
 - +10.3 --Form of Noncompetition Agreement between the Company and Mortimer B. Zuckerman
 - +10.4 --Form of Employment and Noncompetition Agreement between the Company and Edward H. Linde
 - 10.5 --Form of Employment Agreement between the Company and certain executive officers
 - 10.6 --Form of Indemnification Agreement between the Company and each of its directors and executive officers
 - +10.7 --Omnibus Option Agreement by and among Boston Properties Limited Partnership (the "Operating Partnership") and the Grantors named therein dated as of April 9, 1997
 - *10.8 --Revolving Credit Agreement with BankBoston, N.A.
 - +10.9 --Form of Registration Rights Agreement among the Company and the persons named therein
 - *10.10 --Form of Hotel Lease Agreement
 - +10.11 --Option Agreement between Boston Properties Limited Partnership and Square 36 Properties Limited Partnership dated April 15, 1997
 - +10.12 --Form of Certificate of Incorporation of Boston Properties Management, Inc.
 - +10.13 --Form of By-laws of Boston Properties Management, Inc.
 - +10.14 --Form of Limited Liability Agreement of ZL Hotel LLC
 - *10.15 --Form of Option Agreement to Acquire the Property known as Sumner Square
 - 10.16 --Loan Modification Agreement between Lexreal Associates and Mitsui Seimei America Corporation relating to loan secured by 599 Lexington Avenue
 - 10.17 --Loan Modification and Extension Agreement by and between Southwest Market Limited Partnership, a District of Columbia limited partnership, Mortimer B. Zuckerman and Edward H. Linde and the Sumitomo Bank, Limited, for One Independence Square, dated as of September 26, 1994
 - 10.18 --Loan Modification and Extension Agreement by and among Southwest Market Limited Partnership, a District of Columbia limited partnership, Mortimer B. Zuckerman and Edward H. Linde and the Sumitomo Bank, Limited, for Two Independence Square, dated as of September 26, 1994
 - 10.19 --Construction Loan Agreement by and between the Sumitomo Bank, Limited and Southwest Market Limited Partnership, dated as of August 21, 1990
 - 10.20 --Construction Loan Agreement by and between the Sumitomo Bank, Limited and Southwest Market Limited Partnership for Two Independence Square, dated as of February 22, 1991
 - *10.21 --Consent and Loan Modification Agreement regarding One Independence Square between the Sumitomo Bank, Limited and Southwest Market Limited Partnership dated as of June , 1997
 - *10.22 --Consent and Loan Modification Agreement regarding Two Independence Square between the Sumitomo Bank, Limited and Southwest Market Limited Partnership dated as of June , 1997
 - 10.23 --Form of Amended and Restated Loan Agreement between Square 36 Office Joint Venture and the Sanwa Bank Limited dated as of June , 1997
 - 10.24 --Indemnification Agreement between Boston Properties Limited Partnership and Mortimer B. Zuckerman and Edward H. Linde

| EXHIBIT NO. ----- | DESCRIPTION ----- |
|----------------------|---|
| 21.1 | --Schedule of Subsidiaries of the Company |
| +23.1 | --Consent of Coopers & Lybrand, L.L.P. |
| +23.3 | --Consent of Spaulding & Slye |
| 23.4 | --Consent of Goodwin, Procter & Hoar llp (included in Exhibits 5.1 and 8.1) |
| +23.5 | --Consent of Mr. Patricof to be named as a proposed director |
| +23.6 | --Consent of Mr. Seidenberg to be named as a proposed director |
| +23.7 | --Consent of Mr. Turchin to be named as a proposed director |
| +27.1 | --Financial Data Schedule |

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* To be filed by amendment
+ Previously filed

ITEM 36. UNDERTAKINGS.

(a) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(b) The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(c) The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purposes of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, BOSTON PROPERTIES, INC. CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING ON FORM S-11 AND HAS DULY CAUSED THIS AMENDMENT TO REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF BOSTON, THE COMMONWEALTH OF MASSACHUSETTS, ON THIS 12TH DAY OF JUNE, 1997.

Boston Properties, Inc.

/s/ Edward H. Linde

By: _____
NAME: EDWARD H. LINDE
TITLE: PRESIDENT AND CHIEF
EXECUTIVE OFFICER

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THIS AMENDMENT TO REGISTRATION STATEMENT HAS BEEN SIGNED BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATES INDICATED.

| SIGNATURE | TITLE | DATE |
|---|--|---------------|
| /s/ Mortimer B. Zuckerman ----- MORTIMER B. ZUCKERMAN | Chairman of the Board of Directors | June 12, 1997 |
| /s/ Edward H. Linde ----- EDWARD H. LINDE | President and Chief Executive Officer, Director (Principal Executive Officer) | June 12, 1997 |
| /s/ David G. Gaw ----- DAVID G. GAW | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | June 12, 1997 |

EXHIBIT INDEX

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+ Previously filed

Boston Properties, Inc.

and

BankBoston, N.A

as Rights Agent

Shareholder Rights Agreement

Dated as of June 16, 1997

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Exhibit A -- Certificate of Designation of
Series X Junior Participating
Cumulative Preferred Stock

Exhibit B -- Form of Right Certificate

SHAREHOLDER RIGHTS AGREEMENT

Agreement, dated as of June 16, 1997, between Boston Properties, Inc., a Delaware corporation (the "Company"), and BankBoston, N.A., a national banking association (the "Rights Agent").

W I T N E S S E T H

WHEREAS, the Board of Directors of the Company desires to provide shareholders of the Company with the opportunity to benefit from the long-term prospects and value of the Company and to ensure that shareholders of the Company receive fair and equal treatment in the event of any proposed takeover of the Company; and

WHEREAS, on June 13, 1997, the Board of Directors of the Company authorized and declared a dividend distribution of one Right (as such term is hereinafter defined) for each outstanding share of Common Stock, par value \$0.01 per share, of the Company outstanding as of the close of business on June 16, 1997 (the "Record Date"), and contemplates the issuance of one Right for each share of Common Stock of the Company issued (whether originally issued (including upon the conversion of Excess Stock (as such term is defined in the Company's Certificate of Incorporation, as amended), into Common Stock) or sold from the Company's treasury) between the Record Date and the earlier of the Distribution Date or the Expiration Date (as such terms are hereinafter defined), each Right initially representing the right to purchase one one-thousandth of a share of Series A Junior Participating Cumulative Preferred Stock of the Company having the rights, powers and preferences set forth on

Exhibit A hereto, upon the terms and subject to the conditions hereinafter set forth (the "Rights"); and

WHEREAS, the Company desires to appoint the Rights Agent to act as rights agent hereunder, in accordance with the terms and conditions hereof;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) "Acquiring Person" shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates (as such term is hereinafter defined) and Associates (as such term is hereinafter defined) of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of more than 15% of the Common Shares (as such term is hereinafter defined) then outstanding, but shall not include (i) the Company, (ii) any Subsidiary (as such term is hereinafter defined) of the Company, (iii) any employee benefit plan or compensation arrangement of the Company or any Subsidiary of the Company or (iv) any Person holding shares of Common Stock of the Company organized, appointed or established

by the Company or any Subsidiary of the Company for or pursuant to the terms of any such employee benefit plan or compensation arrangement (the Persons described in clauses (i) through (iv) above are referred to herein as "Exempt Persons").

Notwithstanding the foregoing, no Person shall become an "Acquiring Person" as the result of an acquisition by the Company of Common Shares which, by reducing the number of Common Shares outstanding, increases the proportionate number of Common Shares beneficially owned by such Person to more than 15% of the Common Shares then outstanding; provided, however, that if a Person shall

become the Beneficial Owner of more than 15% of the Common Shares then outstanding by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of any additional shares (other than pursuant to a stock split, stock dividend or similar transaction) of Common Shares and immediately thereafter be the Beneficial Owner of more than 15% of the Common Shares then outstanding, then such Person shall be deemed to be an "Acquiring Person."

In addition, notwithstanding the foregoing, a Person shall not be an "Acquiring Person" if the Board of Directors of the Company determines that a Person who would otherwise be an "Acquiring Person," as defined pursuant to the foregoing provisions of this Section 1(a), has become such inadvertently, and such Person divests as promptly as practicable (or within such period of time as the Board of Directors determines is reasonable) a sufficient number of shares of Common Stock of the Company so that such person would no longer be an "Acquiring Person," as defined pursuant to the foregoing provisions of this Section 1(a).

Furthermore, in recognition that Original Partners who present their OP Units to the Operating Partnership for redemption may, if the Company in accordance with the Operating Partnership Agreement acquires such OP Units in exchange for shares of Common Stock of the Company, own in excess of 15% of the Common Shares, no Original Partner shall be an Acquiring Person unless such Original Partner Beneficially Owns both (i) more than 15% of the Common Shares then outstanding and (ii) a greater Economic Interest than such Original Partner's Original Economic Interest. The preceding two paragraphs shall apply, mutatis mutandi, to Original Partners after taking into account the preceding sentence.

(b) "Adjustment Shares" shall have the meaning set forth in

Section 11(a)(ii) hereof.

(c) "Affiliate" and "Associate" shall have the respective meanings

ascribed to such terms in Rule 12b-2 of the General Rules and Regulations (the "Rules") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of this Agreement; provided, however, that no

Person who is a director or officer of the Company shall be deemed an Affiliate or an Associate of any other director or officer of the Company solely as a result of his or her position as director or officer of the Company.

(d) A Person shall be deemed the "Beneficial Owner" of, and shall

be deemed to "beneficially own," any securities:

(i) which such Person or any of such Person's Affiliates or Associates, directly or indirectly, beneficially owns (as determined pursuant to Rule 13d-3 of the Rules under the Exchange Act, as in effect on the date of this Agreement);

(ii) which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has:

(A) the right to acquire (whether such right is exercisable immediately or only after the passage of time or upon the satisfaction of any conditions or both) pursuant to any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) or upon the exercise of conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; provided, however, that a

Person shall not be deemed the "Beneficial Owner" of, or to "beneficially own," (1) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; (2) securities issuable upon exercise of these Rights at any time prior to the occurrence of a Triggering Event; or (3) securities issuable upon exercise of Rights from and after the occurrence of a Triggering Event, which Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Sections 3(a), 11(i) or 22 hereof; or

(B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a

Person shall not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this clause (B) if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy given in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the Rules of the Exchange Act and (2) is not also then reportable by such person on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(C) the right to dispose of pursuant to any agreement, arrangement or understanding (whether or not in writing) (other than customary arrangements with and between underwriters and selling group members with respect to a bona fide public offering of securities); or

(iii) which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of

securities) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause (B) of Section 1(d)(ii) hereof) or disposing of any securities of the Company;

provided, however, that (1) no Person engaged in business as an underwriter of

securities shall be deemed the Beneficial Owner of any securities acquired through such Person's participation as an underwriter in good faith in a firm commitment underwriting until the expiration of forty (40) days after the date of such acquisition, (2) no Person who is a director or an officer of the Company or a partner of the Operating Partnership shall be deemed, as a result of his or her position as a director or officer of the Company or a partner of the Operating Partnership or as a result of any action taken in any such capacity, the Beneficial Owner of any securities of the Company that are beneficially owned by any other director or officer of the Company or any other partner of the Operating Partnership, (3) no shares of the Company's Common Stock which may be issuable, in accordance with the Operating Partnership Agreement, in exchange for units of limited partnership interest in the Operating Partnership (or in any other limited partnership in which the Company or an Affiliate of the Company acts as general partner) which may be presented for redemption shall be considered to be Beneficially Owned by a Person who owns such units until such Person actually receives shares of the Company's Common Stock in exchange therefor and (4) the Beneficial Ownership of securities of the Company owned by a Group shall in no event include any such securities Beneficially Owned by L-Related Parties or Z-Related Parties who are members of such Group.

(e) "Business Day" shall mean any day other than a Saturday, Sunday,

or a day on which banking institutions in the City of New York, New York are authorized or obligated by law or executive order to close.

(f) "Certificate" shall mean the Company's Amended and Restated

Certificate of Incorporation as in effect at the closing of the Initial Public Offering.

(g) "Close of Business" on any given date shall mean 5:00 P.M., New

York, New York time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., New York, New York time, on the next succeeding Business Day.

(h) "Common Shares" shall mean shares of Common Stock of the Company

and shares of Excess Stock which are issued upon the conversion of shares of Common Stock of the Company into Excess Stock.

(i) "Common Stock" when used in reference to the Company shall mean

the common stock, par value \$0.01 per share, of the Company or any other shares of capital stock of the Company into which such stock shall be reclassified or changed. "Common Stock" when used with reference to any Person other than the Company organized in corporate form shall mean (i) the capital stock or other equity interest of such Person with the greatest voting power or (ii) the equity securities or other equity interest having power to control or direct the management of such Person or, if such Person is a Subsidiary of another Person, the Person or

Persons which ultimately control such first-mentioned Person and which have issued any such outstanding capital stock, equity securities or equity interest. "Common Stock" when used with reference to any Person not organized in corporate form shall mean units of beneficial interest which shall be entitled to exercise the greatest voting power of such Person or, in the case of a limited partnership, shall have the power to remove or otherwise replace the general partner or partners.

(j) "Current Value" shall have the meaning set forth in Section

11(a)(iii) hereof.

(k) "Distribution Date" shall have the meaning defined in Section

3(a) hereof.

(l) The "Economic Interest" of an Original Partner means a

percentage equal to (x) 100 multiplied by (y) the sum of the number of shares of Common Stock of the Company and OP Units owned by such Original Partner divided by the total number of OP Units (including OP Units owned by the Company) then outstanding. If the Conversion Factor (as defined in the Operating Partnership Agreement) is not equal to 1.0 at the time that the Economic Interest is being determined, then all references in this definition to a number of OP Units shall refer to that number of OP Units multiplied by the Conversion Factor.

(m) "Exercise Price" shall have the meaning defined in Section

4(a) hereof.

(n) "Expiration Date" and "Final Expiration Date" shall have the

meanings set forth in Section 7(a) hereof.

(o) "Fair Market Value" of any securities or other property shall

be as determined in accordance with Section 11(d) hereof.

(p) "Group" shall have the meaning ascribed thereto in clause (b)

of the definition of "Person."

(q) "Initial Public Offering" means the initial public offering of

Common Stock of the Company by the Company pursuant to a Registration Statement on Form S-11 (No. 333-25279).

(r) "L-Related Party" shall have the meaning ascribed thereto in

the Certificate.

(s) "Operating Partnership" shall mean Boston Properties Limited

Partnership, a Delaware limited partnership, and any successor thereto, and "Operating Partnership Agreement" shall mean the Amended and Restated Agreement of Limited Partnership of the Operating Partnership, as amended.

(t) "Original Partner" means a person who became a limited

partner of the Operating Partnership contemporaneously with the closing of the Initial Public Offering and the Formation Transactions (as defined in the Registration Statement relating to the Initial Public Offering) or who was a partner before such time.

(u) "Original Economic Interest" means, with respect to a

particular Original Partner, the Economic Interest of such Original Partner immediately after the closing of the Initial Public Offering and the Formation Transactions (as defined in the Registration Statement relating to the Initial Public Offering).

(v) "Person" (a) shall mean an individual, a corporation, a

partnership, an association, a joint stock company, a trust, a business trust, a government or political subdivision, any unincorporated organization, or any other association or entity, and (b) a "group" as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (any such group under this clause (b), a "Group").

(v) "Preferred Stock" shall mean shares of Series A Junior

Participating Cumulative Preferred Stock, par value \$0.01 per share, of the Company having the rights and preferences set forth in the form of Certificate of Designation attached hereto as Exhibit A.

(w) "Preferred Stock Equivalents" shall have the meaning set forth

in Section 11(b) hereof.

(x) "Principal Party" shall have the meaning defined in Section

13(b) hereof.

(y) "Redemption Price" shall have the meaning defined in Section

23 hereof.

(z) "Right Certificate" shall have the meaning set forth in

Section 3(a).

(aa) "Related Party" shall have the meaning ascribed thereto in

the Certificate.

(bb) "Section 11(a)(ii) Event" shall have the meaning set forth in

Section 11(a)(ii) hereof.

(cc) "Section 11(a)(ii) Trigger Date" shall have the meaning set

forth in Section 11(a)(iii) hereof.

(dd) "Section 13 Event" shall mean any event described in clauses

(x), (y) or (z) of Section 13(a) hereof.

(ee) "Section 24(a)(i) Exchange Ratio" shall have the meaning set

forth in Section 24(a)(i) hereof.

(ff) "Section 24(a)(ii) Exchange Ratio" shall have the meaning set

forth in Section 24(a)(ii) hereof.

(gg) "Spread" shall have the meaning set forth in Section

11(a)(iii) hereof.

(hh) "Stock Acquisition Date" shall mean the date of the first

public announcement (which for purposes of this definition shall include, without limitation, the issuance of a press release or the filing of a publicly-available report or other document with the Securities and Exchange Commission or any other governmental agency) by the Company or an Acquiring Person that an Acquiring Person has become such.

(ii) "Subsidiary" shall mean, with reference to any Person, any

corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient, in the absence of contingencies, to elect a majority of the board of directors or other persons performing similar functions of such corporation or other entity are at the time directly or indirectly beneficially owned or otherwise controlled by such Person either alone or together with one or more Affiliates of such Person.

(jj) "Substitution Period" shall have the meaning set forth in

Section 11(a)(iii) hereof.

(kk) "Triggering Event" shall mean any Section 11(a)(ii) Event or

any Section 13 Event.

(ll) "Z-Related Party" shall have the meaning ascribed thereto in

the Certificate.

Section 2. Appointment of Rights Agent. The Company hereby appoints

the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3 hereof, shall prior to the Distribution Date (as hereinafter defined in Section 3(a)) also be the holders of the Common Stock of the Company) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such Co-Rights Agents as it may deem necessary or desirable. In the event the Company appoints one or more Co-Rights Agents, the respective duties of the Rights Agent and any Co-Rights Agents shall be as the Company shall determine. The Company shall give ten (10) days prior written notice to the Rights Agent of the appointment of one or more Co-Rights Agents and the respective duties of the Rights Agent and any such Co-Rights Agents. The Rights Agent shall have no duty to supervise, and shall in no event be liable for, the acts or omissions of any such Co-Rights Agent.

Section 3. Issue of Right Certificates.

(a) From the date hereof until the earlier of (i) the Close of Business on the tenth calendar day after the Stock Acquisition Date or (ii) the Close of Business on the tenth Business Day (or such other calendar day, if any, as the Board of Directors may determine in its sole discretion) after the date a tender or exchange offer by any Person, other than an Exempt Person, is first published or sent or given within the meaning of Rule 14d-4(a) of the Exchange Act, or any successor rule, if, upon consummation thereof, such Person would be the Beneficial Owner of more than 15% of the Common Shares then outstanding (and, if such Person is an Original Partner, such person's Beneficial Ownership of Common Shares and OP Units after consummation would cause the Economic Interest of such Person to exceed such Person's Original Economic Interest) (including any such date which is after the date of this Agreement and prior to the issuance of the Rights) (the earlier of such dates being herein referred to as the "Distribution Date"), (x) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for the Common Stock of the Company registered in the names of the holders of the Common Stock of the Company (which certificates for Common Stock of the Company shall be deemed also to be certificates for Rights) and not by separate certificates, and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Common Stock of the Company. As soon as practicable after the Distribution Date, the Rights Agent will, at the Company's expense, send, by first-class, insured, postage prepaid mail, to each record holder of the Common Stock of the Company as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, one or more certificates, in substantially the form of Exhibit B hereto (the "Right

Certificates"), evidencing one Right for each share of Common Stock of the Company so held, subject to adjustment as provided herein. In the event that an adjustment in the number of Rights per share of Common Stock of the Company has been made pursuant to Section 11(o) hereof, the Company may make the necessary and appropriate rounding adjustments (in accordance with Section 14(a) hereof) at the time of distribution of the Right Certificates, so that Right Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Close of Business on the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

(b) With respect to certificates for the Common Stock of the Company issued prior to the Close of Business on the Record Date, the Rights will be evidenced by such certificates for the Common Stock of the Company on or until the Distribution Date (or the earlier redemption, expiration or termination of the Rights), and the registered holders of the Common Stock of the Company also shall be the registered holders of the associated Rights. Until the Distribution Date (or the earlier redemption, expiration or termination of the Rights), the transfer of any of the certificates for the Common Stock of the Company outstanding prior to the date of this Agreement shall also constitute the transfer of the Rights associated with the Common Stock of the Company represented by such certificate.

(c) Certificates for the Common Stock of the Company issued after the Record Date, but prior to the earlier of the Distribution Date or the redemption, expiration or termination of the Rights, shall be deemed also to be certificates for Rights, and shall bear a legend, substantially in the form set forth below:

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in a Shareholder Rights Agreement between Boston Properties, Inc. and BankBoston, N.A., as Rights Agent, dated as of June 16, 1997, as amended, restated, renewed or extended from time to time (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal offices of Boston Properties, Inc. and the stock transfer administration office of the Rights Agent. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. Boston Properties, Inc. may redeem the Rights at a redemption price of \$0.001 per Right, subject to adjustment, under the terms of the Rights Agreement. Boston Properties, Inc. will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge promptly after receipt of a written request therefor. Under certain circumstances, Rights issued to or held by Acquiring Persons or any Affiliates or Associates thereof (as defined in the Rights Agreement), and any subsequent holder of such Rights, may become null and void. The Rights shall not be exercisable, and shall be void so long as held, by a holder in any jurisdiction where the requisite qualification, if any, to the issuance to such holder, or the exercise by such holder, of the Rights in such jurisdiction shall not have been obtained or be obtainable.

With respect to such certificates containing the foregoing legend, the Rights associated with the Common Stock of the Company represented by such certificates shall be evidenced by such certificates alone until the Distribution Date (or the earlier redemption, expiration or termination of the Rights), and the transfer of any of such certificates shall also constitute the transfer of the Rights associated with the Common Stock of the Company represented by such certificates. In the event that the Company purchases or acquires any shares of Common Stock of the Company after the Record Date but prior to the Distribution Date, any Rights associated with such Common Stock of the Company shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the shares of Common Stock of the Company which are no longer outstanding. The failure to print the foregoing legend on any such certificate representing Common Stock of the Company or any defect therein shall not affect in any manner whatsoever the application or interpretation of the provisions of Section 7(e) hereof.

(d) Notwithstanding anything in this Agreement to the contrary, in the event that prior to the earlier of the Distribution Date or the redemption, expiration or termination of the Rights, any shares of Common Stock are retired and canceled in connection with the conversion of such shares to Excess Stock pursuant to Article IV(D) of the Company's Certificate of Incorporation, as amended, then the associated Rights shall be deemed to be similarly retired and canceled.

Section 4. Form of Right Certificates.

(a) The Right Certificates (and the forms of election to purchase shares and of assignment and certificate to be printed on the reverse thereof) shall each be substantially in the form of Exhibit B hereto and may have such

marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law, rule or regulation or with any rule or regulation of any stock exchange on which the Rights may from time to time be listed, or to conform to customary usage. The Right Certificates shall be in a machine printable format and in a form reasonably satisfactory to the Rights Agent. Subject to the provisions of Section 11 and Section 22 hereof, the Right Certificates, whenever distributed, shall be dated as of the Record Date, shall show the date of countersignature, and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the price set forth therein (the "Exercise Price"), but the number of such shares and the Exercise Price shall be subject to adjustment as provided herein.

(b) Any Right Certificate issued pursuant to Section 3(a) or Section 22 hereof that represents Rights beneficially owned by (i) an Acquiring Person or any Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee after the Acquiring Person becomes such, or (iii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding (whether or not in writing) regarding the transferred Rights, the shares of Common Stock of the Company associated with such Rights or the Company or (B) a transfer which the Board of Directors of the Company has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect the avoidance of Section 7(e) hereof, and any Right Certificate issued pursuant to Section 6, Section 11 or Section 22 upon transfer, exchange, replacement or adjustment of any other Right Certificate referred to in this sentence, shall have deleted therefrom the second sentence of the existing legend on such Right Certificate and in substitution therefor shall contain the following legend:

The Rights represented by this Right Certificate are or were beneficially owned by a Person who was or became an Acquiring

Person or an Affiliate or an Associate of an Acquiring Person (as such terms are defined in the Rights Agreement). This Right Certificate and the Rights represented hereby may become null and void under certain circumstances as specified in Section 7(e) of the Rights Agreement.

The Company shall give notice to the Rights Agent promptly after it becomes aware of the existence and identity of any Acquiring Person or any Associate or Affiliate thereof. The Company shall instruct the Rights Agent in writing of the Rights which should be so legended. The failure to print the foregoing legend on any such Right Certificate or any defect therein shall not affect in any manner whatsoever the application or interpretation of the provisions of Section 7(e) hereof.

Section 5. Countersignature and Registration.

(a) The Right Certificates shall be executed on behalf of the Company by its Chairman of the Board of Directors, or its President or any Vice President and by its Treasurer or any Assistant Treasurer, or by its Secretary or any Assistant Secretary, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested to by the Secretary or any Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be manually countersigned by an authorized signatory of the Rights Agent and shall not be valid for any purpose unless so countersigned, and such countersignature upon any Right Certificate shall be conclusive evidence, and the only evidence, that such Right Certificate has been duly countersigned as required hereunder. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by an authorized signatory of the Rights Agent, and issued and delivered by the Company with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificates may be signed on behalf of the Company by any person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Rights Agreement any such person was not such an officer.

(b) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at one of its offices designated as the appropriate place for surrender of Right Certificates upon exercise or transfer, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right

Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates.

(a) Subject to the provisions of Section 4(b), Section 7(e) and Section 14 hereof, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the Expiration Date, any Right Certificate or Certificates may be transferred, split up, combined or exchanged for another Right Certificate or Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock (or following a Triggering Event, preferred stock, cash, property, debt securities, Common Stock of the Company or any combination thereof) as the Right Certificate or Certificates surrendered then entitled such holder to purchase and at the same Exercise Price. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Certificates to be transferred, split up, combined or exchanged, with the form of assignment and certificate duly executed, at the office or offices of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate until the registered holder shall have completed and signed the certificate contained in the form of assignment on the reverse side of such Right Certificate and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request. Thereupon the Rights Agent shall, subject to Section 4(b), Section 7(e) and Section 14 hereof, countersign and deliver to the Person entitled thereto a Right Certificate or Certificates, as the case may be, as so requested. The Company may require payment by the registered holder of a Right Certificate, of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security satisfactory to them, and reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate, if mutilated, the Company will execute and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Rights; Exercise Price; Expiration Date of

Rights.

(a) Subject to Section 7(e) hereof, the registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein) in whole or in part at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such

purpose, together with payment of the aggregate Exercise Price for the total number of one one-thousandths of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercised, at or prior to the earlier of (i) the Close of Business on the tenth anniversary of the date of this Agreement (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof or (iii) the time at which such Rights are exchanged as provided in Section 24 hereof (the earliest of (i), (ii) or (iii) being herein referred to as the "Expiration Date"). Except as set forth in Section 7(e) hereof and notwithstanding any other provision of this Agreement, any Person who prior to the Distribution Date becomes a record holder of shares of Common Stock of the Company may exercise all of the rights of a registered holder of a Right Certificate with respect to the Rights associated with such shares of Common Stock of the Company in accordance with the provisions of this Agreement, as of the date such Person becomes a record holder of shares of Common Stock of the Company.

(b) The Exercise Price for each one one-thousandth of a share of Preferred Stock pursuant to the exercise of a Right shall initially be one hundred dollars (\$100), shall be subject to adjustment from time to time as provided in Section 11 and Section 13 hereof and shall be payable in lawful money of the United States of America in accordance with Section 7(c) below.

(c) As promptly as practicable following the Distribution Date, the Company shall deposit with a corporation, trust, bank or similar institution in good standing organized under the laws of the United States or any State of the United States, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by a federal or state authority (such institution is hereinafter referred to as the "Depository Agent"), certificates representing the shares of Preferred Stock that may be acquired upon exercise of the Rights and the Company shall cause such Depository Agent to enter into an agreement pursuant to which the Depository Agent shall issue receipts representing interests in the shares of Preferred Stock so deposited. Upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase and the certificate on the reverse side thereof duly executed, accompanied by payment of the Exercise Price for the shares to be purchased and an amount equal to any applicable transfer tax (as determined by the Rights Agent) in cash, or by certified check or bank draft payable to the order of the Company, the Rights Agent shall, subject to Section 20(k) hereof, thereupon promptly (i) requisition from the Depository Agent (or make available, if the Rights Agent is the Depository Agent) depository receipts or certificates for the number of one one-thousandths of a share of Preferred Stock to be purchased and the Company hereby irrevocably authorizes the Depository Agent to comply with all such requests, (ii) when appropriate, requisition from the Company the amount of cash, if any, to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof, (iii) promptly after receipt of such certificates or depository receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt promptly deliver such cash to or upon the order of the registered holder of such Right Certificate. In the event that the Company is obligated to issue

other securities (including Common Stock) of the Company, pay cash or distribute other property pursuant to Section 11(a) hereof, the Company will make all arrangements necessary so that such other securities, cash or other property are available for distribution by the Rights Agent, if and when appropriate. The payment of the Exercise Price may be made in cash or by certified or bank check payable to the order of the Company, or by wire transfer of immediately available funds to the account of the Company (provided that notice of such wire transfer shall be given by the holder of the related Right to the Rights Agent).

(d) In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Section 11(a)(ii) Event or Section 13 Event, any Rights beneficially owned by (i) an Acquiring Person or any Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee after the Acquiring Person becomes such or (iii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights, the shares of Common Stock of the Company associated with such Rights or the Company, or (B) a transfer which the Board of Directors of the Company has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect the avoidance of this Section 7(e), shall be null and void without any further action and no holder of such Rights shall have any rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise. The Company shall use all reasonable efforts to ensure that the provisions of this Section 7(e) and Section 4(b) hereof are complied with, but shall have no liability to any holder of Right Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or any Affiliates or Associates of an Acquiring Person or any transferee of any of them hereunder.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) completed and signed the certificate contained in the form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such exercise, and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All

Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Right Certificates to the Company.

Section 9. Reservation and Availability of Preferred Stock.

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock or any authorized and issued shares of Preferred Stock held in its treasury, the number of shares of Preferred Stock that will be sufficient to permit the exercise in full of all outstanding and exercisable Rights. Upon the occurrence of any events resulting in an increase in the aggregate number of shares of Preferred Stock issuable upon exercise of all outstanding Rights in excess of the number then reserved, the Company shall make appropriate increases in the number of shares so reserved.

(b) The Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares of Preferred Stock issued or reserved for issuance to be listed, upon official notice of issuance, upon the principal national securities exchange, if any, upon which the Common Stock of the Company is listed or, if the principal market for the Common Stock of the Company is not on any national securities exchange, to be eligible for quotation on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") or any successor thereto or other comparable quotation system.

(c) The Company shall use its best efforts to (i) file, as soon as practicable following the earliest date after the occurrence of a Section 11(a)(ii) Event on which the consideration to be delivered by the Company upon exercise of the Rights has been determined in accordance with Section 11(a)(iii) hereof, or as soon as required by law following the Distribution Date, as the case may be, a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the securities purchasable upon exercise of the Rights on an appropriate form, (ii) cause such registration statement to become effective as soon as practicable after such filing and (iii) cause such registration statement to remain effective (with a prospectus that at all times meets the requirements of the Securities Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities or (B) the Expiration Date. The Company will also take such action as may be appropriate under, and which will ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time not to exceed ninety (90) days after the date determined in accordance with the provisions of the first sentence of this Section 9(c), the

exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective. Upon such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect, in each case with prompt written notice to the Rights Agent. Notwithstanding any such provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification in such jurisdiction shall have been obtained.

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all shares of Preferred Stock delivered upon the exercise of the Rights shall, at the time of delivery of the certificates or depositary receipts for such shares (subject to payment of the Exercise Price), be duly and validly authorized and issued and fully paid and nonassessable.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any certificates for shares of Preferred Stock upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Right Certificates to a person other than, or in respect of the issuance or delivery of securities in a name other than that of, the registered holder of the Right Certificates evidencing Rights surrendered for exercise or to issue or deliver any certificates for securities in a name other than that of the registered holder upon the exercise of any Rights until such tax shall have been paid (any such tax being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax is due.

Section 10. Preferred Stock Record Date. Each Person in whose name

any certificate for Preferred Stock (including any fraction of a share of Preferred Stock) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the shares of Preferred Stock represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Exercise Price (and any applicable transfer taxes) was made; provided,

however, that if the date of such surrender and payment is a date upon which the

Preferred Stock transfer books of the Company are closed, such person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock transfer books of the Company are open; and further provided, however, that if

delivery of shares of Preferred Stock is delayed pursuant to Section 9(c), such Person shall be deemed to have become the record holder of such shares of Preferred Stock only when such shares first become deliverable. Prior to the exercise of the Right evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a shareholder of the Company with respect to shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Exercise Price, Number and Kind of Shares

or Number of Rights. The Exercise Price, the number and kind of shares covered

by each Right and the number of Rights outstanding are subject to adjustment
from time to time as provided in this Section 11.

(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Stock payable in shares of Preferred Stock, (B) subdivide the outstanding Preferred Stock, (C) combine the outstanding Preferred Stock into a smaller number of shares or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a) and Section 7(e) hereof, the Exercise Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; provided, however, that in no event shall the

consideration to be paid upon the exercise of a Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of a Right. If an event occurs which would require an adjustment under both Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii) hereof.

(ii) Subject to the provisions of Section 24 hereof, in the event any Person, alone or together with its Affiliates and Associates, shall become an Acquiring Person (a "Section 11(a)(ii) Event"), then promptly following any such occurrence, proper provision shall be made so that each holder of a Right, except as provided in Section 7(e) hereof, shall thereafter have a right to receive, upon exercise thereof at the then current Exercise Price in accordance with the terms of this Agreement, such number of shares of Preferred Stock of the Company as shall equal the result obtained by (x) multiplying the then current Exercise Price by the then number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event, whether or not such Right was then exercisable, and dividing that product by (y) 50% of the Fair Market Value per one one-thousandth of a share of the Preferred Stock (determined pursuant to Section

11(d)) on the date of the occurrence of a Section 11(a)(ii) Event (such number of shares being referred to as the "Adjustment Shares").

(iii) In lieu of issuing any shares of Preferred Stock in accordance with Section 11(a)(ii) hereof, the Company, acting by or pursuant to resolution of the Board of Directors, may, and in the event that the number of shares of Preferred Stock which are authorized by the Company's Certificate of Incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights is not sufficient to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii) of this Section 11(a), the Company, acting by or pursuant to resolution of the Board of Directors, shall: (A) determine the excess of (X) the Fair Market Value of the Adjustment Shares issuable upon the exercise of a Right (the "Current Value") over (Y) the Exercise Price attributable to each Right (such excess being referred to as the "Spread") and (B) with respect to all or a portion of each Right (subject to Section 7(e) hereof), make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Exercise Price, (1) cash, (2) a reduction in the Exercise Price, (3) Preferred Stock Equivalents which the Board of Directors has deemed to have the same value as shares of Common Stock of the Company, (4) debt securities of the Company, (5) other assets of the Company or (6) any combination of the foregoing which, when added to any shares of Preferred Stock issued upon such exercise, has an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board of Directors based upon the advice of a nationally recognized investment banking firm selected by the Board of Directors; provided, however, that if the Company shall not have

made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the later of (x) the first occurrence of a Section 11(a)(ii) Event and (y) the date on which the Company's right of redemption pursuant to Section 23(a) expires (the later of (x) and (y) being referred to herein as the "Section 11(a)(ii) Trigger Date"), then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the Exercise Price, shares of Preferred Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If the Board of Directors shall determine in good faith that it is likely that sufficient additional shares of Preferred Stock could be authorized for issuance upon exercise in full of the Rights, the 30-day period set forth above may be extended to the extent necessary, but not more than ninety (90) days after the Section 11(a)(ii) Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such period, as it may be extended, being referred to herein as the "Substitution Period"). To the extent that the Company determines that some action need be taken pursuant to the first and/or second sentences of this Section 11(a)(iii), the Company (x) shall provide, subject to Section 7(e) hereof, that such action shall apply uniformly to all outstanding Rights and (y) may suspend the exercisability of the Rights until the expiration of

the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended and a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of the Preferred Stock shall be the Fair Market Value (as determined pursuant to Section 11(d) hereof) per share of the Preferred Stock on the Section 11(a)(ii) Trigger Date and the value of any Preferred Stock Equivalent shall be deemed to have the same value as the Preferred Stock on such date.

(b) If the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them (for a period expiring within forty-five (45) calendar days after such record date) to subscribe for or purchase Preferred Stock (or securities having the same or more favorable rights, privileges and preferences as the shares of Preferred Stock ("Preferred Stock Equivalents")) or securities convertible into Preferred Stock or Preferred Stock Equivalents at a price per share of Preferred Stock or per share of Preferred Stock Equivalents (or having a conversion price per share, if a security convertible into Preferred Stock or Preferred Stock Equivalents) less than the Fair Market Value (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock on such record date, the Exercise Price to be in effect after such record date shall be determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of shares of Preferred Stock which the aggregate offering price of the total number of shares of Preferred Stock and/or Preferred Stock Equivalents to be offered (and the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such Fair Market Value and the denominator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of additional shares of Preferred Stock and Preferred Stock Equivalents to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); provided,

however, that in no event shall the consideration to be paid upon the exercise

of a Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of a Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be the Fair Market Value thereof determined in accordance with Section 11(d) hereof. Shares of Preferred Stock owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such rights or warrants are not so issued, the Exercise Price shall be adjusted to be the Exercise Price which would then be in effect if such record date had not been fixed.

(c) If the Company shall fix a record date for the making of a distribution to all holders of Preferred Stock (including any such distribution made in connection with a

consolidation or merger in which the Company is the continuing or surviving corporation), of evidences of indebtedness, cash (other than a regular periodic cash dividend out of the earnings or retained earnings of the Company), assets (other than a dividend payable in Preferred Stock, but including any dividend payable in stock other than Preferred Stock) or convertible securities, subscription rights or warrants (excluding those referred to in Section 11(b)), the Exercise Price to be in effect after such record date shall be determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Fair Market Value (as determined pursuant to Section 11(d) hereof) per one one-thousandth of a share of Preferred Stock on such record date, less the Fair Market Value (as determined pursuant to Section 11(d) hereof) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such convertible securities, subscription rights or warrants applicable to one one-thousandth of a share of Preferred Stock and the denominator of which shall be the Fair Market Value (as determined pursuant to Section 11(d) hereof) per one one-thousandth of a share of Preferred Stock; provided, however, that in no event shall the

consideration to be paid upon the exercise of a Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of a Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Exercise Price shall again be adjusted to be the Exercise Price which would be in effect if such record date had not been fixed.

(d) For the purpose of this Agreement, the "Fair Market Value" of any share of Preferred Stock, Common Stock or any other stock or any Right or other security or any other property shall be determined as provided in this Section 11(d).

(i) In the case of a publicly-traded stock or other security, the Fair Market Value on any date shall be deemed to be the average of the daily closing prices per share of such stock or per unit of such other security for the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however,

that in the event that the Fair Market Value per share of any share of stock is determined during a period following the announcement by the issuer of such stock of (x) a dividend or distribution on such stock payable in shares of such stock or securities convertible into shares of such stock or (y) any subdivision, combination or reclassification of such stock, and prior to the expiration of the 30 Trading Day period after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the Fair Market Value shall be properly adjusted to take into account ex-dividend trading. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the securities are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the

principal national securities exchange on which such security is listed or admitted to trading; or, if not listed or admitted to trading on any national securities exchange, the last quoted price (or, if not so quoted, the average of the last quoted high bid and low asked prices) in the over-the-counter market, as reported by NASDAQ or such other system then in use; or, if on any such date no bids for such security are quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such security selected by the Board of Directors of the Company. If on any such date no market maker is making a market in such security, the Fair Market Value of such security on such date shall be determined reasonably and with utmost good faith to the holders of the Rights by the Board of Directors of the Company, provided, however, that if at the

time of such determination there is an Acquiring Person, the Fair Market Value of such security on such date shall be determined by a nationally recognized investment banking firm selected by the Board of Directors, which determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. The term "Trading Day" shall mean a day on which the principal national securities exchange on which such security is listed or admitted to trading is open for the transaction of business or, if such security is not listed or admitted to trading on any national securities exchange, a Business Day.

(ii) If a security is not publicly held or not so listed or traded, "Fair Market Value" shall mean the fair value per share of stock or per other unit of such security, determined reasonably and with utmost good faith to the holders of the Rights by the Board of Directors of the Company, provided, however, that if at the time of such

determination there is an Acquiring Person, the Fair Market Value of such security on such date shall be determined by a nationally recognized investment banking firm selected by the Board of Directors, which determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights; provided, however, that for the purposes of making any

any adjustment provided for by Section 11(a)(ii) hereof, the Fair Market Value of a share of Preferred Stock shall not be less than the product of the then Fair Market Value of a share of Common Stock multiplied by the higher of the then Dividend Multiple or Vote Multiple (as both of such terms are defined in the Certificate of Designation attached as Exhibit A hereto) applicable to the Preferred Stock and shall not exceed

105% of the product of the then Fair Market Value of a share of Common Stock multiplied by the higher of the then Dividend Multiple or Vote Multiple applicable to the Preferred Stock.

(iii) In the case of property other than securities, the Fair Market Value thereof shall be determined reasonably and with utmost good faith to the holders of Rights by the Board of Directors of the Company, provided, however, that if at the time of such determination there is an

Acquiring Person, the Fair Market

Value of such property on such date shall be determined by a nationally recognized investment banking firm selected by the Board of Directors, which determination shall be described in a statement filed with the Rights Agent and shall be binding upon the Rights Agent and the holders of the Rights.

(e) Anything herein to the contrary notwithstanding, no adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Exercise Price; provided, however,

that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest hundred-thousandth of a share of Common Stock of the Company or ten-millionth of a share of Preferred Stock, as the case may be, or to such other figure as the Board of Directors may deem appropriate. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three (3) years from the date of the transaction which mandates such adjustment or (ii) the Expiration Date.

(f) If as a result of any provision of Section 11(a) or Section 13(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Section 11(a), (b), (c), (d), (e), (g) through (k) and (m), inclusive, and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Exercise Price hereunder shall evidence the right to purchase, at the adjusted Exercise Price, the number of one one-thousandths of a share of Preferred Stock (or other securities or amount of cash or combination thereof) purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Exercise Price as a result of the calculations made in Section 11(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Exercise Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one ten-millionth) as the Board of Directors reasonably determines is appropriate to preserve the economic value of the Rights, including, by way of example, that number obtained by (i) multiplying (x) the number of one one-thousandths of a share of Preferred Stock for which a Right may be exercisable immediately prior to this adjustment by (y) the Exercise Price in effect immediately prior to such adjustment of the Exercise Price and (ii) dividing the product so obtained by the Exercise Price in effect immediately after such adjustment of the Exercise Price.

(i) The Company may elect on or after the date of any adjustment of the Exercise Price to adjust the number of Rights, in substitution for any adjustment in the number of shares of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one hundred-thousandth) obtained by dividing the Exercise Price in effect immediately prior to adjustment of the Exercise Price by the Exercise Price in effect immediately after adjustment of the Exercise Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Exercise Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Exercise Price) and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Exercise Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Exercise Price per share and the number of shares which were expressed in the initial Right Certificates issued hereunder without prejudice to any adjustment or change.

(k) Before taking any action that would cause an adjustment reducing the Exercise Price below the then stated value, if any, of the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Preferred Stock at such adjusted Exercise Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuing to the holder of any Right exercised after such record date the number of one one-thousandths of a share of Preferred Stock or

other capital stock or securities of the Company, if any, issuable upon such exercise over and above the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Exercise Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such

holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Exercise Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in their good faith judgment a majority of the Board of Directors shall determine to be advisable in order that any consolidation or subdivision of the Preferred Stock, issuance wholly for cash of any shares of Preferred Stock at less than the Fair Market Value, issuance wholly for cash of shares of Preferred Stock or securities which by their terms are convertible into or exchangeable for shares of Preferred Stock, stock dividends or issuance of rights, options or warrants referred to hereinabove in this Section 11, hereafter made by the Company to holders of its Preferred Stock, shall not be taxable to such shareholders.

(n) The Company covenants and agrees that it shall not, at any time after the Distribution Date and so long as the Rights have not been redeemed pursuant to Section 23 hereof or exchanged pursuant to Section 24 hereof, (i) consolidate with (other than a Subsidiary of the Company in a transaction which complies with the proviso at the end of this sentence), (ii) merge with or into, or (iii) sell or transfer (or permit any Subsidiary to sell or transfer), in one transaction or a series of related transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries taken as a whole, to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with the proviso at the end of this sentence) if (x) at the time of or immediately after such consolidation, merger or sale there are any rights, warrants or other instruments outstanding or agreements or arrangements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, or (y) prior to, simultaneously with or immediately after such consolidation, merger or sale the shareholders of a Person who constitutes, or would constitute, the "Principal Party" for the purposes of Section 13(a) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates and Associates; provided, however, that this Section 11(n) shall not affect the ability of any

Subsidiary of the Company to consolidate with, merge with or into, or sell or transfer assets or earning power to, any other Subsidiary of the Company. The Company further covenants and agrees that after the Distribution Date it will not, except as permitted by Section 23 or Section 27 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights.

(o) Notwithstanding anything in this Agreement to the contrary, in the event the Company shall at any time after the date of this Agreement and prior to the Distribution

Date (i) declare or pay any dividend on the outstanding Common Stock of the Company payable in shares of Common Stock of the Company or (ii) effect a subdivision, combination or consolidation of the outstanding shares of Common Stock of the Company (by reclassification or otherwise than by payment of dividends in shares of Common Stock of the Company) into a greater or lesser number of shares of Common Stock of the Company, then in any such case (A) the number of one one-thousandths of a share of Preferred Stock purchasable after such event upon proper exercise of each Right shall be determined by multiplying the number of one one-thousandths of a share of Preferred Stock so purchasable immediately prior to such event by a fraction, the numerator of which is the number of shares of Common Stock of the Company outstanding immediately prior to such event and the denominator of which is the number of shares of Common Stock of the Company outstanding immediately after such event, and (B) each share of Common Stock of the Company outstanding immediately after such event shall have issued with respect to it that number of Rights which each share of Common Stock of the Company outstanding immediately prior to such event had issued with respect to it. The adjustments provided for in this Section 11(o) shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

(p) The exercise of Rights under Section 11(a)(ii) shall only result in the loss of rights under Section 11(a)(ii) to the extent so exercised and shall not otherwise affect the rights of holders of Right Certificates under this Rights Agreement, including rights to purchase securities of the Principal Party following a Section 13 Event which has occurred or may thereafter occur, as set forth in Section 13 hereof. Upon exercise of a Right Certificate under Section 11(a)(ii), the Rights Agent shall return such Right Certificate duly marked to indicate that such exercise has occurred.

Section 12. Certificate of Adjusted Exercise Price or Number of

Shares. Whenever an adjustment is made as provided in Section 11 or Section 13

hereof, the Company shall (a) promptly prepare a certificate setting forth such adjustment and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Rights Agent and with each transfer agent for the Preferred Stock and the Common Stock of the Company a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 26 hereof. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment contained therein and shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such certificate.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or

Earning Power.

(a) In the event that, following the Stock Acquisition Date, directly or indirectly, (x) the Company shall consolidate with, or merge with and into, any other Person (other than a Subsidiary of the Company in a transaction which is not prohibited by Section 11(n) hereof), and the Company shall not be the continuing or surviving corporation of such consolidation or merger, (y) any Person (other than a Subsidiary of the Company in a transaction which is not prohibited by the proviso at the end of the first sentence of Section

11(n) hereof) shall consolidate with the Company, or merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the shares of Common Stock of the Company shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, or (z) the Company shall sell, mortgage or otherwise transfer (or one or more of its Subsidiaries shall sell, mortgage or otherwise transfer), in one transaction or a series of related transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company or any Subsidiary of the Company in one or more transactions, each of which is not prohibited by the proviso at the end of the first sentence of Section 11(n) hereof), then, and in each such case, proper provision shall be made so that: (i) each holder of a Right, except as provided in Section 7(e) hereof, shall have the right to receive, upon the exercise thereof at the then current Exercise Price in accordance with the terms of this Agreement, such number of validly authorized and issued, fully paid and nonassessable shares of freely tradeable Common Stock of the Principal Party (as hereinafter defined in Section 13(b)), free and clear of rights of call or first refusal, liens, encumbrances, transfer restrictions or other adverse claims, as shall be equal to the result obtained by (1) multiplying the then current Exercise Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is exercisable immediately prior to the first occurrence of a Section 13 Event, and dividing that product by (2) 50% of the Fair Market Value (determined pursuant to Section 11(d) hereof) per share of the Common Stock of such Principal Party on the date of consummation of such consolidation, merger, sale or transfer; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale, mortgage or transfer, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term "Company" shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 hereof shall apply to such Principal Party; and (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock to permit exercise of all outstanding Rights in accordance with this Section 13(a) and the making of payments in cash and/or other securities in accordance with Section 11(a)(iii) hereof) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights.

(b) "Principal Party" shall mean

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of Section 13(a), the Person that is the issuer of any securities into which shares of Common Stock of the Company are converted in such merger or consolidation, or, if there is more than one such issuer, the issuer of Common Stock that has the highest aggregate Fair Market Value (determined pursuant to Section 11(d)), and if no securities are so issued, the Person that is the other party to the merger or consolidation, or, if there is more than one such Person, the Person the Common Stock of which has the highest aggregate Fair Market Value (determined pursuant to Section 11(d)); and

(ii) in the case of any transaction described in clause (z) of the first sentence of Section 13(a), the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power transferred pursuant to such transaction or transactions or if the Person receiving the largest portion of the assets or earning power cannot be determined, whichever Person the Common Stock of which has the highest aggregate Fair Market Value (determined pursuant to Section 11(d));

provided, however, that in any such case, (1) if the Common Stock of such Person

is not at such time and has not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act ("Registered Common Stock") or such Person is not a corporation, and such Person is a direct or indirect Subsidiary or Affiliate of another Person who has Registered Common Stock outstanding, "Principal Party" shall refer to such other Person; (2) if the Common Stock of such Person is not Registered Common Stock or such Person is not a corporation, and such Person is a direct or indirect Subsidiary of another Person but is not a direct or indirect Subsidiary of another Person which has Registered Common Stock outstanding, "Principal Party" shall refer to the ultimate parent entity of such first-mentioned Person; (3) if the Common Stock of such Person is not Registered Common Stock or such Person is not a corporation, and such Person is directly or indirectly controlled by more than one Person, and one or more of such other Persons has Registered Common Stock outstanding, "Principal Party" shall refer to whichever of such other Persons is the issuer of the Registered Common Stock having the highest aggregate Fair Market Value (determined pursuant to Section 11(d)); and (4) if the Common Stock of such Person is not Registered Common Stock or such Person is not a corporation, and such Person is directly or indirectly controlled by more than one Person, and none of such other Persons has Registered Common Stock outstanding, "Principal Party" shall refer to whichever ultimate parent entity is the corporation having the greatest stockholders' equity or, if no such ultimate parent entity is a corporation, "Principal Party" shall refer to whichever ultimate parent entity is the entity having the greatest net assets.

(c) The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto (x) the Principal Party shall have a sufficient number of authorized shares of its Common Stock, which have not been issued or reserved for issuance, to permit the exercise in full of the Rights in accordance with this Section 13, and (y) the Company and each Principal Party and each other Person who may become a Principal Party as a result of such consolidation, merger, sale or transfer shall have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in Section 13(a) and (b) and further providing that, as soon as practicable after the date of any consolidation, merger, sale or transfer of assets mentioned in Section 13(a), the Principal Party at its own expense will:

(i) prepare and file a registration statement under the Securities Act with respect to the Rights and the securities purchasable upon exercise of the Rights on

an appropriate form, use its reasonable best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its reasonable best efforts to cause such registration statement to remain effective (with a prospectus that at all times meets the requirements of the Securities Act) until the Expiration Date;

(ii) use its reasonable best efforts to qualify or register the Rights and the securities purchasable upon exercise of the Rights under the blue sky laws of such jurisdictions as may be necessary or appropriate;

(iii) use its reasonable best efforts to list (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on a national securities exchange or to meet the eligibility requirements for quotation on NASDAQ; and

(iv) deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates which comply in all respects with the requirements for registration on Form 10 under the Exchange Act.

(d) In case the Principal Party which is to be a party to a transaction referred to in this Section 13 has a provision in any of its authorized securities or in its Certificate of Incorporation or By-laws or other instrument governing its corporate affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this Section 13), in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, shares of Common Stock of such Principal Party at less than the then current Fair Market Value (determined pursuant to Section 11(d)) or securities exercisable for, or convertible into, Common Stock of such Principal Party at less than such Fair Market Value, or (ii) providing for any special payment, tax or similar provisions in connection with the issuance of the Common Stock of such Principal Party pursuant to the provisions of this Section 13, then, in such event, the Company shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers.

Section 14. Fractional Rights and Fractional Shares.

(a) The Company shall not be required to issue fractions of Rights, except prior to the Distribution Date as provided in Section 11(o) hereof, or to distribute Right Certificates which evidence fractional Rights. If the Company elects not to issue such fractional Rights, the Company shall pay, in lieu of such fractional Rights, to the registered

holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the Fair Market Value of a whole Right, as determined pursuant to Section 11(d) hereof.

(b) The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise of the Rights or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock). In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company may pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the Fair Market Value of one one-thousandth of a share of Preferred Stock. For purposes of this Section 14(b), the Fair Market Value of one one-thousandth of a share of Preferred Stock shall be determined pursuant to Section 11(d) hereof for the Trading Day immediately prior to the date of such exercise.

(c) The holder of a Right by the acceptance of the Rights expressly waives his right to receive any fractional Rights or any fractional shares upon exercise of a Right, except as permitted by this Section 14.

Section 15. Rights of Action. All rights of action in respect of

this Agreement, other than rights of action vested in the Rights Agent pursuant to Sections 18 and 20 hereof, are vested in the respective registered holders of the Right Certificates (or, prior to the Distribution Date, the registered holders of the Common Stock of the Company); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Stock of the Company), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock of the Company), may, in such registered holder's own behalf and for such registered holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his right to exercise the Right evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations hereunder and injunctive relief against actual or threatened violations of the obligations hereunder of any Person subject to this Agreement. Holders of Rights shall be entitled to recover the reasonable costs and expenses, including attorneys' fees, incurred by them in any action to enforce the provisions of this Agreement.

Section 16. Agreement of Right Holders. Every holder of a Right, by

accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, each Right will be transferable only simultaneously and together with the transfer of shares of Common Stock of the Company;

(b) after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office or offices of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer;

(c) subject to Sections 6(a) and 7(f), the Company and the Rights Agent may deem and treat the person in whose name a Right Certificate (or, prior to the Distribution Date, the associated certificate representing Common Stock of the Company) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated certificate representing Common Stock of the Company made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and, subject to the last sentence of Section 7(e), neither the Company nor the Rights Agent shall be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as the result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority prohibiting or otherwise restraining performance of such obligations; provided, however, that the Company must use

its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible.

Section 17. Right Certificate Holder Not Deemed a Shareholder. No

holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the shares of Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting shareholders (except as provided in Section 25 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent.

(a) The Company agrees to pay to the Rights Agent such compensation as shall be agreed to in writing between the Company and the Rights Agent for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its

reasonable expenses and counsel fees and disbursements and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly. The provisions of this Section 18(a) shall survive the expiration of the Rights and the termination of this Agreement.

(b) The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any Right Certificate or certificate representing Common Stock of the Company, Preferred Stock, or other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it in good faith and without negligence to be genuine and to be signed and executed by the proper Person or Persons.

(c) The Rights Agent shall not be liable for consequential damages under any provision of this Agreement or for any consequential damages arising out of any act or failure to act hereunder.

Section 19. Merger or Consolidation or Change of Name of Rights

Agent.

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the corporate trust or shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the

Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. Duties of Rights Agent. The Rights Agent undertakes the

duties and obligations expressly imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring Person and the determination of "Fair Market Value") be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof shall be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by a person believed by the Rights Agent to be the Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary or an Assistant Secretary of the Company and delivered to the Rights Agent. Any such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 7(e) hereof) or any adjustment required under the

provisions of Sections 11, 13 or 23(c) hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate describing any such adjustment furnished in accordance with Section 12 hereof), nor shall it be responsible for any determination by the Board of Directors of the Company of the Fair Market Value of the Rights or Preferred Stock pursuant to the provisions of Section 14 hereof; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock of the Company or Preferred Stock to be issued pursuant to this Agreement or any Right Certificate or as to whether any shares of Common Stock of the Company or Preferred Stock will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder and certificates delivered pursuant to any provision hereof from any person believed by the Rights Agent to be the Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, the President, a Vice President, the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer of the Company, and is authorized to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent under this Agreement and the date on or after which such action shall be taken or such omission shall be effective. The Rights Agent shall not be liable for any action taken by, or omission of, the Rights Agent in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

(h) The Rights Agent and any shareholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not the Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents.

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) If, with respect to any Right Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been completed or indicates an affirmative response to clause (1) or clause (2) thereof, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

Section 21. Change of Rights Agent. The Rights Agent or any

successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing mailed to the Company by first class mail. The Company may remove the Rights Agent or any successor Rights Agent (with or without cause) upon thirty (30) days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock of the Company and Preferred Stock by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the incumbent Rights Agent or the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (a) a corporation organized and doing business under the laws of the United States or of the State of New York (or of any other state of the United States so long as such corporation is authorized to do business as a banking institution in the State of New York), in good standing, which is authorized under such laws to exercise stock transfer or corporate trust powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$100,000,000 or (b) an Affiliate of a corporation described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company shall

file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock of the Company and the Preferred Stock, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any

of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price per share and the number or kind or class of shares of stock or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of Common Stock of the Company following the Distribution Date and prior to the redemption or expiration of the Rights, the Company (a) shall, with respect to shares of Common Stock of the Company so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, or upon the exercise, conversion or exchange of securities hereafter issued by the Company, and (b) may, in any other case, if deemed necessary or appropriate by the Board of Directors of the Company, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided, however,

that (i) no such Right Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the person to whom such Right Certificate would be issued, and (ii) no such Right Certificate shall be issued if, and to the extent that, appropriate adjustments shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption.

(a) The Board of Directors of the Company may, at its option, redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.001 per Right, appropriately adjusted to reflect any dividend declared or paid on the Common Stock of the Company in shares of Common Stock of the Company or any subdivision or combination of the outstanding shares of Common Stock of the Company or similar event occurring after the date of this Agreement (such redemption price, as adjusted from time to time, being hereinafter referred to as the "Redemption Price"). The Rights may be redeemed only until the earlier to occur of (i) 5:00 P.M., New York, New York time, on the tenth calendar day after the Stock Acquisition Date or (ii) the Final Expiration Date.

(b) Immediately upon the action of the Board of Directors ordering the redemption of the Rights, and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. Promptly after the action of the Board of Directors ordering the redemption of the Rights, the Company shall give notice of such

redemption to the Rights Agent and the holders of the then outstanding Rights by mailing such notice to the Rights Agent and to all such holders at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the Transfer Agent for the Common Stock of the Company. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or Section 24 hereof or in connection with the purchase of shares of Common Stock of the Company prior to the Distribution Date.

(c) The Company may, at its option, pay the Redemption Price in cash, shares of Common Stock of the Company (based on the Fair Market Value of the Common Stock of the Company as of the time of redemption) or any other form of consideration deemed appropriate by the Board of Directors.

Section 24. Exchange.

(a) (i) The Board of Directors of the Company may, at its option, at any time on or after the Distribution Date, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e) hereof) for shares of Common Stock of the Company at an exchange ratio of one share of Common Stock of the Company per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such exchange ratio being hereinafter referred to as the "Section 24(a)(i) Exchange Ratio"). Notwithstanding the foregoing, the Board of Directors shall not be empowered to effect such exchange at any time after any Person (other than an Exempt Person), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50% or more of the Common Stock of the Company.

(ii) Notwithstanding the foregoing, the Board of Directors of the Company may, at its option, at any time on or after the Distribution Date, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e) hereof) for shares of Common Stock of the Company at an exchange ratio specified in the following sentence, as appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date of this Agreement. Subject to the adjustment described in the foregoing sentence, each Right may be exchanged for that number of shares of Common Stock of the Company obtained by dividing the Spread (as defined in Section 11(a)(iii)) by the then Fair Market Value per one one-thousandth of a share of Preferred Stock on the earlier of (x) the date on which any person becomes an Acquiring Person or (y) the date on which a tender or exchange offer by any Person (other than an

Exempt Person) is first published or sent or given within the meaning of Rule 14d-4(a) of the Exchange Act or any successor rule, if upon consummation thereof such Person would be the Beneficial Owner of more than 15% of the shares of Common Stock of the Company then outstanding (such exchange ratio being referred to herein as the "Section 24(a)(ii) Exchange Ratio"). Notwithstanding the foregoing, the Board of Directors shall not be empowered to effect such exchange at any time after any Person (other than an Exempt Person), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50% or more of the Common Stock of the Company.

(b) Immediately upon the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to subsection (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock of the Company equal to the number of such Rights held by such holder multiplied by the Section 24(a)(i) Exchange Ratio or the Section 24(a)(ii) Exchange Ratio, as applicable. The Company shall promptly give notice of any such exchange in accordance with Section 26 hereof and shall promptly mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent; provided, however, that the

failure to give, or any defect in, such notice shall not affect the validity of such exchange. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock of the Company for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 7(e) hereof) held by each holder of Rights.

(c) In any exchange pursuant to this Section 24, the Company, at its option, may substitute Preferred Stock (or Preferred Stock Equivalent, as such term is defined in Section 11(b) hereof) for Common Stock of the Company exchangeable for Rights, at the initial rate of one one-thousandth of a share of Preferred Stock (or Preferred Stock Equivalent) for each share of Common Stock of the Company, as appropriately adjusted to reflect adjustments in the voting rights of the Preferred Stock pursuant to the terms thereof, so that the fraction of a share of Preferred Stock delivered in lieu of each share of Common Stock of the Company shall have the same voting rights as one share of Common Stock of the Company.

(d) In the event that there shall not be sufficient shares of Common Stock of the Company or Preferred Stock (or Preferred Stock Equivalent) issued but not outstanding or authorized but unissued to permit any exchange of Rights as contemplated in accordance with this Section 24, the Company shall take all such action as may be necessary to authorize additional shares of Common Stock of the Company or Preferred Stock (or Preferred Stock Equivalent) for issuance upon exchange of the Rights.

(e) The Company shall not be required to issue fractions of Common Stock of the Company or to distribute certificates which evidence fractional shares of Common Stock of the Company. If the Company elects not to issue such fractional shares of Common Stock of the Company, the Company shall pay, in lieu of such fractional shares of Common Stock of the Company, to the registered holders of the Right Certificates with regard to which such fractional shares of Common Stock of the Company would otherwise be issuable, an amount in cash equal to the same fraction of the Fair Market Value of a whole share of Common Stock of the Company. For the purposes of this paragraph (e), the Fair Market Value of a whole share of Common Stock of the Company shall be the closing price of a share of Common Stock of the Company (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of exchange pursuant to this Section 24.

Section 25. Notice of Certain Events.

(a) In case the Company shall propose, at any time after the Distribution Date, (i) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular periodic cash dividend out of earnings or retained earnings of the Company), or (ii) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, or (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding shares of Preferred Stock), or (iv) to effect any consolidation or merger into or with, or to effect any sale, mortgage or other transfer (or to permit one or more of its Subsidiaries to effect any sale, mortgage or other transfer), in one transaction or a series of related transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to, any other Person (other than a Subsidiary of the Company in one or more transactions each of which is not prohibited by the proviso at the end of the first sentence of Section 11(n) hereof), (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the Common Stock of the Company payable in Common Stock of the Company or to effect a subdivision, combination or consolidation of the Common Stock of the Company (by reclassification or otherwise than by payment of dividends in Common Stock of the Company) then in each such case, the Company shall give to each holder of a Right Certificate and to the Rights Agent, in accordance with Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the shares of Common Stock of the Company and/or Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least twenty (20) days prior to the record date for determining holders of the shares of Preferred Stock for purposes of such action, and in the case of any such other action, at least twenty (20) days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the shares of Common Stock of the Company and/or Preferred Stock, whichever shall be the earlier; provided, however, no such notice shall

be required pursuant to this Section 25 as a result of any Subsidiary of the Company effecting a consolidation or merger with or into, or effecting a sale or other transfer of assets or earnings power to, any other Subsidiary of the Company in a manner not inconsistent with the provisions of this Agreement.

(b) In case any Section 11(a)(ii) Event shall occur, then, in any such case, the Company shall as soon as practicable thereafter give to each registered holder of a Right Certificate and to the Rights Agent, in accordance with Section 26 hereof, a notice of the occurrence of such event, which shall specify the event and the consequences of the event to holders of Rights under Section 11(a)(ii) hereof.

Section 26. Notices. Notices or demands authorized by this

Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, by facsimile transmission or by nationally recognized overnight courier addressed (until another address is filed in writing with the Rights Agent) as follows:

Boston Properties, Inc.
8 Arlington Street
Boston, Massachusetts 02116
Attention: President

Subject to the provisions of Section 21, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, by facsimile transmission or by nationally-recognized overnight courier addressed (until another address is filed in writing with the Company) as follows:

BankBoston, N.A.
c/o Boston Equiserve Limited Partnership
150 Royall Street
Canton, MA 02021
Attention: Administration

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate (or, prior to the Distribution Date, to the holder of any certificate representing shares of Common Stock of the Company) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. Supplements and Amendments. Prior to the Distribution

Date, the Company and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement as the Company may deem necessary or desirable

without the approval of any holders of certificates representing shares of Common Stock of the Company. From and after the Distribution Date, the Company and the Rights Agent shall, if the Company so directs, supplement or amend this Agreement without the approval of any holder of Right Certificates in order (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, (iii) to shorten or lengthen any time period hereunder, or (iv) to change or supplement the provisions hereof in any manner which the Company may deem necessary or desirable and which shall not adversely affect the interests of the holders of Right Certificates (other than an Acquiring Person or any Affiliate or Associate of an Acquiring Person); provided, however, that from and after the

Distribution Date this Agreement may not be supplemented or amended to lengthen, pursuant to clause (iii) of this sentence, (A) a time period relating to when the Rights may be redeemed at such time as the Rights are not then redeemable or (B) any other time period unless such lengthening is for the purpose of protecting, enhancing or clarifying the rights of, and the benefits to, the holders of Rights (other than an Acquiring Person or any Affiliate or Associate of an Acquiring Person). Upon the delivery of such certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment. Prior to the Distribution Date, the interests of the holders of Rights shall be deemed coincident with the interests of the holders of Common Stock of the Company. Notwithstanding any other provision hereof, the Rights Agent's consent must be obtained regarding any amendment or supplement pursuant to this Section 27 which alters the Rights Agent's rights or duties.

Section 28. Successors. All the covenants and provisions of this

Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Determinations and Actions by the Board of Directors.

For all purposes of this Agreement, any calculation of the number of shares of Common Stock of the Company outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of the Company of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the Rules under the Exchange Act as in effect on the date hereof. The Board of Directors of the Company shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board of Directors or to the Company, or as may be necessary or advisable in the administration of this Agreement, including without limitation, the right and power to (i) interpret the provisions of this Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to redeem or not redeem the Rights or to amend the Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) which are done or made by the Board of Directors in good faith shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all

other parties, and (y) not subject any member of the Board of Directors to any liability to the holders of the Rights or to any other person.

Section 30. Benefits of this Agreement. Nothing in this Agreement

shall be construed to give to any person or corporation other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock of the Company) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, registered holders of the Common Stock of the Company).

Section 31. Severability. If any term, provision, covenant or

restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated;

provided, however, that notwithstanding anything in this Agreement to the

contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board of Directors of the Company determines in its good faith judgment that severing the invalid language from the Agreement would adversely affect the purpose or effect of the Agreement, the right of redemption set forth in Section 23 hereof shall be reinstated and shall not expire until the Close of Business on the tenth day following the date of such determination by the Board of Directors.

Section 32. Governing Law. This Agreement, each Right and each

Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and to be performed entirely within such state. The courts of the State of Delaware and of the United States of America located in the State of Delaware (the "Delaware Courts") shall have exclusive jurisdiction over any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and any Person commencing or otherwise involved in any such litigation shall waive any objection to the laying of venue of such litigation in the Delaware Courts and shall not plead or claim in any Delaware Court that such litigation brought therein has been brought in an inconvenient forum.

Section 33. Counterparts. This Agreement may be executed in any

number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 34. Descriptive Headings. Descriptive headings of the

several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal and attested, all as of the day and year first above written.

ATTEST: BOSTON PROPERTIES, INC.

By:----- By:-----
Name:
Title:

ATTEST: BANKBOSTON, N.A.

By:----- By:-----
Name:
Title:

VOTE OF DIRECTORS ESTABLISHING
SERIES X JUNIOR PARTICIPATING CUMULATIVE PREFERRED STOCK
OF
BOSTON PROPERTIES, INC.

Pursuant to Section 151 of the General Corporation Law
of the State of Delaware:

VOTED, that pursuant to the authority conferred upon and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of Boston Properties, Inc. (the "Corporation") the Board of Directors hereby establishes and designates a series of Preferred Stock of the Corporation, and hereby fixes and determines the relative rights and preferences of the shares of such series, in addition to those set forth in the Certificate of Incorporation, as follows:

Section 1. Designation and Amount. The shares of such series shall

be designated as "Series X Junior Participating Cumulative Preferred Stock," par value \$.01 per share (hereinafter called "Series X Preferred Stock"), and the number of shares initially constituting such series shall be 200,000. Such number of shares may be increased or decreased by resolution of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction has been so authorized; provided, however, that no decrease shall

reduce the number of shares of Series X Preferred Stock to a number less than that of the shares then outstanding plus the number of shares of Series X Preferred Stock issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

Section 2. Dividends and Distributions.

(A) (i) Subject to the rights of the holders of any shares of any series of preferred stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of shares of common stock and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provisions for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of common stock or a

subdivision of the outstanding shares of common stock (by reclassification or otherwise), declared on the shares of common stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. The multiple of cash and non-cash dividends declared on the shares of common stock to which holders of the Series X Preferred Stock are entitled, which shall be 1,000 initially but which shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall at any time after June 13, 1997 (the "Rights Declaration Date") (i) declare or pay any dividend on the shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of dividends which holders of shares of Series A Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event. The prior sentence shall specifically not apply to the merger of Boston Properties, Inc., a Massachusetts corporation, with and into the Corporation and any transaction or action taken in contemplation or furtherance thereof.

(ii) Notwithstanding anything else contained in this paragraph (A), the Corporation shall, out of funds legally available for that purpose, declare a dividend or distribution on the Series A Preferred Stock as provided in this paragraph (A) immediately after it declares a dividend or distribution on the shares of common stock (other than a dividend payable in shares of common stock); provided that, in the event no dividend or distribution shall have been declared on the shares of common stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(B) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix in accordance with

applicable law a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than such number of days prior to the date fixed for the payment thereof as may be allowed by applicable law.

Section 3. Voting Rights. In addition to any other voting rights required

by law, the holders of shares of Series X Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series X Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. The number of votes which a holder of a share of Series A Preferred Stock is entitled to cast, which shall initially be 1,000 but which may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series X Preferred Stock shall be entitled shall be the Vote Multiple immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of common stock and the holders of shares of any other capital stock of this Corporation having general voting rights, shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) Whenever, at any time or times, dividends payable on any shares of Series X Preferred Stock shall be in arrears in an amount equal to at least two full quarter dividends (whether or not declared and whether or not consecutive), the holders of record of the outstanding shares of Series X Preferred Stock shall have the exclusive right, voting separately as a single class, to elect two directors of the Corporation at a special meeting of shareholders of the Corporation or at the Corporation's next annual meeting of shareholders, and at each subsequent annual meeting of stockholders, as provided below. At elections for such directors, each Series X Preferred Share shall entitle the holder thereof to 1,000 votes in such elections.

(ii) Upon the vesting of such right of the holders of shares of Series X Preferred Stock, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding shares of Series X Preferred Stock as hereinafter set forth. A

special meeting of the stockholders of the Corporation then entitled to vote shall be called by the Chairman of the Board of Directors or the President or the Secretary of the Corporation, if requested in writing by the holders of record of not less than 10% of the shares of Series X Preferred Stock then outstanding. At such special meeting, or, if no such special meeting shall have been called, then at the next annual meeting of shareholders of the Corporation, the holders of the shares of Series X Preferred Stock shall elect, voting as above provided, two directors of the Corporation to fill the aforesaid vacancies created by the automatic increase in the number of members of the Board of Directors. At any and all such meetings for such election, the holders of a majority of the outstanding shares of Series X Preferred Stock shall be necessary to constitute a quorum for such election, whether present in person or proxy, and such two directors shall be elected by the vote of at least a majority of the shares of Series X Preferred Stock held by such shareholders present or represented at the meeting. Any director elected by holders of shares of Series X Preferred Stock pursuant to this Section may be removed at any annual or special meeting, by vote of a majority of the shareholders voting as a class who elected such director, with or without cause. In case any vacancy shall occur among the directors elected by the holders of shares of Series X Preferred Stock pursuant to this Section, such vacancy may be filled by the remaining director so elected, or his successor then in office, and the director so elected to fill such vacancy shall serve until the next meeting of shareholders for the election of directors. After the holders of shares of Series X Preferred Stock shall have exercised their right to elect directors in any default period and during the continuance of such period, the number of directors shall not be further increased or decreased except by vote of the holders of shares of Series X Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series X Preferred Stock.

(iii) The right of the holders of shares of Series X Preferred Stock, voting separately as a class, to elect two members of the Board of Directors of the Corporation as aforesaid shall continue until, and only until, such time as all arrears in dividends (whether or not declared) on the Series X Preferred Stock shall have been paid or declared and set apart for payment, at which time such right shall terminate, except as herein or by law expressly provided subject to vesting in the event of each and every subsequent default of the character above-mentioned. Upon any termination of the right of the holders of the Series X Preferred Stock as a class to vote for directors as herein provided, the term of office of all directors then in office elected by the holders of shares of Series A Preferred Stock pursuant to this Section shall terminate immediately. Whenever the term of office of the directors elected by the holders of shares of Series X Preferred Stock pursuant to this Section shall terminate and the special voting powers vested in the holders of the Series X Preferred Stock pursuant to this Section shall have expired, the maximum number of members of this Board of Directors of the Corporation shall be such number as may be provided for in the By-laws of the Corporation, irrespective of any increase made pursuant to the provisions of this Section.

(D) Except as otherwise required by applicable law or as set forth herein, holders of Series X Preferred Stock shall have no special voting rights and their consent shall not be

required (except to the extent they are entitled to vote with holders of shares of common stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

- (i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;
- (ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;
- (iii) except as permitted in subsection 4(A)(iv) below, redeem, purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or
- (iv) purchase or otherwise acquire for consideration any shares of Series X Preferred Stock, or any shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under subsection (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock

purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of preferred stock and may be reissued as part of a new series of preferred stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation

(voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made (x) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (1) \$1,000.00 per share or (2) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of common stock, or (y) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the aggregate amount per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (x) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

Neither the consolidation of nor merging of the Corporation with or into any other corporation or corporations, nor the sale or other transfer of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall

enter into any consolidation, merger, combination or other transaction in which the shares of common stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of common stock is changed or exchanged, plus accrued and unpaid dividends, if any,

payable with respect to the Series X Preferred Stock. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

Section 8. Redemption. The shares of Series A Preferred Stock shall not

be redeemable; provided, however, that the foregoing shall not limit the ability

of the Corporation to purchase or otherwise deal in such shares to the extent otherwise permitted hereby and by law.

Section 9. Ranking. Unless otherwise provided in the Certificate of

Incorporation or a Certificate of Vote of Directors Establishing a Class of Stock relating to a subsequently-designated series of preferred stock of the Corporation, the Series A Preferred Stock shall rank junior to any other series of the Corporation's preferred stock subsequently issued, as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up and shall rank senior to the common stock.

Section 10. Amendment. The Certificate of Incorporation and this

Certificate of Vote of Directors shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series X Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series X Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Shares of Series X Preferred Stock may be

issued in whole shares or in any fraction of a share that is one one-thousandth (1/1,000th) of a share or any integral multiple of such fraction, which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of shares of Series X Preferred Stock. In lieu of fractional shares, the Corporation may elect to make a cash payment as provided in the Rights Agreement for fractions of a share other than one one-thousandth (1/1,000th) of a share or any integral multiple thereof.

[Form of Right Certificate]

Certificate No. R- _____ Rights

NOT EXERCISABLE AFTER _____, 200_ OR EARLIER IF NOTICE OF REDEMPTION IS GIVEN. THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF BOSTON PROPERTIES, INC., AT \$0.001 PER RIGHT ON THE TERMS SET FORTH IN THE SHAREHOLDER RIGHTS AGREEMENT BETWEEN BOSTON PROPERTIES, INC. AND [RIGHTS AGENT], AS RIGHTS AGENT, DATED AS OF _____, 199_ (THE "RIGHTS AGREEMENT"). UNDER CERTAIN CIRCUMSTANCES SPECIFIED IN SECTION 7(e) OF THE RIGHTS AGREEMENT, RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON OR AN ASSOCIATE OR AFFILIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) AND ANY SUBSEQUENT HOLDER OF SUCH RIGHTS MAY BECOME NULL AND VOID.

Right Certificate

BOSTON PROPERTIES, INC.

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Shareholder Rights Agreement dated as of _____, 199_ (the "Rights Agreement") between BOSTON PROPERTIES, INC. (the "Company") and [RIGHTS AGENT], as Rights Agent (the "Rights Agent"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to the close of business on _____, 200_ at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth of a fully paid, non-assessable share of Series A Junior Participating Cumulative Preferred Stock (the "Preferred Stock") of the Company, at a purchase price of \$_____ per one one-thousandth of a share (the "Exercise Price"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase and the related Certificate duly executed. The number of Rights evidenced by this Right Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Exercise Price per

share set forth above, are the number and Exercise Price as of _____, based on the shares of Preferred Stock as constituted at such date.

Upon the occurrence of a Section 11(a)(ii) Event (as such term is defined in the Rights Agreement), if the Rights evidenced by this Right Certificate are beneficially owned by (i) an Acquiring Person or an Affiliate or Associate of any such Person (as such terms are defined in the Rights Agreement), (ii) a transferee of any such Acquiring Person, Associate or Affiliate, or (iii) under certain circumstances specified in the Rights Agreement, a transferee of a Person who, after such transfer, became an Acquiring Person or an Affiliate or Associate of an Acquiring Person, such Rights shall become null and void and no holder hereof shall have any right with respect to such Rights from and after the occurrence of such Section 11(a)(ii) Event.

As provided in the Rights Agreement, the Exercise Price and the number of shares of Preferred Stock or other securities which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates, which limitations of rights include the temporary suspension of the exercisability of such Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the principal office of the Company and the designated office of the Rights Agent and are also available upon written request to the Company or the Rights Agent.

This Right Certificate, with or without other Right Certificates, upon surrender at the office or offices of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of shares of Preferred Stock as the Rights evidenced by the Right Certificate or Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Certificates for the number of whole Rights not exercised. If this Right Certificate shall be exercised in whole or in part pursuant to Section 11(a)(ii) of the Rights Agreement, the holder shall be entitled to receive this Right Certificate duly marked to indicate that such exercise has occurred as set forth in the Rights Agreement.

Under certain circumstances, subject to the provisions of the Rights Agreement, the Board of Directors of the Company at its option may exchange all or any part of the Rights evidenced by this Certificate for shares of the Company's Common Stock or Preferred Stock at an exchange ratio (subject to adjustment) of one share of Common Stock or one one-thousandth of a share of Preferred Stock per Right.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate may be redeemed by the Board of Directors of the Company at its option at a redemption price of \$0.01 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board of Directors).

The Company is not obligated to issue fractional shares of stock upon the exercise of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts). If the Company elects not to issue such fractional shares, in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of shares of Preferred Stock, Common Stock or any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Rights Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by an authorized signatory of the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

[Corporate Seal]

BOSTON PROPERTIES, INC.

Attested:

By

By _____
[Secretary or Assistant Secretary]

Name:
Title: [Chairman, Vice
Chairman, President
or Vice President]

Countersigned:

[_____] ,
as Rights Agent

Authorized Signatory

Date of countersignature:

[Form of Reverse Side of Right Certificate]

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ (Please print name and address of transferee) _____ this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____

Signature

Signature Guaranteed: _____

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Right Certificate _____ are _____ are not being transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned ___ did ___ did not directly or indirectly acquire the Rights evidenced by this Right Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of any such Person.

Dated: _____

Signature

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

B-7

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise the Right Certificate.)

To BOSTON PROPERTIES, INC.:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the shares of Preferred Stock issuable upon the exercise of the Rights (or such other securities of the Company or of any other person which may be issuable upon the exercise of the Rights) and requests that certificates for such shares be issued in the name of:

Please insert social security or other identifying taxpayer number: _____

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate or if the Rights are being exercised pursuant to Section 11(a)(ii) of the Rights Agreement, a new Right Certificate for the balance of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying taxpayer number: _____

(Please print name and address)

Dated: _____

Signature

Signature Guaranteed: _____

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Right Certificate _____ are _____ are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned ___ did ___ did not directly or indirectly acquire the Rights evidenced by this Right Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of any such Person.

Dated: _____

Signature

NOTICE

The signature to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

B-10

Form of Certificate of Designation, Preferences
and Rights of a Series of Preferred Stock

CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RIGHTS OF A SERIES OF
PREFERRED STOCK

OF

BOSTON PROPERTIES, INC.

Pursuant to Section 151
of the General Corporation Law of the State of Delaware

BOSTON PROPERTIES, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify:

That, pursuant to authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of said Corporation, and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, said Board of Directors, by a unanimous written consent, dated as of June 11, 1997, adopted a resolution providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, and conversion or exchange, of a Series of Preferred Stock, which resolution is as follows:

See attached pages 2A-8A

VOTE OF DIRECTORS ESTABLISHING
SERIES X JUNIOR PARTICIPATING CUMULATIVE PREFERRED STOCK
OF
BOSTON PROPERTIES, INC.

Pursuant to Section 151 of the General Corporation Law
of the State of Delaware:

VOTED, that pursuant to the authority conferred upon and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of Boston Properties, Inc. (the "Corporation") the Board of Directors hereby establishes and designates a series of Preferred Stock of the Corporation, and hereby fixes and determines the relative rights and preferences of the shares of such series, in addition to those set forth in the Certificate of Incorporation, as follows:

Section 1. Designation and Amount. The shares of such series shall

be designated as "Series X Junior Participating Cumulative Preferred Stock," par value \$.01 per share (hereinafter called "Series X Preferred Stock"), and the number of shares initially constituting such series shall be 200,000. Such number of shares may be increased or decreased by resolution of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction has been so authorized; provided, however, that no decrease shall

reduce the number of shares of Series X Preferred Stock to a number less than that of the shares then outstanding plus the number of shares of Series X Preferred Stock issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

Section 2. Dividends and Distributions.

(A) (i) Subject to the rights of the holders of any shares of any series of preferred stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of shares of common stock and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provisions for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of common stock or a subdivision of the outstanding shares of common stock (by reclassification or otherwise),

declared on the shares of common stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. The multiple of cash and non-cash dividends declared on the shares of common stock to which holders of the Series X Preferred Stock are entitled, which shall be 1,000 initially but which shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall at any time after June 13, 1997 (the "Rights Declaration Date") (i) declare or pay any dividend on the shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of dividends which holders of shares of Series A Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event. The prior sentence shall specifically not apply to the merger of Boston Properties, Inc., a Massachusetts corporation, with and into the Corporation and any transaction or action taken in contemplation or furtherance thereof.

(ii) Notwithstanding anything else contained in this paragraph (A), the Corporation shall, out of funds legally available for that purpose, declare a dividend or distribution on the Series A Preferred Stock as provided in this paragraph (A) immediately after it declares a dividend or distribution on the shares of common stock (other than a dividend payable in shares of common stock); provided that, in the event no dividend or distribution shall have been declared on the shares of common stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(B) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix in accordance with

applicable law a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than such number of days prior to the date fixed for the payment thereof as may be allowed by applicable law.

Section 3. Voting Rights. In addition to any other voting rights required

by law, the holders of shares of Series X Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series X Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. The number of votes which a holder of a share of Series A Preferred Stock is entitled to cast, which shall initially be 1,000 but which may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series X Preferred Stock shall be entitled shall be the Vote Multiple immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of common stock and the holders of shares of any other capital stock of this Corporation having general voting rights, shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) Whenever, at any time or times, dividends payable on any shares of Series X Preferred Stock shall be in arrears in an amount equal to at least two full quarter dividends (whether or not declared and whether or not consecutive), the holders of record of the outstanding shares of Series X Preferred Stock shall have the exclusive right, voting separately as a single class, to elect two directors of the Corporation at a special meeting of shareholders of the Corporation or at the Corporation's next annual meeting of shareholders, and at each subsequent annual meeting of stockholders, as provided below. At elections for such directors, each Series X Preferred Share shall entitle the holder thereof to 1,000 votes in such elections.

(ii) Upon the vesting of such right of the holders of shares of Series X Preferred Stock, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of

the holders of the outstanding shares of Series X Preferred Stock as hereinafter set forth. A special meeting of the stockholders of the Corporation then entitled to vote shall be called by the Chairman of the Board of Directors or the President or the Secretary of the Corporation, if requested in writing by the holders of record of not less than 10% of the shares of Series X Preferred Stock then outstanding. At such special meeting, or, if no such special meeting shall have been called, then at the next annual meeting of shareholders of the Corporation, the holders of the shares of Series X Preferred Stock shall elect, voting as above provided, two directors of the Corporation to fill the aforesaid vacancies created by the automatic increase in the number of members of the Board of Directors. At any and all such meetings for such election, the holders of a majority of the outstanding shares of Series X Preferred Stock shall be necessary to constitute a quorum for such election, whether present in person or proxy, and such two directors shall be elected by the vote of at least a majority of the shares of Series X Preferred Stock held by such shareholders present or represented at the meeting. Any director elected by holders of shares of Series X Preferred Stock pursuant to this Section may be removed at any annual or special meeting, by vote of a majority of the shareholders voting as a class who elected such director, with or without cause. In case any vacancy shall occur among the directors elected by the holders of shares of Series X Preferred Stock pursuant to this Section, such vacancy may be filled by the remaining director so elected, or his successor then in office, and the director so elected to fill such vacancy shall serve until the next meeting of shareholders for the election of directors. After the holders of shares of Series X Preferred Stock shall have exercised their right to elect directors in any default period and during the continuance of such period, the number of directors shall not be further increased or decreased except by vote of the holders of shares of Series X Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series X Preferred Stock.

(iii) The right of the holders of shares of Series X Preferred Stock, voting separately as a class, to elect two members of the Board of Directors of the Corporation as aforesaid shall continue until, and only until, such time as all arrears in dividends (whether or not declared) on the Series X Preferred Stock shall have been paid or declared and set apart for payment, at which time such right shall terminate, except as herein or by law expressly provided subject to revesting in the event of each and every subsequent default of the character above-mentioned. Upon any termination of the right of the holders of the Series X Preferred Stock as a class to vote for directors as herein provided, the term of office of all directors then in office elected by the holders of shares of Series A Preferred Stock pursuant to this Section shall terminate immediately. Whenever the term of office of the directors elected by the holders of shares of Series X Preferred Stock pursuant to this Section shall terminate and the special voting powers vested in the holders of the Series X Preferred Stock pursuant to this Section shall have expired, the maximum number of members of this Board of Directors of the Corporation shall be such number as may be provided for in the By-laws of the Corporation, irrespective of any increase made pursuant to the provisions of this Section.

(D) Except as otherwise required by applicable law or as set forth herein, holders of

Series X Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of shares of common stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

- (i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;
- (ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;
- (iii) except as permitted in subsection 4(A)(iv) below, redeem, purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or
- (iv) purchase or otherwise acquire for consideration any shares of Series X Preferred Stock, or any shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the

Corporation could, under subsection (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock

purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of preferred stock and may be reissued as part of a new series of preferred stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation

(voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made (x) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (1) \$1,000.00 per share or (2) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of common stock, or (y) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the aggregate amount per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (x) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

Neither the consolidation of nor merging of the Corporation with or into any other corporation or corporations, nor the sale or other transfer of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall

enter into any consolidation, merger, combination or other transaction in which the shares of common stock are exchanged for or changed into other stock or securities, cash and/or any other property,

then in any such case the shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of common stock is changed or exchanged, plus accrued and unpaid dividends, if any, payable with respect to the Series X Preferred Stock. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on shares of common stock payable in shares of common stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise than by payment of a dividend in shares of common stock) into a greater or lesser number of shares of common stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of common stock outstanding immediately after such event and the denominator of which is the number of shares of common stock that were outstanding immediately prior to such event.

Section 8. Redemption. The shares of Series A Preferred Stock shall not

be redeemable; provided, however, that the foregoing shall not limit the ability

of the Corporation to purchase or otherwise deal in such shares to the extent otherwise permitted hereby and by law.

Section 9. Ranking. Unless otherwise provided in the Certificate of

Incorporation or a Certificate of Vote of Directors Establishing a Class of Stock relating to a subsequently-designated series of preferred stock of the Corporation, the Series A Preferred Stock shall rank junior to any other series of the Corporation's preferred stock subsequently issued, as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up and shall rank senior to the common stock.

Section 10. Amendment. The Certificate of Incorporation and this

Certificate of Vote of Directors shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series X Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series X Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Shares of Series X Preferred Stock may be

issued in whole shares or in any fraction of a share that is one one-thousandth (1/1,000th) of a share or any integral multiple of such fraction, which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of shares of Series X Preferred Stock. In lieu of fractional shares, the Corporation may elect to make a cash payment as provided in the Rights Agreement for fractions of a share other than one one-thousandth (1/1,000th) of a share or any integral multiple thereof.

I, William J. Wedge, Senior Vice President and Secretary of the Corporation, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation this 13th day of June, 1997.

BOSTON PROPERTIES, INC.

By: _____
William J. Wedge, Senior Vice
President and Secretary

TEMPORARY CERTIFICATE: EXCHANGEABLE FOR DEFINITIVE ENGRAVED
CERTIFICATE WHEN READY FOR DELIVERY

COMMON STOCK

COMMON STOCK

BOSTON PROPERTIES, INC.

\$0.01 PAR VALUE

\$0.01 PAR VALUE

Incorporated under the laws of the State of Delaware
TRANSFERABLE IN THE CITIES OF BOSTON, MA OR NEW YORK, NY

CUSIP 101121 10 1
SEE REVERSE FOR
CERTAIN DEFINITIONS
AND RESTRICTIONS

| THIS CERTIFIES THAT |
| |
| |
| IS THE OWNER OF |

FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF
BOSTON PROPERTIES, INC. transferable on the books of the Corporation by the
holder hereof in person or by duly authorized attorney upon surrender of this
Certificate properly endorsed. This Certificate and the shares represented
hereby are issued and shall be subject to all of the provisions of the
Certificate of Incorporation and By-Laws of the Corporation, each as from time
to time amended, to all of which the holder by acceptance hereof assents. This
Certificate is not valid until countersigned and registered by the Transfer
Agent and Registrar.
Witness the facsimile seal of the Corporation and the facsimile signatures of
its duly authorized officers.

DATED:

[SEAL OF BOSTON PROPERTIES, INC.]

/s/ David G. Gaw
TREASURER

/s/ Edward H. Linde
PRESIDENT

Countersigned and Registered:
BankBoston, N.A.

By /s/ Mary Penzic

Transfer Agent
and Registrar

Authorized Signature

of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney

to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises

Dated: _____

Signature(s) _____

Signature Guaranteed by:

NOTICE: The signature(s) to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement or any change whatever.

June 12, 1997

Boston Properties, Inc.
8 Arlington Street
Boston, Massachusetts 02116

Gentlemen:

We have acted as counsel to Boston Properties, Inc., a Delaware corporation (the "Company"), in connection with the offer and sale by the Company of up to 36,110,000 shares of common stock, par value \$.01 per share ("Common Stock"), of the Company (the "Shares"). The Shares include an overallotment option of up to 4,710,000 shares of Common Stock. This opinion is being delivered in connection with the Company's Registration Statement on Form S-11 (No. 33-25279) (the "Registration Statement") relating to the registration of the offering and sale of the Shares under the Securities Act of 1933, as amended. Pursuant to that certain United States purchase agreement between the Company and the underwriters named below (the "U.S. Purchase Agreement"), up to 28,888,000 of the Shares (including an overallotment option of up to 3,768,000 shares of Common Stock) will be offered by the several United States underwriters (the "U.S. Underwriters") represented by Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman, Sachs & Co., Bear, Stearns & Co. Inc., Morgan Stanley & Co. Incorporated, PaineWebber Incorporated, Prudential Securities Incorporated, and Smith Barney Inc. Pursuant to that certain international purchase agreement between the Company and the underwriters named below (together with the U.S. Purchase Agreement, the "Purchase Agreements"), up to 7,222,000 of the Shares (including an overallotment option of up to 942,000 shares of Common Stock) will be offered by the several international underwriters (together with the U.S. Underwriters, the "Underwriters") represented by Merrill Lynch International, Goldman Sachs International, Bear, Stearns International Limited, Morgan Stanley & Co. International Limited, PaineWebber International (UK) Ltd., Prudential-Bache Securities (U.K.) Inc., and Smith Barney Inc.

As the basis for the opinion hereinafter expressed, we have examined such statutes, regulations, corporate records and documents, certificates of public officials and other instruments as we have deemed necessary or advisable for the purposes of this opinion. In such examination, we have assumed the authenticity of all documents submitted to us as

originals and the conformity with the original documents of all documents submitted to us as copies.

Based on the foregoing and on such legal considerations as we deem relevant, we are of the opinion that the Shares to be sold by the Company to the Underwriters as described in the Registration Statement have been duly authorized and, upon delivery of such Shares and payment therefor in accordance with the Purchase Agreements, will be validly issued, fully paid and non-assessable.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the heading "Legal Matters" in the Registration Statement.

Very truly yours,

/s/ Goodwin, Procter & Hoar LLP
Goodwin, Procter & Hoar LLP

[LETTERHEAD OF GOODWIN, PROCTER & HOAR LLP APPEARS HERE]

June 12, 1997

Boston Properties, Inc.
8 Arlington Street
Boston, MA 02116

Ladies and Gentlemen:

We have acted as counsel to Boston Properties, Inc., a Delaware corporation (the "Company"), in connection with the preparation of a registration statement (the "Registration Statement") filed with the Securities and Exchange Commission on April 16, 1997 on Form S-11 (No. 333-25279), as amended through the date hereof, with respect to the offering and sale (the "Offering") of up to 31,400,000 shares of common stock, par value \$.01 per share ("Common Stock") of the Company, and the Company's contribution of substantially all of the net proceeds of the Offering to Boston Properties, Limited Partnership, a Delaware limited partnership organized on April 8, 1997 (the "Operating Partnership"), in exchange for a general partnership interest and a limited partnership interest therein. You have requested our opinion on certain federal income tax matters in connection with the Offering.

In connection with the completion of the Offering, (i) pursuant to one or more options, contribution or merger agreements, certain partnerships (each a "Property Partnership") that currently own properties that will be owned, directly or indirectly, by the Company (each a "Property" and collectively the "Properties") will contribute their Properties to the Operating Partnership, or will merge with and into the Operating Partnership, in exchange for OP Units and the assumption of debt, and the partners of each such Property Partnership will receive OP Units either directly as merger consideration or as a distribution from one or more of the Property Partnerships; (ii) direct and indirect interest in other Property Partnerships will be contributed to the Operating Partnership in exchange for OP Units; (iii) the Company through the Operating Partnership will contribute substantially all of its greater Washington, D.C. property management business to Boston Properties Management, Inc. (the "Management Company"), a Delaware corporation organized on June 10, 1997. The Operating Partnership owns a 1% voting interest representing a 95% economic interest in the Management Company. The remaining voting and economic interest are held by Mortimer B. Zuckerman and Edward H. Linde, officers and directors of the Management Company; (iv) the other management and development operations

of the Company will be contributed directly to the Operating Partnership; and (v) the Operating Partnership will enter into a participating lease with ZL Hotel LLC, a Delaware limited liability company organized on June 10, 1997 formed to be the lessee of the Company's hotel Properties. Mortimer B. Zuckerman and Edward H. Linde, shareholders of the Company will be the sole member managers of the ZL Hotel LLC and own a 9.8% economic interest in ZL Hotel LLC. ZL Hotel Corp., a pre-existing Delaware corporation will own the remaining economic interest in ZL Hotel LLC and one or more public charities will own all of the capital stock of ZL Hotel Corp.

References herein to the Subsidiaries includes (i) the Operating Partnership; (ii) the Management Company; (iii) Boston Properties LLC, a Delaware limited liability company formed on June 10, 1997, of which the Company is a 1% member and the Operating Partnership is a 99% member manager, established to own general partnership interests in various New York, D.C. and Maryland Property Partnerships the limited partner interest in which will be held by the Operating Partnership; (iv) BP Lex LLC, a Delaware limited liability company formed on June 10, 1997, to manage one of the New York Properties and in which a 99.9% membership interest will be held by the Operating Partnership and a .1% member-manager interest will be held, in the aggregate, by Mortimer B. Zuckerman and Edward H. Linde; and (v) the Property Partnerships in which interests will be contributed to the Operating Partnership in exchange for OP Units in connection with the Offering.

Capitalized terms not defined herein shall have the same meaning as in the Registration Statement.

In rendering the following opinions, we have examined the Amended and Restated Certificate of Incorporation (the "Articles") and Bylaws of the Company, and such other records, certificates and documents as we have deemed necessary or appropriate for purposes of rendering the opinion set forth herein (collectively, the "Documents"). We have reviewed the proposed investment activities, operations and governance of the Company and its Subsidiaries. We have relied upon representations of duly appointed officers of the Company and the Operating Partnership (including without limitation, representations contained in a letter dated as of this date (the "Officer's Certificate")), principally relating to the Company's organization and operations. We assume that each such representation is and will be true, correct and complete and that all representations that speak in the future, or to the intention, or to the best of the belief and knowledge of any person(s) or party(ies) are and will be true, correct and complete as if made without such qualification. Nothing has come to our attention which would cause us to believe that any of such representations are untrue, incorrect or incomplete. We assume that the Company will be operated in accordance with the applicable laws and the terms and conditions

of applicable documents. We have also reviewed the Registration Statement, including the prospectus (the "Prospectus") contained as part of the Registration Statement, the form of Amended and Restated Agreement of Limited Partnership of the Operating Partnership to be executed as of the date of the closing of the Offering, among the Company as the general partner and several limited partners; the participating leases with respect to the hotel properties entered into between the Operating Partnership as lessor and ZL Hotel LC as lessee, and certain other leases as we have deemed appropriate. In addition, we have relied upon certain additional facts and assumptions described below.

In rendering the opinion set forth herein, we have assumed (i) the genuineness of all signatures on documents we have examined, (ii) the authenticity of all documents submitted to us as originals, (iii) the conformity to the original documents of all documents submitted to us as copies, (iv) the conformity of final documents to all documents submitted to us as drafts, (v) the authority and capacity of the individual or individuals who executed any such documents on behalf of any person, (vi) the accuracy and completeness of all records made available to us, and (vii) the factual accuracy of all representations, warranties and other statements made by all parties. In addition, we assume that all interests in the Operating Partnership will be issued in a transaction (or transactions) that are not required to be registered under the Securities Act of 1933 and that no interest in the Operating Partnership offered for sale outside the United States would have been required to be registered under the Securities Act of 1933 if such interest had been offered for sale within the United States. We have further assumed that during its short 1997 taxable year ending December 31, 1997 and subsequent taxable years, the Company will operate in such a manner that will make the representations contained in the Officer's Certificate true for all such years, and that the Company and its Subsidiaries will not make any amendments to its organizational documents after the date of this opinion that would affect the Company's qualification as a real estate investment trust for any taxable year. In addition, we have assumed that the Company will make an election to be taxable as a real estate investment trust pursuant to the Internal Revenue Code of 1986, as amended (the "Code") with its properly and timely filed federal income tax return for its taxable year ending December 1997. For purposes of our opinion, we have made no independent investigation of the facts contained in the documents and assumptions set forth above, the representations set forth in the Officer's Certificate, or the Registration Statement. No facts have come to our attention, however, that would cause us to question the accuracy and completeness of such facts or documents in a material way.

The discussion and conclusion set forth below are based upon the Code, the Income Tax Regulations and Procedure and Administration Regulations promulgated thereunder and existing administrative and judicial interpretation thereof, all of which are subject to change. No assurance can therefore be given that the federal income tax consequences described below will

not be altered in the future. Based on the documents and assumptions set forth above, the representations set forth in the Officer's Certificate and the discussion in the Prospectus under the caption "Federal Income Tax Considerations" (which is incorporated herein by reference), we are of the opinion that

(1) Commencing with the Company's initial taxable year ending December 31, 1997, the Company has been organized in conformity with the requirements for qualification as a real estate investment trust under the Code, and its proposed method of operation, including the lease of the Hotel Properties and the Garage Properties, will enable it to meet the requirements for qualification as a "real estate investment trust" under the Code provided that the Company files a proper election to be taxed as a real estate investment trust with its timely filed federal income tax return for the taxable year ending December 31, 1997 and continues to meet the applicable asset composition, source of income, shareholder diversification, distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a real estate investment trust, and

(2) The information in the Registration Statement under the caption "Federal Income Tax Considerations" to the extent that it constitutes matters of law or legal conclusions, have been reviewed by us and is correct in all material respects, and our opinion set forth in such discussion is confirmed.

We will not review on a continuing basis the Company's compliance with the documents or assumptions set forth above, or the representations set forth in the Officer's Certificate. Accordingly, no assurance can be given that the actual results of the Company's operations for any given taxable year will satisfy the requirements for qualification and taxation as a real estate investment trust under the Code. The ability of the Company to continue to meet the requirements for qualification and taxation as a real estate investment trust will be dependent upon the Company's ability to continue to meet in each year the applicable asset composition, source of income, shareholder diversification, distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a real estate investment trust. The foregoing opinions are limited to the federal income tax matters addressed herein, and no other opinions are rendered with respect to other federal tax matters or to any issues arising out of the tax laws of any state or locality. We express no opinion with respect to the transactions described herein other than those expressly set forth herein. You should recognize that our opinion is not binding on the IRS and that the IRS may disagree with the opinions contained herein. Although we believe that our opinion will be sustained if challenged, there is no guarantee that this will be the case. Except as specifically discussed above, the opinion expressed herein is based upon the laws that currently exist. Consequently, future changes in the

law may cause the federal income tax treatment of the transactions herein to be materially and adversely different from that described above.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. We also consent to the references to Goodwin, Procter & Hoar LLP under the caption "Federal Income Tax Considerations" in the Registration Statement. In giving this consent, we do not admit that we are in the category of persons whose consent is required by Section 7 of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder by the Securities and Exchange Commission.

Very truly yours,

/s/ Goodwin, Procter & Hoar LLP

Goodwin, Procter & Hoar LLP

AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
BOSTON PROPERTIES LIMITED PARTNERSHIP

_____, 1997

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EXHIBITS

- Exhibit A - Partners Contributions and Partnership Interests
- Exhibit B - Capital Account Maintenance
- Exhibit C - Special Allocation Rules
- Exhibit D - Notice of Redemption
- Exhibit E - Designated Properties and Protected Partners

AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
BOSTON PROPERTIES LIMITED PARTNERSHIP

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF BOSTON PROPERTIES LIMITED PARTNERSHIP (this "Agreement"), dated as of _____, 1997, is entered into by and among Boston Properties, Inc., a Delaware corporation (the "Company"), and the Persons (as defined below) whose names are set forth on Exhibit A attached hereto (as it may be amended from time to time).

- - - - -

WHEREAS, this Limited Partnership was formed on April 8, 1997 and an original agreement of limited partnership was entered into between the Company, as general partner, and Edward H. Linde, as limited partner;

WHEREAS, prior to the date hereof certain partnerships merged into the Partnership and the partners of such partnerships ("Merging Partners") became partners of this Partnership;

WHEREAS, the Company proposes to effect a public offering of its common stock, to acquire and cause the Partnership to acquire direct and indirect interests in certain office properties and other assets, to cause the Partnership to enter into certain financing arrangements and to contribute the remaining net proceeds from the public offering and the other assets of the Company to the Partnership;

WHEREAS, the Partnership will issue Partnership Interests to the Company and other persons, and additional Partnership Interests to the Merging Partners, in accordance with the foregoing transactions;

WHEREAS, upon the completion of the foregoing transactions, the Partnership shall return the original capital contributions made by the Company and Mr. Linde and any ongoing interest in the Partnership of the Company and Mr. Linde shall be based on their respective contributions as Merging Partners or as contemplated below;

WHEREAS, as evidenced by their respective execution of this Agreement, the Company and Mr. Linde hereby consent to the amendment and restatement of the original agreement of limited partnership.

NOW, THEREFORE, BE IT RESOLVED, that for good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

"Act" means the Delaware Revised Uniform Limited Partnership Act, as it may

be amended from time to time, and any successor to such statute.

"Additional Limited Partner" means a Person admitted to the Partnership as

a Limited Partner pursuant to Sections 4.2 and 12.2 hereof and who is shown as such on the books and records of the Partnership.

"Adjusted Capital Account" means the Capital Account maintained for each

Partner as of the end of each Partnership taxable year (i) increased by any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) decreased by the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Account Deficit" means, with respect to any Partner, the

deficit balance, if any, in such Partner's Adjusted Capital Account as of the end of the relevant Partnership taxable year.

"Adjusted Property" means any property, the Carrying Value of which has

been adjusted pursuant to Exhibit B hereof. Once an Adjusted Property is deemed

distributed by, and recontributed to, the Partnership for federal income tax purposes upon a termination thereof pursuant to Section 708 of the Code, such property shall thereafter constitute a Contributed Property until the Carrying Value of such property is further adjusted pursuant to Exhibit B hereof.

"Affiliate" means, with respect to any Person, (i) any Person directly or

indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting interests of such Person; (iii) any Person of which such Person owns or controls ten percent (10%) or more of the voting interests; or (iv) any officer, director, general partner or trustee of such Person or of any Person referred to in clauses (i), (ii), and (iii) above. For purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreed Value" means (i) in the case of any Contributed Property as of the

time of its contribution to the Partnership, the 704(c) Value of such property,
reduced by any liabilities either assumed by the Partnership upon such
contribution or to which such property is subject when contributed, and (ii) in
the case of any property distributed to a Partner by the Partnership, the
Partnership's Carrying Value of such property at the time such property is
distributed, reduced by any indebtedness either assumed by such Partner upon
such distribution or to which such property is subject at the time of
distribution as determined under Section 752 of the Code and the Regulations
thereunder. The aggregate Agreed Value of the Contributed Property contributed
or deemed contributed by each Partner as of the date hereof is as set forth in
Exhibit A.

"Agreement" means this Amended and Restated Agreement of Limited

Partnership, as it may be amended, supplemented or restated from time to time.

"Assignee" means a Person to whom one or more Partnership Units have been

transferred in a manner permitted under this Agreement, but who has not become a
Substituted Limited Partner, and who has the rights set forth in Section 11.5.

"Available Cash" means, with respect to any period for which such

calculation is being made, (i) the sum of:

(a) the Partnership's Net Income or Net Loss (as the case may be) for
such period (without regard to adjustments resulting from allocations
described in Sections 1.A through 1.E of Exhibit C);

(b) Depreciation and all other noncash charges deducted in determining
Net Income or Net Loss for such period;

(c) the amount of any reduction in the reserves of the Partnership
referred to in clause (ii)(f) below (including, without limitation,
reductions resulting because the General Partner determines such amounts
are no longer necessary);

(d) the excess of proceeds from the sale, exchange, disposition, or
refinancing of Partnership property for such period over the gain
recognized from such sale, exchange, disposition, or refinancing during
such period (excluding Terminating Capital Transactions); and

(e) all other cash received by the Partnership for such period that
was not included in determining Net Income or Net Loss for such period;

(ii) less the sum of:

(a) all principal debt payments made by the Partnership during such
period;

(b) capital expenditures made by the Partnership during such period;

(c) investments made by the Partnership during such period in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (ii)(a) or (ii)(b);

(d) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period;

(e) any amount included in determining Net Income or Net Loss for such period that was not received or disbursed by the Partnership during such period;

(f) the amount of any increase in reserves during such period which the General Partner determines to be necessary or appropriate in its sole and absolute discretion; and

(g) the amount of any working capital accounts and other cash or similar balances which the General Partner determines to be necessary or appropriate, in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include any cash received or reductions in reserves, or take into account any disbursements made or reserves established, after commencement of the dissolution and liquidation of the Partnership.

"Book-Tax Disparities" means, with respect to any item of Contributed

Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Exhibit B and the hypothetical balance of such Partner's Capital Account

computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

"Business Day" means any day except a Saturday, Sunday or other day on

which commercial banks in New York, New York or Boston, Massachusetts are authorized or required by law to close.

"Capital Account" means the Capital Account maintained for a Partner

pursuant to Exhibit B hereof.

"Capital Contribution" means, with respect to any Partner, any cash, cash

equivalents or the Agreed Value of Contributed Property which such Partner contributes or is deemed to contribute to the Partnership pursuant to Section 4.1, 4.2, or 4.3 hereof.

"Carrying Value" means (i) with respect to a Contributed Property or

Adjusted Property, the 704(c) Value of such property, reduced (but not below zero) by all Depreciation with respect to such Contributed Property or Adjusted Property, as the case may be, charged to the Partners' Capital Accounts following the contribution of or adjustment with respect to such Property; and (ii) with respect to any other Partnership property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Exhibit B hereof, and to reflect changes, additions or other

adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

"Cash Amount" means an amount of cash per Partnership Unit equal to the

Value on the Valuation Date of the REIT Shares Amount.

"Certificate of Incorporation" means the Certificate of Incorporation or

other organizational document governing the General Partner, as amended or restated from time to time.

"Certificate of Limited Partnership" means the Certificate of Limited

Partnership relating to the Partnership filed in the office of the Delaware Secretary of State, as amended from time to time in accordance with the terms hereof and the Act.

"Code" means the Internal Revenue Code of 1986, as amended and in effect

from time to time, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Consent" means the consent or approval of a proposed action by a Partner

given in accordance with Section 14.2 hereof.

"Consenting Partner" or "Consenting Partners" means Mortimer B. Zuckerman

and Edward H. Linde.

"Contributed Property" means each property or other asset, in such form as

may be permitted by the Act (but excluding cash), contributed or deemed contributed to the Partnership (including deemed contributions to the Partnership on termination and reconstitution thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Exhibit B hereof, such property shall no longer constitute a

Contributed Property for purposes of Exhibit B hereof, but shall be deemed an Adjusted Property for such purposes.

"Conversion Factor" means 1.0, provided that in the event that the Company

(i) declares or pays a dividend on its outstanding REIT Shares in REIT Shares or makes a

distribution to all holders of its outstanding REIT Shares in REIT Shares; (ii) subdivides its outstanding REIT Shares; or (iii) combines its outstanding REIT Shares into a smaller number of REIT Shares, the Conversion Factor shall be adjusted by multiplying the Conversion Factor by a fraction, the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, subdivision or combination (assuming for such purpose that such dividend, distribution, subdivision or combination has occurred as of such time), and the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, subdivision or combination. Any adjustment to the Conversion Factor shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event (provided, however, if a Notice of

Redemption is given prior to such a record date and the Specified Redemption Date is after such a record date, then the adjustment to the Conversion Factor shall, with respect to such redeeming Partner, be retroactive to the date of such Notice of Redemption). It is intended that adjustments to the Conversion Factor are to be made in order to avoid unintended dilution or anti-dilution as a result of transactions in which REIT Shares are issued, redeemed or exchanged without a corresponding issuance, redemption or exchange of Partnership Units. If, prior to a Specified Redemption Date, Rights (other than Rights issued pursuant to an employee benefit plan or other compensation arrangement) were issued and have expired, and such Rights were issued with an exercise price that, together with the purchase price for such Rights, was below fair market value in relation to the security or other property to be acquired upon the exercise of such Rights, and such Rights were issued to all holders of outstanding REIT shares or the General Partner cannot in good faith represent that the issuance of such Rights benefitted the Limited Partners, then the Conversion Factor applicable upon a Notice of Redemption shall be equitably adjusted in a manner consistent with antidilution provisions in warrants and other instruments in the case of such a below market issuance or exercise price. A similar equitable adjustment to protect the value of Partnership Units shall be made in all events if any Rights issued under a "Shareholder Rights Plan" became exercisable and expired prior to a Specified Redemption Date.

"Depreciation" means, for each taxable year, an amount equal to the federal

income tax depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year bears to such beginning adjusted tax basis; provided, however,

that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the General Partner.

"Designated Property" or "Designated Properties" has the meanings set forth

in Section 8.7 hereof.

"Effective Date" means the date of closing the initial public offering of

REIT Shares by the Company.

"Exempt Transaction" has the meaning set forth in Section 8.7 hereof.

"Extraordinary Transaction" shall mean, with respect to the Company, the

occurrence of one or more of the following events: (i) a merger (including a
triangular merger), consolidation or other combination with or into another
Person; (ii) the direct or indirect sale, lease, exchange or other transfer of
all or substantially all of its assets in one transaction or a series of
transactions; (iii) any reclassification, recapitalization or change of its
outstanding equity interests (other than a change in par value, or from par
value to no par value, or as a result of a split, dividend or similar
subdivision); (iv) any issuance of equity securities of the Company in exchange
for assets (other than an issuance of securities for cash or an issuance of
securities pursuant to an employee benefit plan); (v) any Change of Control (as
defined in the Company's Certificate of Incorporation) or (vi) the adoption of
any plan of liquidation or dissolution of the Company (whether or not in
compliance with the provisions of this Agreement).

"General Partner" means the Company, in its capacity as the general partner

of the Partnership, or its successors as general partner of the Partnership.

"General Partner Interest" means a Partnership Interest held by the General

Partner, in its capacity as general partner. A General Partner Interest may be
expressed as a number of Partnership Units.

"IRS" means the Internal Revenue Service, which administers the internal

revenue laws of the United States.

"Immediate Family" means, with respect to any natural Person, such natural

Person's estate or heirs or current spouse, parents, parents-in-law, children,
siblings and grandchildren (in each case whether by adoption or not) and any
trust or estate, all of the beneficiaries of which consist of such Person or
such Person's spouse, parents, parents-in-law, children, siblings or
grandchildren.

"Incapacity" or "Incapacitated" means, (i) as to any individual Partner,

death, total physical disability or entry by a court of competent jurisdiction
adjudicating him incompetent to manage his or her Person or estate; (ii) as to
any corporation which is a Partner, the filing of a certificate of dissolution,
or its equivalent, for the corporation or the revocation of its charter; (iii)
as to any partnership which is a Partner, the dissolution and commencement of
winding up of the partnership; (iv) as to any estate which is a Partner, the
distribution by the fiduciary of the estate's entire interest in the
Partnership; (v) as to any trustee of a trust which is a Partner, the
termination of the trust (but not the substitution of a new trustee); or (vi) as
to any Partner, the bankruptcy of such Partner. For purposes of this
definition, bankruptcy of a

Partner shall be deemed to have occurred when (a) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect; (b) the Partner is adjudged as bankrupt or insolvent, or a final and nonappealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner; (c) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors; (d) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (b) above; (e) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for the Partner or for all or any substantial part of the Partner's properties; (f) any proceeding seeking liquidation, reorganization or other relief of or against such Partner under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof; (g) the appointment without the Partner's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment; or (h) an appointment referred to in clause (g) which has been stayed is not vacated within ninety (90) days after the expiration of any such stay.

"Indemnitee" means (i) any Person made a party to a proceeding by reason of

(A) his status as the General Partner, or as a director or officer of the Partnership or the General Partner, or (B) his or its liabilities, pursuant to a loan guarantee or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken assets subject to); and (ii) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"Limited Partner" means any Person (including the Company) named as a

Limited Partner in Exhibit A attached hereto, as such Exhibit may be amended

from time to time, or any Substituted Limited Partner or Additional Limited Partner, in such Person's capacity as a Limited Partner of the Partnership.

"Limited Partner Interest" means a Partnership Interest of a Limited

Partner in the Partnership representing a fractional part of the Partnership Interests of all Partners and includes any and all benefits to which the holder of such a Partnership Interest may be entitled, as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Limited Partner Interest may be expressed as a number of Partnership Units.

"Limited Partner Recourse Debt Percentage" means with respect to certain of

the Limited Partners the percentage listed with respect to such Limited Partner on the recourse debt level schedule attached hereto as Exhibit F.

"Liquidating Event" has the meaning set forth in Section 13.1.

"Liquidator" has the meaning set forth in Section 13.2.

"Merging Partners" has the meaning set forth in the recitals.

"Net Income" means, for any taxable period, the excess, if any, of the

Partnership's items of income and gain for such taxable period over the Partnership's items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit B.

"Net Loss" means, for any taxable period, the excess, if any, of the

Partnership's items of loss and deduction for such taxable period over the Partnership's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit B.

"Nonrecourse Built-in Gain" means, with respect to any Contributed

Properties or Adjusted Properties that are subject to a mortgage or negative pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Partners pursuant to Section 2.B of Exhibit C if such

properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

"Nonrecourse Deductions" has the meaning set forth in Regulations Section

1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Regulations Section

1.752-1(a)(2).

"Notice of Redemption" means the Notice of Redemption substantially in the

form of Exhibit D to this Agreement.

"Partner" means a General Partner or a Limited Partner, and "Partners"

means the General Partner and the Limited Partners collectively.

"Partner Minimum Gain" means an amount, with respect to each Partner

Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"Partner Nonrecourse Debt" has the meaning set forth in Regulations Section

1.704-2(b)(4).

"Partner Nonrecourse Deductions" has the meaning set forth in Regulations

Section 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with
respect to a Partner Nonrecourse Debt for a Partnership taxable year shall be
determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

"Partnership" means the limited partnership formed under the Act and

pursuant to this Agreement, as it may be amended and/or restated, and any
successor thereto.

"Partnership Interest" means an ownership interest in the Partnership

representing a Capital Contribution by either a Limited Partner or the General
Partner and includes any and all benefits to which the holder of such a
Partnership Interest may be entitled as provided in this Agreement, together
with all obligations of such Person to comply with the terms and provisions of
this Agreement. A Partnership Interest may be expressed as a number of
Partnership Units.

"Partnership Minimum Gain" has the meaning set forth in Regulations Section

1.704-2(b)(2), and the amount of Partnership Minimum Gain, as well as any net
increase or decrease in a Partnership Minimum Gain, for a Partnership taxable
year shall be determined in accordance with the rules of Regulations Section
1.704-2(d).

"Partnership Record Date" means the record date established by the General

Partner for the distribution of Available Cash pursuant to Section 5.1 hereof,
which record date shall be the same as the record date established by the
Company for a distribution to its shareholders of some of all of its portion of
such distribution.

"Partnership Unit" or "Unit" means a fractional, undivided share of the

Partnership Interests of all Partners issued pursuant to Sections 4.1, 4.2 and
4.3. The number of Partnership Units outstanding and the Percentage Interest in
the Partnership represented by such Units are set forth in Exhibit A attached

hereto, as such Exhibit may be amended from time to time. The ownership of
Partnership Units shall be evidenced by such form of certificate for units as
the General Partner adopts from time to time unless the General Partner
determines that the Partnership Units shall be uncertificated securities.

"Partnership Year" means the fiscal year of the Partnership, which shall be

the calendar year.

"Percentage Interest" means, as to a Partner, its interest in the

Partnership as determined by dividing the Partnership Units owned by such
Partner by the total number of Partnership Units then outstanding and as
specified in Exhibit A attached hereto, as such Exhibit may be amended from time

to time.

"Person" means an individual or a corporation, partnership, trust,

unincorporated organization, association or other entity.

"Recapture Income" means any gain recognized by the Partnership upon the disposition of any property or asset of the Partnership, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

"Recourse Debt Amount" has the meaning set forth in Section 6.1B(2) hereof.

"Redeeming Partner" has the meaning set forth in Section 8.6 hereof.

"Redemption Right" shall have the meaning set forth in Section 8.6 hereof.

"Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"REIT" means a real estate investment trust under Section 856 of the Code.

"REIT Share" shall mean a share of common stock, par value \$.01 per share, of the Company.

"REIT Shares Amount" shall mean a number of REIT Shares equal to the product of the number of Partnership Units offered for redemption by a Redeeming Partner, multiplied by the Conversion Factor in effect on the date of receipt by the General Partner of a Notice of Redemption, provided that in the event the

Company issues to all holders of REIT Shares rights, options, warrants or convertible or exchangeable securities entitling the shareholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, "Rights"), and the Rights have not expired at the Specified Redemption Date, then the REIT Shares Amount shall also include the Rights that were issuable to a holder of the REIT Shares Amount of REIT Shares on the applicable record date relating to the issuance of such Rights.

"Residual Gain" or "Residual Loss" means any item of gain or loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 2.B.1(a) or 2.B.2(a) of Exhibit C to eliminate Book-Tax

Disparities.

"Rights" shall have the meaning set forth in the definition of "REIT Shares Amount."

"704(c) Value" of any Contributed Property means the fair market value of such property or other consideration at the time of contribution, as determined by the General Partner using such reasonable method of valuation as it may adopt; provided, however, that the 704(c) Value of any property deemed

contributed to the Partnership for federal income tax purposes upon termination and reconstitution thereof pursuant to Section 708 of the Code shall

be determined in accordance with Exhibit B hereof. Subject to Exhibit B hereof,

the General Partner shall, in its sole and absolute discretion, use such method
as it deems reasonable and appropriate to allocate the aggregate of the 704(c)
Values of Contributed Properties in a single or integrated transaction among the
separate properties on a basis proportional to their respective fair market
values.

"Specified Redemption Date" means the tenth (10th) Business Day after

receipt by the Company of a Notice of Redemption; provided that no Specified

Redemption Date shall occur before that date that is fourteen (14) months after
the Effective Date, provided further that if the Company combines its

outstanding REIT Shares, no Specified Redemption Date shall occur after the
record date of such combination of REIT Shares and prior to the effective date
of such combination.

"Subsidiary" means, with respect to any Person, any corporation,

partnership or other entity of which a majority of (i) the voting power of the
voting equity securities; or (ii) the outstanding equity interests, is owned,
directly or indirectly, by such Person.

"Substituted Limited Partner" means a Person who is admitted as a Limited

Partner to the Partnership pursuant to Section 11.4.

"Successor Designated Property" has the meaning set forth in Section 8.7

hereof.

"Terminating Capital Transaction" means any sale or other disposition of

all or substantially all of the assets of the Partnership or a related series of
transactions that, taken together, result in the sale or other disposition of
all or substantially all of the assets of the Partnership.

"Unrealized Gain" attributable to any item of Partnership property means,

as of any date of determination, the excess, if any, of (i) the fair market
value of such property (as determined under Exhibit B hereof) as of such date;

over (ii) the Carrying Value of such property (prior to any adjustment to be
made pursuant to Exhibit B hereof) as of such date.

"Unrealized Loss" attributable to any item of Partnership property means,

as of any date of determination, the excess, if any, of (i) the Carrying Value
of such property (prior to any adjustment to be made pursuant to Exhibit B

hereof) as of such date; over (ii) the fair market value of such property (as
determined under Exhibit B hereof) as of such date.

"Valuation Date" means the date of receipt by the General Partner of a

Notice of Redemption or, if such date is not a Business Day, the first Business
Day thereafter.

"Value" means, with respect to a REIT Share, the average of the daily

market price for the ten (10) consecutive trading days immediately preceding the
Valuation Date. The market price for each such trading day shall be: (i) if the
REIT Shares are listed or admitted to trading

on any securities exchange or the Nasdaq National Market System, the closing price on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices on such day; (ii) if the REIT Shares are not listed or admitted to trading on any securities exchange or the Nasdaq National Market System, the last reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the General Partner; or (iii) if the REIT Shares are not listed or admitted to trading on any securities exchange or the Nasdaq National Market System and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reliable quotation source designated by the General Partner, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than ten (10) days prior to the date in question) for which prices have been so reported; provided that if there are

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no bid and asked prices reported during the ten (10) days prior to the date in question, the Value of the REIT Shares shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate. In the event the REIT Shares Amount includes Rights, then the Value of such Rights shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate, provided that the Value of any rights issued pursuant to

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a "Shareholder Rights Plan" shall be deemed to have no value unless a "triggering event" shall have occurred (i.e., if the Rights issued pursuant

thereto are no longer "attached" to the REIT Shares and are able to trade independently).

ARTICLE 2 ORGANIZATIONAL MATTERS

Section 2.1 Formation

The Partnership is a limited partnership organized pursuant to the provisions of the Act. The Partners hereby agree to continue the Partnership upon the terms and conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

Section 2.2 Name

The name of the Partnership is Boston Properties Limited Partnership. The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any

jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

Section 2.3 Registered Office and Agent; Principal Office

The address of the registered office of the Partnership in the State of Delaware and the name and address of the registered agent for service of process on the Partnership in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The principal office of the Partnership shall be 8 Arlington Street, Boston, MA 02116, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems advisable.

Section 2.4 Power of Attorney

A. Each Limited Partner and each Assignee hereby constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

- (1) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate of Limited Partnership and all amendments or restatements thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the Limited Partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may or plans to conduct business or own property; (b) all instruments that the General Partner deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article 11, 12 or 13 hereof or the Capital Contribution of any Partner; and (e) all certificates, documents and other instruments

relating to the determination of the rights, preferences and privileges of Partnership Interests; and

- (2) execute, swear to, seal, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the General Partner or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Partners hereunder or is consistent with the terms of this agreement or appropriate or necessary, in the sole discretion of the General Partner or any Liquidator, to effectuate the terms or intent of this Agreement.

Nothing contained herein shall be construed as authorizing the General Partner or any Liquidator to amend this Agreement except in accordance with Article 14 hereof or as may be otherwise expressly provided for in this Agreement.

B. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, in recognition of the fact that each of the Partners will be relying upon the power of the General Partner and any Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the transfer of all or any portion of such Limited Partner's or Assignee's Partnership Units and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or any Liquidator, acting in good faith pursuant to such power of attorney, and each such Limited Partner or Assignee hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the General Partner or any Liquidator, taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within fifteen (15) days after receipt of the General Partner's or Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator, as the case may be, deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.5 Term

The term of the Partnership commenced on April 8, 1997, the date on which the Certificate of Limited Partnership was filed in the office of the Secretary of State of the State of Delaware, and shall continue until December 31, 2095, unless the Partnership is dissolved sooner pursuant to the provisions of Article 13 or as otherwise provided by law.

ARTICLE 3
PURPOSE

Section 3.1 Purpose and Business

The purpose and nature of the business to be conducted by the Partnership is (i) to conduct any business that may be lawfully conducted by a limited partnership organized pursuant to the Act; provided, however, that such business

shall be limited to and conducted in such a manner as to permit the Company at all times to be classified as a REIT, unless the Company ceases to qualify as a REIT for reasons other than the conduct of the business of the Partnership; (ii) to enter into any partnership, joint venture, limited liability company or other similar arrangement to engage in any of the foregoing or to own interests in any entity engaged, directly or indirectly, in any of the foregoing; and (iii) to do anything necessary or incidental to the foregoing. In connection with the foregoing, and without limiting the Company's right, in its sole discretion, to cease qualifying as a REIT, the Partners acknowledge the Company's current status as a REIT inures to the benefit of all of the Partners and not solely the General Partner. The General Partner shall also be empowered to do any and all acts and things necessary or prudent to ensure that the Partnership will not be classified as a "publicly traded partnership" for purposes of Section 7704 of the Code, including but not limited to imposing restrictions on transfers and restrictions on redemptions.

Section 3.2 Powers

The Partnership is empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership, including, without limitation, full power and authority, directly or through its ownership interest in other entities, to enter into, perform and carry out contracts of any kind, borrow money and issue evidences of indebtedness whether or not secured by mortgage, deed of trust, pledge or other lien, acquire, own, manage, improve and develop real property, and lease, sell, transfer and dispose of real property; provided,

however, that the Partnership shall not take, or refrain from taking, any action

which, in the judgment of the General Partner, in its sole and absolute discretion, (i) could adversely affect the ability of the Company to continue to qualify as a REIT; (ii) could subject the Company to any additional taxes under Section 857 or Section 4981 of the Code; or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over the Company or its securities, unless such action (or inaction) shall have been specifically consented to by the General Partner in writing.

ARTICLE 4
CAPITAL CONTRIBUTIONS

Section 4.1 Capital Contributions of the Partners

A. Initial Capital Contributions and Recapitalization of the Partnership

on the Effective Date. The Company and Edward H. Linde previously made Capital

Contributions to the Partnership upon its formation, which contributions shall be returned to them on the Effective Date. On the Effective Date, the Company, as General Partner and as a Limited Partner, Edward H. Linde, as a Limited Partner, and the other Persons listed on Schedule A will make Capital

Contributions to the Partnership as set forth therein (except that certain of such Persons, as Merging Partners, were deemed to have made Capital Contributions prior to the date hereof). On the Effective Date, the Partnership shall be recapitalized, and the General Partner will complete Exhibit A to

reflect the Capital Contributions made by each Partner, the Partnership Units assigned to each Partner and the Percentage Interest in the Partnership represented by such Partnership Units. The Capital Accounts of the Partners and the Carrying Values of the Partnership's Assets shall be determined as of the Effective Date pursuant to Section I.D of Exhibit B hereto to reflect the

Capital Contributions made prior to and on the Effective Date.

B. General Partnership Interest. A number of Partnership Units held by

the Company equal to one percent (1%) of all outstanding Partnership Units shall be deemed to be the General Partner Partnership Units and shall be the General Partnership Interest. All other Partnership Units held by the Company shall be deemed to be Limited Partnership Interests and shall be held by the General Partner in its capacity as a Limited Partner in the Partnership.

C. Capital Contributions By Merger. To the extent the Partnership

acquires any property by the merger of any other Person into the Partnership, Persons who receive Partnership Interests in exchange for their interests in the Person merging into the Partnership shall become Partners and shall be deemed to have made Capital Contributions as provided in the applicable merger agreement and as set forth in Exhibit A, as amended to reflect such deemed Capital

Contributions.

D. No Obligation to Make Additional Capital Contributions. Each Partner

shall own the number of Partnership Units set forth for such Partner in Exhibit

A and shall have a Percentage Interest in the Partnership as set forth in

Exhibit A, which Percentage Interest shall be adjusted in Exhibit A from time to

time by the General Partner to the extent necessary to reflect accurately redemptions, additional Capital Contributions, the issuance of additional Partnership Units (pursuant to any merger or otherwise), or similar events having an effect on any Partner's Percentage Interest. The number of Partnership Units held by the General Partner, in its capacity as general partner, (equal to one percent (1%) of all outstanding Partnership Units from time to time) shall be deemed to be the General Partner Interest.

Except as provided in Sections 4.2, 10.5 or elsewhere in this Agreement, the Partners shall have no obligation to make any additional Capital Contributions or loans to the Partnership.

Section 4.2 Issuances of Additional Partnership Interests

A. The General Partner is hereby authorized to cause the Partnership from time to time to issue to the Partners (including the General Partner and its Affiliates) or other Persons (including, without limitation, in connection with the contribution of property to the Partnership) additional Partnership Units or other Partnership Interests in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties, including rights, powers and duties senior to the Limited Partner Interests issued on the Effective Date, all as shall be determined by the General Partner in its sole and absolute discretion subject to Delaware law, including, without limitation, (i) the allocations of items of Partnership income, gain, loss, deduction and credit to each such class or series of Partnership Interests; (ii) the right of each such class or series of Partnership Interests to share in Partnership distributions; and (iii) the rights of each such class or series of Partnership Interests upon dissolution and liquidation of the Partnership; provided that no

such additional Partnership Units or other Partnership Interests shall be issued to the General Partner, unless either (a)(1) the additional Partnership Interests are issued in connection with the grant, award or issuance of REIT Shares or other equity interests by the Company, which REIT shares or other equity interests have designations, preferences and other rights such that the economic interests attributable to such REIT shares or other equity interests are substantially similar to the designations, preferences and other rights of the additional Partnership Interests issued to the General Partner in accordance with this Section 4.2.A, and (2) the Company shall make a Capital Contribution to the Partnership in an amount equal to the proceeds raised in connection with such issuance, or (b) the additional Partnership Interests are issued to all Partners in proportion to their respective Percentage Interests. In addition, the Company may acquire Units from other Partners pursuant to this Agreement. In the event that the Partnership issues Partnership Interests pursuant to this Section 4.2.A, the General Partner shall make such revisions to this Agreement (without any requirement of receiving approval of the Limited Partners) including but not limited to the revisions described in Section 5.4, Section 6.1 and Section 8.6 hereof, as it deems necessary to reflect the issuance of such additional Partnership Interests and the special rights, powers and duties associated therewith. Unless specifically set forth otherwise by the General Partner, any Partnership Interest issued after the Effective Date shall have the same rights, powers and duties as the Partnership Interests issued on the Effective Date.

B. From and after the date hereof, the Company shall not issue any additional REIT Shares (other than REIT Shares issued pursuant to Section 8.6), or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase REIT Shares (collectively "New Securities") other than to all holders of REIT Shares unless (i) the General

Partner shall cause the Partnership to issue to the Company, Partnership Interests or rights, options, warrants or convertible or exchangeable securities of the

Partnership having designations, preferences and other rights, all such that the economic interests are substantially similar to those of the New Securities; and (ii) the Company contributes to the Partnership the proceeds from the issuance of such New Securities and from the exercise of rights contained in such New Securities. Without limiting the foregoing, the Company is expressly authorized to issue New Securities for no tangible value or for less than fair market value, and the General Partner is expressly authorized to cause the Partnership to issue to the Company corresponding Partnership Interests, so long as (x) the General Partner concludes in good faith that such issuance is in the interests of the Company and the Partnership (for example, and not by way of limitation, the issuance of REIT Shares and corresponding Units pursuant to an employee stock purchase plan providing for employee grants or purchases of REIT Shares or employee stock options that have an exercise price that is less than the fair market value of the REIT Shares, either at the time of issuance or at the time of exercise); and (y) the Company contributes all proceeds, if any, from such issuance and exercise to the Partnership.

Section 4.3 Contribution of Proceeds of Issuance of REIT Shares

In connection with the initial public offering of REIT Shares by the Company and any other issuance of New Securities pursuant to Section 4.2, the Company shall contribute to the Partnership any proceeds (or a portion thereof) raised in connection with such issuance; provided that if the proceeds actually

received by the Company are less than the gross proceeds of such issuance as a result of any underwriter's discount or other expenses paid or incurred in connection with such issuance, then the Company shall be deemed to have made a Capital Contribution to the Partnership in the amount equal to the sum of the net proceeds of such issuance plus the amount of such underwriter's discount and other expenses paid by the Company (which discount and expense shall be treated as an expense for the benefit of the Partnership for purposes of Section 7.4). In the case of employee acquisitions of New Securities at a discount from fair market value or for no value in connection with a grant of New Securities, the amount of such discount representing compensation to the employee, as determined by the General Partner, shall be treated as an expense of the issuance of such New Securities.

ARTICLE 5
DISTRIBUTIONS

Section 5.1 Requirement and Characterization of Distributions

The General Partner shall distribute at least quarterly an amount equal to one hundred percent (100%) of Available Cash generated by the Partnership during such quarter or shorter period to the Partners who are Partners on the Partnership Record Date with respect to such quarter or shorter period in accordance with their respective Percentage Interests on such Partnership Record Date; provided that in no event may a Partner receive a distribution of

Available Cash with respect to a Partnership Unit if such Partner is entitled to receive a distribution out of such Available Cash with respect to a REIT Share for which such Partnership Unit has been exchanged and such distribution shall be made to the Company. The General Partner shall take such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with the Company's qualification as a REIT, to distribute Available Cash (a) to the Limited Partners so as to preclude any such distribution or portion thereof from being treated as part of a sale of property to the Partnership by a Limited Partner under Section 707 of the Code or the Regulations thereunder; provided

that the General Partner and the Partnership shall not have liability to a

Limited Partner under any circumstances as a result of any distribution to a Limited Partner being so treated and (b) to satisfy the requirements for qualifying as a REIT under the Code. Unless otherwise expressly provided for herein or in an agreement at the time a new class of Partnership Interests is created in accordance with Article 4 hereof, no Partnership Interest shall be entitled to a distribution in preference to any other Partnership Interest.

Section 5.2 Amounts Withheld

All amounts withheld pursuant to the Code or any provisions of any state or local tax law and Section 10.5 hereof with respect to any allocation, payment or distribution to the Partners or Assignees shall be treated as amounts distributed to the Partners or Assignees pursuant to Section 5.1 for all purposes under this Agreement.

Section 5.3 Distributions Upon Liquidation

Proceeds from a Terminating Capital Transaction and any other cash received or reductions in reserves made after commencement of the liquidation of the Partnership shall be distributed to the Partners in accordance with Section 13.2.

Section 5.4 Revisions to Reflect Issuance of Additional Partnership

Interests

In the event that the Partnership issues additional Partnership Interests to the General Partner or any Additional Limited Partner pursuant to Article 4 hereof, the General Partner shall make such revisions to this Article 5 as it deems necessary to reflect the issuance of such additional Partnership Interests and any special rights, duties or powers with respect thereto.

ARTICLE 6
ALLOCATIONS

Section 6.1 Allocations For Capital Account Purposes

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction

(computed in accordance with Exhibit B hereof) shall be allocated among the

Partners in each taxable year (or portion thereof) as provided herein below.

A. Net Income shall be allocated (i) first, to the General Partner to the extent that Net Losses previously allocated to the General Partner pursuant to the last sentence of Section 6.1.B exceed Net Income previously allocated to the General Partner pursuant to this clause (i) of Section 6.1.A; and (ii) thereafter, Net Income shall be allocated to the Partners in accordance with their respective Percentage Interests, provided however, gain on the sale of property contributed as of the Effective Date with respect to which the General Partner elects, the "traditional method with cumulative allocations" described in Treasury Regulation Section 1.704-3(c)(3)(iii)(B) shall first be allocated to solely to the Partners who contributed such Property, pro rata, in proportion to their Percentage Interests, to the extent allocations to non-contributing Partners of depreciation deductions with respect to such Contributed Property have been limited by the so-called "ceiling rule".

B. After giving effect to the special allocations set forth in Section 1 of Exhibit C attached hereto, Net Losses shall be allocated to the Partners in

the following order:

(1) First, to the Partners, in proportion to their Percentage Interest until each Partner's Adjusted Capital Account balance has been reduced to zero;

(2) Second, to the General Partner until the General Partner's negative Adjusted Capital Account balance is equal to the excess, if any, of the aggregate recourse liabilities of the Partnership over the aggregate amount of recourse partnership debt (the "Recourse Debt Amount") set forth on the recourse debt level schedule attached hereto as Exhibit F, as appropriately amended from time to time;

(3) Third, to the Limited Partners listed on the recourse debt level schedule attached hereto as Exhibit F, in proportion to each such Limited Partner's Limited Partner Recourse Debt Percentage, until the sum of such Limited Partners' negative Adjusted Capital Account balances equals the Recourse Debt Amount; and

(4) Fourth, 100% to the General Partner.

C. The Partners agree that Nonrecourse Liabilities of the Partnership shall be allocated among the Partners in accordance with the provisions of Regulations Section 1.752-3, as modified by any guidance published by the Internal Revenue Service, or otherwise reasonably interpreted.

D. Any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required

allocations of gain pursuant to Exhibit C, be characterized as Recapture

Income in the same proportions and to the same extent as such Partners have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

In the event that the Partnership issues additional Partnership Interests to the General Partner, or any Additional Limited Partner pursuant to Article 4 hereof, the General Partner shall make such revisions to this Section 6.1 as it determines are necessary to reflect the terms of the issuance of such additional Partnership Interests, including making preferential allocations to certain classes of Partnership Interests.

ARTICLE 7
MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 Management

A. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are and shall be exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the business and affairs of the Partnership. The General Partner may not be removed by the Limited Partners with or without cause. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.3 hereof, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 hereof and to effectuate the purposes set forth in Section 3.1 hereof, including, without limitation:

- (1) the making of any expenditures, the lending or borrowing of money (including, without limitation, making prepayments on loans and borrowing money to permit the Partnership to make distributions to its Partners in such amounts as will permit the Company (so long as the Company qualifies as a REIT) to avoid the payment of any federal income tax (including, for this purpose, any excise tax pursuant to Section 4981 of the Code) and to make distributions to its shareholders in amounts sufficient to permit the Company to maintain REIT status), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidence of indebtedness (including the securing of the same by deed, mortgage, deed of trust or other lien or encumbrance on the Partnership's assets) and the incurring of any obligations it deems necessary for the conduct of the activities of the Partnership;

- (2) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership, the registration of any class of securities of the Partnership under the Securities Exchange Act of 1934, as amended, and the listing of any debt securities of the Partnership on any exchange;
- (3) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any assets of the Partnership (including the exercise or grant of any conversion, option, privilege, or subscription right or other right available in connection with any assets at any time held by the Partnership) or the merger or other combination of the Partnership with or into another entity (all of the foregoing subject to any prior approval only to the extent required by Section 7.3 hereof);
- (4) the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms it sees fit, including, without limitation, the financing of the conduct of the operations of the Company, the Partnership or any of the Partnership's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Subsidiaries of the Partnership and/or the Company) and the repayment of obligations of the Partnership and its Subsidiaries and any other Person in which it has an equity investment, and the making of capital contributions to its Subsidiaries;
- (5) the management, operation, leasing, landscaping, repair, alteration, demolition or improvement of any real property or improvements owned by the Partnership or any Subsidiary of the Partnership;
- (6) the negotiation, execution, and performance of any contracts, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement, including contracting with contractors, developers, consultants, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation out of the Partnership's assets;
- (7) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement;

- (8) holding, managing, investing and reinvesting cash and other assets of the Partnership;
- (9) the collection and receipt of revenues and income of the Partnership;
- (10) the establishment of one or more divisions of the Partnership, the selection and dismissal of employees of the Partnership (including, without limitation, employees having titles such as "president," "vice president," "secretary" and "treasurer" of the Partnership), and agents, outside attorneys, accountants, consultants and contractors of the Partnership, and the determination of their compensation and other terms of employment or hiring;
- (11) the maintenance of such insurance for the benefit of the Partnership, the Partner and directors and officers thereof as it deems necessary or appropriate;
- (12) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, its Subsidiaries and any other Person in which it has an equity investment from time to time);
- (13) the control of any matters affecting the rights and obligations of the Partnership, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment of, any claim, cause of action, liability, debt or damages, due or owing to or from the Partnership, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitration or other forms of dispute resolution, and the representation of the Partnership in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;
- (14) the undertaking of any action in connection with the Partnership's direct or indirect investment in its Subsidiaries or any other Person (including, without limitation, the contribution or loan of funds by the Partnership to such Persons);

- (15) the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as the General Partner may adopt;
- (16) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;
- (17) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;
- (18) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest pursuant to contractual or other arrangements with such Person;
- (19) the making, execution and delivery of any and all deeds, leases, notes, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases or legal instruments or agreements in writing necessary or appropriate, in the judgment of the General Partner, for the accomplishment of any of the powers of the General Partner enumerated in this Agreement; and
- (20) the issuance of additional Partnership Units, as appropriate, in connection with Capital Contributions by Additional Limited Partners and additional Capital Contributions by Partners pursuant to Article 4 hereof.

B. Each of the Limited Partners agrees that the General Partner is authorized to execute, deliver and perform the above-mentioned agreements and transactions on behalf of the Partnership without any further act, approval or vote of the Partners, notwithstanding any other provision of this Agreement (except as provided in Section 7.3 or Section 8.7), the Act or any applicable law, rule or regulation, to the fullest extent permitted under the Act or other applicable law, rule or regulation. The execution, delivery or performance by the General Partner or the Partnership of any agreement authorized or permitted under this Agreement shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement or of any duty stated or implied by law or equity.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain at any and all times working capital accounts and other cash or similar balances in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

D. In exercising its authority under this Agreement, the General Partner may, but shall be under no obligation to, take into account the tax consequences to any Partner of any action taken by it. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances, as a result of an income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner taken pursuant to its authority under this Agreement and in accordance with the terms of Section 7.3 and Section 8.7. The Limited Partners expressly acknowledge that the General Partner is acting on behalf of the Partnership, the Company and the Company's stockholders collectively. In the event of a conflict between the interests of the stockholders of the Company on one hand and the Limited Partners on the other, the General Partner shall endeavor in good faith to resolve the conflict in a manner not adverse to either the stockholders of the Company or the Limited Partners.

E. The General Partner agrees to cause the Partnership to use its reasonable commercial efforts to cause its lenders to permit the Consenting Partners or either of them individually to guarantee any indebtedness of the Partnership (including additional indebtedness or substitute indebtedness incurred after the Effective Date).

Section 7.2 Certificate of Limited Partnership

The General Partner has previously filed the Certificate of Limited Partnership with the Secretary of State of the State of Delaware as required by the Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and any other state, or the District of Columbia, in which the Partnership may elect to do business or own property. To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all of the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware and each other state, or the District of Columbia, in which the Partnership may elect to do business or own property. Subject to the terms of Section 8.5.A(4) hereof, the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership or any amendment thereto to any Limited Partner.

Section 7.3 Restrictions on General Partner Authority. The General

Partner may not take any action in contravention of an express prohibition or limitation of this Agreement

without the written Consent of Limited Partners holding a majority of the Percentage Interests of the Limited Partners (including Limited Partner Interests held by the Company), or such other percentage of the Limited Partners as may be specifically provided for under a provision of this Agreement.

Section 7.4 Reimbursement of the General Partner and the Company; DRIP's

and Repurchase Programs

A. Except as provided in this Section 7.4 and elsewhere in this Agreement (including the provisions of Articles 5 and 6 regarding distributions, payments, and allocations to which it may be entitled), the General Partner shall not be compensated for its services as general partner of the Partnership.

B. The General Partner shall be reimbursed on a monthly basis, or such other basis as it may determine in its sole and absolute discretion, for all expenses that it incurs relating to the ownership and operation of, or for the benefit of, the Partnership (including, without limitation, (i) expenses relating to the ownership of interests in and operation of the Partnership, (ii) compensation of the Company's officers and employees including, without limitation, payments under the General Partner's Stock Incentive Plans that provides for stock units, or other phantom stock, pursuant to which employees of the General Partner will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses and (iv) all costs and expenses of being a public company, including costs of filings with the SEC, reports and other distributions to its stockholders); provided that the amount of any such

reimbursement shall be reduced by any interest earned by the General Partner with respect to bank accounts or other instruments or accounts held by it on behalf of the Partnership. The Partners acknowledge that all such expenses of the General Partner are deemed to be for the benefit of the Partnership. Such reimbursement shall be in addition to any reimbursement made as a result of indemnification pursuant to Section 7.7 hereof.

C. As set forth in Section 4.3, the Company shall be treated as having made a Capital Contribution in the amount of all expenses that it incurs relating to the Company's initial public offering REIT of Shares.

D. In the event that the Company shall elect to purchase from its shareholders REIT Shares for the purpose of delivering such REIT Shares to satisfy an obligation under any dividend reinvestment program adopted by the Company, any employee stock purchase plan adopted by the Company, or any similar obligation or arrangement undertaken by the Company in the future or for the purpose of retiring such REIT Shares, the purchase price paid by the Company for such REIT Shares and any other expenses incurred by the Company in connection with such purchase shall be considered expenses of the Partnership and shall be advanced to the Company or reimbursed to the Company, subject to the condition that: (i) if such REIT Shares subsequently are sold by the Company, the Company shall pay to the Partnership any proceeds received by the Company for such REIT Shares (which sales

proceeds shall include the amount of dividends reinvested under any dividend reinvestment or similar program provided that a transfer of REIT Shares for Units pursuant to Section 8.6 would not be considered a sale for such purposes); and (ii) if such REIT Shares are not retransferred by the Company within thirty (30) days after the purchase thereof, or the Company otherwise determines not to retransfer such REIT Shares, the Company, as General Partner, shall cause the Partnership to redeem a number of Partnership Units held by the Company, as a Limited Partner, equal to the product obtained by dividing the number of such REIT Shares by the Conversion Factor (in which case such advancement or reimbursement of expenses shall be treated as having been made as a distribution in redemption of such number of Units held by the Company).

Section 7.5 Outside Activities of the General Partner

The General Partner shall not directly or indirectly enter into or conduct any business other than in connection with the ownership, acquisition and disposition of Partnership Interests and the management of the business of the Partnership, and such activities as are incidental thereto. The General Partner and any Affiliates of the General Partner may acquire Limited Partner Interests and shall be entitled to exercise all rights of a Limited Partner relating to such Limited Partner Interests.

Section 7.6 Contracts with Affiliates

A. The Partnership may lend or contribute funds or other assets to its Subsidiaries or other Persons in which it has an equity investment and such Persons may borrow funds from the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Subsidiary or any other Person.

B. Except as provided in Section 7.5, the Partnership may transfer assets to joint ventures, other partnerships, corporations or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law as the General Partner, in its sole and absolute discretion, believes are advisable.

C. Except as expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are determined by the General Partner in good faith to be fair and reasonable.

D. The General Partner, in its sole and absolute discretion and without the approval of the Limited Partners, may propose and adopt, on behalf of the Partnership, employee benefit plans, stock option plans, and similar plans funded by the Partnership for the benefit of employees of the General Partner, the Partnership, Subsidiaries of the Partnership or any

Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Partnership, the General Partner, or any Subsidiaries of the Partnership.

E. The General Partner is expressly authorized to enter into, in the name and on behalf of the Partnership, a right of first opportunity arrangement and other conflict avoidance agreements with various Affiliates of the Partnership and the General Partner, on such terms as the General Partner, in its sole and absolute discretion, believes are advisable.

Section 7.7 Indemnification

A. To the fullest extent permitted by Delaware law, the Partnership shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including, without limitation, attorneys fees and other legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership or the Company as set forth in this Agreement, in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that: (i) the act or omission of the Indemnitee was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) the Indemnitee actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the Indemnitee had reasonable cause to believe that the act or omission was unlawful. Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise for any indebtedness of the Partnership or any Subsidiary of the Partnership (including without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. The termination of any proceeding by conviction of an Indemnitee or upon a plea of nolo contendere or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, creates a rebuttable presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7.A. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, and neither the General Partner nor any Limited Partner shall have any obligation to contribute to the capital of the Partnership, or otherwise provide funds, to enable the Partnership to fund its obligations under this Section 7.7.

B. Reasonable expenses incurred by an Indemnitee who is a party to a proceeding shall be paid or reimbursed by the Partnership in advance of the final disposition of the proceeding upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in Section 7.7.A. has been met, and (ii) a written undertaking by or

on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

C. The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity unless otherwise provided in a written agreement pursuant to which such Indemnitee is indemnified.

D. The Partnership may, but shall not be obligated to, purchase and maintain insurance, on behalf of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.7; and actions taken or omitted by the Indemnitee with respect to an employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Partnership.

F. In no event may an Indemnitee subject any of the Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

G. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the Partnership's liability to any Indemnitee under this Section 7.7, as in effect immediately prior to such amendment, modification, or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.8 Liability of the General Partner

A. Notwithstanding anything to the contrary set forth in this Agreement, the General Partner and its officers and directors shall not be liable for monetary damages to the Partnership, any Partners or any Assignees for losses sustained or liabilities incurred as a result of errors in judgment or of any act or omission if the General Partner acted in good faith.

B. The Limited Partners expressly acknowledge that, as stated in Section 7.1.D, the General Partner is acting on behalf of the Partnership and the shareholders of the Company collectively, that the General Partner is under no obligation to consider the separate interests of the Limited Partners (except as otherwise provided herein) in deciding whether to cause the Partnership to take (or decline to take) any actions, and that the General Partner shall not be liable for monetary damages for losses sustained, liabilities incurred, or benefits not derived by Limited Partners in connection with such decisions, provided that the General Partner has acted in good faith.

C. Subject to its obligations and duties as General Partner set forth in Section 7.1.A hereof, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents. The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

D. Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's and its officers' and directors' liability to the Partnership and the Limited Partners under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 Other Matters Concerning the General Partner

A. The General Partner may rely and shall be protected in acting, or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, architects, engineers, environmental consultants and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters which such General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively

presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers and duly appointed attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform all and every act and duty which is permitted or required to be done by the General Partner hereunder.

D. Notwithstanding any other provisions of this Agreement or the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the Company to continue to qualify as a REIT; or (ii) to avoid the Company incurring any taxes under Section 857 or Section 4981 of the Code, is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

Section 7.10 Title to Partnership Assets

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner for the use and benefit of the Partnership in accordance with the provisions of this Agreement; provided,

however, that the General Partner shall use its best efforts to cause beneficial

and record title to such assets to be vested in the Partnership as soon as reasonably practicable if failure to so vest such title would have a material adverse effect on the Partnership. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 7.11 Reliance by Third Parties

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority, without consent or approval of any other Partner or Person, to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and take any and all actions on behalf of the Partnership and such Person shall be entitled to deal with the General Partner as if the General Partner were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies which may be available against

such Person to contest, negate or disaffirm any action of the General Partner in connection with any such dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect; (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership; and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE 8
RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 8.1 Limitation of Liability

The Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement, including Section 10.5 hereof, or under the Act.

Section 8.2 Management of Business

No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, employee, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operation, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any officer, director, employee, partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 8.3 Outside Activities of Limited Partners

Subject to any agreements entered into pursuant to Section 7.6.E hereof and any other agreements entered into by a Limited Partner or its Affiliates with the Partnership or any of its Subsidiaries, any Limited Partner (other than the Company) and any officer, director, employee, agent, trustee, Affiliate or shareholder of any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to

the Partnership, including business interests and activities that are in direct competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. None of the Limited Partners (other than the Company) nor any other Person shall have any rights by virtue of this Agreement or the Partnership relationship established hereby in any business ventures of any other Person and such Person shall have no obligation pursuant to this Agreement to offer any interest in any such business ventures to the Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character which, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

Section 8.4 Return of Capital

Except pursuant to the right of redemption set forth in Section 8.6, no Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except to the extent provided by Exhibit C hereof or as otherwise expressly provided in

this Agreement, no Limited Partner or Assignee shall have priority over any other Limited Partner or Assignee, either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 Rights of Limited Partners Relating to the Partnership

A. In addition to the other rights provided by this Agreement or by the Act, and except as limited by Section 8.5.C hereof, each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership, upon written demand with a statement of the purpose of such demand and at such Limited Partner's own expense (including such copying and administrative charges as the General Partner may establish from time to time):

- (1) to obtain a copy of the most recent annual and quarterly reports filed with the Securities and Exchange Commission by the Company pursuant to the Securities Exchange Act of 1934;
- (2) to obtain a copy of the Partnership's federal, state and local income tax returns for each Partnership Year;
- (3) to obtain a current list of the name and last known business, residence or mailing address of each Partner;
- (4) to obtain a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with executed copies of all powers of attorney pursuant to which this Agreement, the Certificate

of Limited Partnership and all amendments thereto have been executed; and

- (5) to obtain true and full information regarding the amount of cash and a description and statement of any other property or services contributed by each Partner and which each Partner has agreed to contribute in the future, and the date on which each became a Partner.

B. The Partnership shall notify each Limited Partner, upon request, of the then current Conversion Factor and the REIT Shares Amount per Partnership Unit and, with reasonable detail, how the same was determined.

C. Notwithstanding any other provision of this Section 8.5, the General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner determines in its sole and absolute discretion to be reasonable, any information that (i) the General Partner reasonably believes to be in the nature of trade secrets or other information, the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or could damage the Partnership or its business; or (ii) the Partnership is required by law or by agreements with an unaffiliated third party to keep confidential.

Section 8.6 Redemption Right -----

A. Subject to Sections 8.6.B and 8.6.C hereof, on or after that date which is fourteen (14) months after the Effective Date, each Limited Partner (other than the Company) shall have the right (the "Redemption Right") to

require the Partnership to redeem on a Specified Redemption Date all or a portion of the Partnership Units held by such Limited Partner at a redemption price per Unit equal to and in the form of the Cash Amount to be paid by the Partnership. The Redemption Right shall be exercised pursuant to a Notice of Redemption delivered to the Partnership (with a copy to the Company) by the Limited Partner who is exercising the redemption right (the "Redeeming Partner"); provided, however, that the Partnership shall not be obligated to

satisfy such Redemption Right if the Company elects to purchase the Partnership Units subject to the Notice of Redemption pursuant to Section 8.6.B. A Limited Partner may not exercise the Redemption Right for less than one thousand (1,000) Partnership Units or, if such Limited Partner holds less than one thousand (1,000) Partnership Units, all of the Partnership Units held by such Partner. The Redeeming Partner shall have no right, with respect to any Partnership Units so redeemed, to receive any distributions paid on or after the Specified Redemption Date. The Assignee of any Limited Partner may exercise the rights of such Limited Partner pursuant to this Section 8.6, and such Limited Partner shall be deemed to have assigned such rights to such Assignee and shall be bound by the exercise of such rights by such Assignee. In connection with any exercise of such rights by an Assignee on behalf of a Limited Partner, the Cash Amount shall be paid by the Partnership directly to such Assignee and not to such Limited Partner.

B. Notwithstanding the provisions of Section 8.6.A, a Limited Partner that exercises the Redemption Right shall be deemed to have offered to sell the Partnership Units described in the Notice of Redemption to the Company, and the Company will, at the direction of the Partnership as determined in the Partnership's sole and absolute discretion and only if so directed, elect to purchase directly and acquire such Partnership Units by paying to the Redeeming Partner either the Cash Amount or the REIT Shares Amount, as elected by the Company (in its sole and absolute discretion), on the Specified Redemption Date, whereupon the Company shall acquire the Partnership Units offered for redemption by the Redeeming Partner and shall be treated for all purposes of this Agreement as the owner of such Partnership Units. If the Company shall elect to exercise its right to purchase Partnership Units under this Section 8.6.B with respect to a Notice of Redemption, it shall so notify the Redeeming Partner within five (5) Business Days after the receipt by it of such Notice of Redemption. Unless the Company (in its sole and absolute discretion) shall exercise its right to purchase Partnership Units from the Redeeming Partner pursuant to this Section 8.6.B, the Company shall not have any obligation to the Redeeming Partner or the Partnership with respect to the Redeeming Partner's exercise of the Redemption Right. In the event the Company shall exercise its right to purchase Partnership Units with respect to the exercise of a Redemption Right in the manner described in the first sentence of this Section 8.6.B, the Partnership shall have no obligation to pay any amount to the Redeeming Partner with respect to such Redeeming Partner's exercise of such Redemption Right, and each of the Redeeming Partner, the Partnership, and the Company shall treat the transaction between the Company and the Redeeming Partner, for federal income tax purposes, as a sale of the Redeeming Partner's Partnership Units to the Company. Each Redeeming Partner agrees to execute such documents as the Company may reasonably require in connection with the issuance of REIT Shares upon exercise of the Redemption Right.

C. Notwithstanding the provisions of Section 8.6.A and Section 8.6.B, a Partner shall not be entitled to exercise the Redemption Right pursuant to Section 8.6.A if the delivery of REIT Shares to such Partner on the Specified Redemption Date by the Company pursuant to Section 8.6.B (regardless of whether or not the Company would in fact exercise its rights under Section 8.6.B) would be prohibited under the Certificate of Incorporation of the Company.

D. In the event that the Partnership issues additional Partnership Interests pursuant to Section 4.2.A hereof, the General Partner shall make such revisions to this Section 8.6 as it determines are necessary to reflect the issuance of such additional Partnership Interests.

Section 8.7 Consent of Certain Limited Partners

Each of the properties listed on Exhibit E hereto is referred to as a

"Designated Property." At any time during the 10 year period following the Effective Date, the Partnership may not sell or otherwise dispose of a Designated Property or a Successor

Designated Property (as hereinafter defined) in a transaction that causes gain recognition under Section 752 (or any other section) of the Code for the Consenting Partners without the consent of each of the Consenting Partners who contributed such Designated Property. For purposes of this Section 8.7, the term "Successor Designated Property" means a property acquired by the Partnership upon the disposition of a Designated Property in a Section 1031 like kind exchange or any other exchange transaction that does not result in gain recognition. The provisions of this Section 8.7 shall not be applicable with respect to any Consenting Partner if at any time such Consenting Partner beneficially owns fewer than 30% of the number of Partnership Units owned by such Consenting Partner following the closing of the initial public offering of REIT Shares on the date hereof and the related formation transactions that occurred simultaneously therewith.

ARTICLE 9
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 Records and Accounting

The General Partner shall keep or cause to be kept at the principal office of the Partnership those records and documents required to be maintained by the Act and other books and records deemed by the General Partner to be appropriate with respect to the Partnership's business, including, without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 9.3 hereof. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics or any other information storage device, provided that the records so maintained are convertible into

clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or such other basis as the General Partner determines to be necessary or appropriate.

Section 9.2 Fiscal Year

The fiscal year of the Partnership shall be the calendar year.

Section 9.3 Reports

A. As soon as practicable, but in no event later than one hundred five (105) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner as of the close of the Partnership Year, an annual report containing financial statements of the Partnership, or of the Company if such statements are prepared solely on a consolidated basis with the Company, for such Partnership Year, presented in accordance with

generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the General Partner.

B. As soon as practicable, but in no event later than one hundred five (105) days after the close of each calendar quarter (except the last calendar quarter of each year), the General Partner shall cause to be mailed to each Limited Partner as of the last day of the calendar quarter, a report containing unaudited financial statements of the Partnership, or of the Company, if such statements are prepared solely on a consolidated basis with the Company, and such other information as may be required by applicable law or regulation, or as the General Partner determines to be appropriate.

ARTICLE 10
TAX MATTERS

Section 10.1 Preparation of Tax Returns

The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gains, deductions, losses and other items required of the Partnership for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by Limited Partners for federal and state income tax reporting purposes.

Section 10.2 Tax Elections

Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available election pursuant to the Code. Notwithstanding the above, in making any such tax election the General Partner shall take into account the tax consequences to the Limited Partners resulting from any such election. The General Partner shall make such tax elections on behalf of the Partnership as the Limited Partners holding a majority of the Percentage Interests of the Limited Partners (excluding Limited Partner Interests held by the Company) request, provided that the General Partner believes that such election is not adverse to the interests of the General Partner, including its interest in preserving its qualification as a REIT under the Code. The General Partner intends that Section 704(c) allocations with respect to property contributed as of the Effective Date shall be made by the election of the so-called "traditional method" with curative allocations limited solely to allocations of gain on sale of such contributed property to the extent allocations of depreciation deductions with respect to such contributed property to non-contributing Partners have been limited by the so-called "ceiling rule", as described in Regulations Section 1.704-3(c)(3)(iii)(B). The General Partner shall have the right to seek to revoke any tax election it makes (including, without limitation, the election under Section 754 of the Code) upon the General Partner's determination, in its sole and absolute discretion, that such revocation is in the best interests of the Partners.

Section 10.3 Tax Matters Partner

A. The General Partner shall be the "tax matters partner" of the Partnership for federal income tax purposes. Pursuant to Section 6230(e) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Partnership, the tax matters partner shall furnish the IRS with the name, address, taxpayer identification number, and profit interest of each of the Limited Partners and the Assignees; provided,

however, that such information is provided to the Partnership by the Limited

Partners and the Assignees.

B. The tax matters partner is authorized, but not required:

- (1) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (i) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner; or (ii) who is a "notice partner" (as defined in Section 6231(a)(8) of the Code) or a member of a "notice group" (as defined in Section 6223(b)(2) of the Code);
- (2) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "final adjustment") is mailed to the tax matters partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court or the filing of a complaint for refund with the United States Claims Court or the District Court of the United States for the district in which the Partnership's principal place of business is located;
- (3) to intervene in any action brought by any other Partner for judicial review of a final adjustment;
- (4) to file a request for an administrative adjustment with the IRS and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

- (5) to enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken account of by a Partner for tax purposes, or an item affected by such item; and
- (6) to take any other action on behalf of the Partners or the Partnership in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.7 of this Agreement shall be fully applicable to the tax matters partner in its capacity as such.

C. The tax matters partner shall receive no compensation for its services. All third party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable.

Section 10.4 Organizational Expenses

The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a sixty (60) month period as provided in Section 709 of the Code.

Section 10.5 Withholding

Each Limited Partner hereby authorizes the Partnership to withhold from, or pay on behalf of or with respect to, such Limited Partner any amount of federal, state, local, or foreign taxes that the General Partner determines that the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Sections 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Limited Partner shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within fifteen (15) days after notice from the General Partner that such payment must be made unless (i) the Partnership withholds such payment from a distribution which would otherwise be made to the Limited Partner; or (ii) the General Partner determines, in its sole and absolute discretion, that such payment may be satisfied out of the available funds of the Partnership which would, but for such payment, be distributed to the Limited Partner. Any amounts withheld pursuant to the foregoing clauses (i) or (ii) shall be treated as having been distributed to such Limited Partner. Each Limited Partner hereby unconditionally and irrevocably grants to the Partnership

a

security interest in such Limited Partner's Partnership Interest to secure such Limited Partner's obligation to pay to the Partnership any amounts required to be paid pursuant to this Section 10.5. In the event that a Limited Partner fails to pay any amounts owed to the Partnership pursuant to this Section 10.5 when due, the General Partner may, in its sole and absolute discretion, elect to make the payment to the Partnership on behalf of such defaulting Limited Partner, and in such event shall be deemed to have loaned such amount to such defaulting Limited Partner and shall succeed to all rights and remedies of the Partnership as against such defaulting Limited Partner. Without limitation, in such event the General Partner shall have the right to receive distributions that would otherwise be distributable to such defaulting Limited Partner until such time as such loan, together with all interest thereon, has been paid in full, and any such distributions so received by the General Partner shall be treated as having been distributed to the defaulting Limited Partner and immediately paid by the defaulting Limited Partner to the General Partner in repayment of such loan. Any amounts payable by a Limited Partner hereunder shall bear interest at the lesser of (A) the base rate on corporate loans at large United States money center commercial banks, as published from time to time in The Wall Street Journal, plus four (4) percentage points, or (B) the

maximum lawful rate of interest on such obligation, such interest to accrue from the date such amount is due (i.e., fifteen (15) days after demand) until such

amount is paid in full. Each Limited Partner shall take such actions as the Partnership or the General Partner shall request in order to perfect or enforce the security interest created hereunder.

ARTICLE 11
TRANSFERS AND WITHDRAWALS

Section 11.1 Transfer

A. The term "transfer," when used in this Article 11 with respect to a Partnership Unit, shall be deemed to refer to a transaction by which the General Partner purports to assign all or any part of its General Partner Interest to another Person or by which a Limited Partner purports to assign all or any part of its Limited Partner Interest to another Person, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by operation of law or otherwise. The term "transfer" when used in this Article 11 does not include any redemption of Partnership Interests by the Partnership from a Limited Partner or any acquisition of Partnership Units from a Limited Partner by the Company pursuant to Section 8.6. No part of the interest of a Limited Partner shall be subject to the claims of any creditor, any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement or consented to by the General Partner.

B. No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. Any transfer or

purported transfer of a Partnership Interest not made in accordance with this Article 11 shall be null and void.

Section 11.2 Transfer of the Company's General Partner Interest and

Limited Partner Interest; Extraordinary Transactions

A. The Company may not transfer any of its General Partner Interest or withdraw as General Partner, or transfer any of its Limited Partner Interest, or engage in an Extraordinary Transaction, except, in any such case, (i) if such Extraordinary Transaction is, or such transfer or withdrawal is pursuant to an Extraordinary Transaction that is, permitted under Section 11.2(B) or (ii) if Limited Partners holding at least three-fourths of the Percentage Interests of the Limited Partners (other than Limited Partner Interests held by the Company or its Affiliates) consent to such transfer or withdrawal or Extraordinary Transaction, or (iii) if such transfer is to an entity that is wholly-owned by the Company and is a Qualified REIT Subsidiary under Section 856(i) of the Code.

B. The General Partner is permitted to engage in the following Extraordinary Transactions without the approval or vote of the Limited Partners except as provided in Section 11.2(C):

- (i) an Extraordinary Transaction in connection with which all Limited Partners either will receive, or will have the right to elect to receive, for each Partnership Unit an amount of cash, securities, or other property equal to the product of the REIT Shares Amount and the greatest amount of cash, securities or other property paid to a holder of one REIT Share in consideration of one REIT Share pursuant to the terms of the Extraordinary Transaction; provided that, if, in connection with the Extraordinary

Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding REIT Shares, each holder of Partnership Units shall receive, or shall have the right to elect to receive, the greatest amount of cash, securities, or other property which such holder would have received had it exercised its right to Redemption (as set forth in Section 8.6) and received REIT Shares in exchange for its Partnership Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Extraordinary Transaction shall have been consummated; and

- (ii) a merger, or other combination of assets, with another entity if:
 - (w) immediately after such Extraordinary Transaction, substantially all of the assets directly or indirectly owned by the surviving entity, other than Partnership Units held by such General Partner, are owned directly or indirectly by the Partnership or another limited partnership or limited

liability company which is the survivor of a merger, consolidation or combination of assets with the Partnership (in each case, the "Surviving Partnership"); (x) the Limited Partners own a percentage interest of the Surviving Partnership based on the relative fair market value of the net assets of the Partnership (as determined pursuant to Section 11.2.E) and the other net assets of the Surviving Partnership (as determined pursuant to Section 11.2.E) immediately prior to the consummation of such transaction; (y) the rights preferences and privileges of the Limited Partners in the Surviving Partnership are at least as favorable as those in effect immediately prior to the consummation of such transaction and as those applicable to any other limited partners or non-managing members of the Surviving Partnership; and (z) such rights of the Limited Partners include the right to exchange their interests in the Surviving Partnership for at least one of: (a) the consideration available to such Limited Partners pursuant to Section 11.2.B(i) or (b) if the ultimate controlling person of the Surviving Partnership has publicly traded common equity securities, such common equity securities, with an exchange ratio based on the relative fair market value of such securities (as determined pursuant to Section 11.2.E) and the REIT Shares.

C. The General Partner shall not consummate any Extraordinary Transaction in connection with which it conducted a vote of its stockholders (a "Stockholder Vote") unless the General Partner also conducts a vote of the Partners of the Partnership (the "Partnership Vote") in which (i) the General Partner provides the Partners with advance notice equal in time to the advance notice given in the case of the Stockholder Vote, (ii) in connection with such advance notice the General Partner provides the Partners with written materials describing the proposed Extraordinary Transaction as well as the tax effect of the consummation thereof on the Limited Partners, (iii) in such vote of the Partners, the General Partner votes all Partnership Interests (General and Limited) held by it in proportion to the manner in which all outstanding shares of capital stock of the General Partner were voted at the Stockholder Meeting (such votes to be "For," "Against," "Abstain" and "Not Present"), and (iv) the total votes of the General and Limited Partners voted "For," "Against," "Abstain" and "Not Present" would be sufficient, if such vote were a vote by the Company of its stockholders, to approve the Extraordinary Transaction. For purposes of the Partnership Vote, each holder of a Partnership Interest shall be entitled to a number of votes equal to the total votes such holder would have been entitled to at the Stockholder Meeting had such holder presented its Partnership Interest for redemption and such Partnership Interest had been acquired by the Company for the REIT Shares Amount of REIT Shares prior to the record date therefor.

D. Without in any way limiting the exculpation from liability set forth in Section 7.1.D and 7.8.B, in connection with any transaction permitted by Section 11.2.B or Section 11.2.C hereof, the General Partner shall use its commercially reasonable efforts to structure such Extraordinary Transaction to avoid causing the Limited Partners to recognize gain for

federal income tax purposes by virtue of the occurrence of or their participation in such Extraordinary Transaction.

E. In connection with any transaction permitted by Section 11.2.B or 11.2.C, the relative fair market values shall be reasonably determined by the General Partner as of the time of such transaction and, to the extent applicable, shall be no less favorable to the Limited Partners than the relative values reflected in the terms of such transaction.

Section 11.3 Limited Partners' Rights to Transfer

A. Subject to the provisions of Sections 11.3.C, 11.3.D, 11.3.E, and 11.4, a Limited Partner (other than the Company) may transfer, with or without the consent of the General Partner, all or any portion of its Partnership Interest, or any of such Limited Partner's economic rights as a Limited Partner.

B. If a Limited Partner is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Limited Partner's estate shall have all of the rights of a Limited Partner, but not more rights than those enjoyed by other Limited Partners, for the purpose of settling or managing the estate and such power as the Incapacitated Limited Partner possessed to transfer all or any part of his or its interest in the Partnership. The Incapacity of a Limited Partner, in and of itself, shall not dissolve or terminate the Partnership.

C. The General Partner may prohibit any transfer by a Limited Partner of its Partnership Units if, in the opinion of legal counsel to the Partnership, such transfer would require filing of a registration statement under the Securities Act of 1933 or would otherwise violate any federal or state securities laws or regulations applicable to the Partnership or the Partnership Units.

D. No transfer by a Limited Partner of its Partnership Units may be made to any Person if (i) in the opinion of legal counsel for the Partnership, it would result in the Partnership being treated as an association taxable as a corporation; (ii) it is made within one year after the consummation of the initial public offering of the Company; (iii) such transfer is effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" with the meaning of Section 7704 of the Code; (iv) such transfer would cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(c) of the Code); (v) such transfer would, in the opinion of legal counsel for the Partnership, cause any portion of the assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.2-101; or (vi) such transfer would subject the Partnership to be regulated under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or the Employee Retirement Income Security Act of 1974, each as amended.

E. No transfer of any Partnership Units may be made to a lender to the Partnership or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability, without the consent of the General Partner, in its sole and absolute discretion; provided that as a condition to such consent the lender

will be required to enter into an arrangement with the Partnership and the General Partner to redeem for the Cash Amount any Partnership Units in which a security interest is held simultaneously with the time at which such lender would be deemed to be a partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code.

Section 11.4 Substituted Limited Partners

A. No Limited Partner shall have the right to substitute a transferee as a Limited Partner in his place. The General Partner shall, however, have the right to consent to the admission of a transferee of the interest of a Limited Partner pursuant to this Section 11.4 as a Substituted Limited Partner, which consent may be given or withheld by the General Partner in its sole and absolute discretion. The General Partner's failure or refusal to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or any Partner.

B. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement.

C. Upon the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A to reflect the name, address, number of

Partnership Units, and Percentage Interest of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and interest of the predecessor of such Substituted Limited Partner.

Section 11.5 Assignees

If the General Partner, in its sole and absolute discretion, does not consent to the admission of any permitted transferee as a Substituted Limited Partner, as described in Section 11.4, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be deemed to have had assigned to it, and shall be entitled to receive distributions from the Partnership and the share of Net Income, Net Losses, Recapture Income, and any other items, gain, loss deduction and credit of the Partnership attributable to the Partnership Units assigned to such transferee, but shall not be deemed to be a holder of Partnership Units for any other purpose under this Agreement, and shall not be entitled to vote such Partnership Units in any matter presented to the Limited Partners for a vote (such Partnership Units being deemed to have been voted on such matter in the same proportion as all other Partnership Units held by Limited Partners are voted). In the event any such transferee desires to make a further assignment of any such Partnership Units, such transferee

shall be subject to all of the provisions of this Article 11 to the same extent and in the same manner as any Limited Partner desiring to make an assignment of Partnership Units.

Section 11.6 General Provisions

A. No Limited Partner may withdraw from the Partnership other than as a result of a permitted transfer of all of such Limited Partner's Partnership Units in accordance with this Article 11 or pursuant to redemption of all of its Partnership Units under Section 8.6.

B. Any Limited Partner who shall transfer all of its Partnership Units in a transfer permitted pursuant to this Article 11 shall cease to be a Limited Partner upon the admission of all Assignees of such Partnership Units as Substitute Limited Partners. Similarly, any Limited Partner who shall transfer all of its Partnership Units pursuant to a redemption of all of its Partnership Units under Section 8.6 shall cease to be a Limited Partner.

C. Transfers pursuant to this Article 11 may only be made on the first day of a fiscal quarter of the Partnership, unless the General Partner otherwise agrees.

D. If any Partnership Interest is transferred or assigned during any quarterly segment of the Partnership's fiscal year in compliance with the provisions of this Article 11 or redeemed or transferred pursuant to Section 8.6 on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items attributable to such interest for such Partnership Year shall be divided and allocated between the transferor Partner and the transferee Partner by taking into account their varying interests during the Partnership Year in accordance with Section 706(d) of the Code, using the interim closing of the books method. Solely for purposes of making such allocations, each of such items for the calendar month in which the transfer or assignment occurs shall be allocated to the transferee Partner, and none of such items for the calendar month in which a redemption occurs shall be allocated to the Redeeming Partner; provided, however, that the General Partner

may adopt such other conventions relating to allocations in connection with transfers, assignments or redemptions as it determines are necessary or appropriate. All distributions of Available Cash attributable to such Partnership Unit with respect to which the Partnership Record Date is before the date of such transfer, assignment, or redemption shall be made to the transferor Partner or the Redeeming Partner, as the case may be, and in the case of a transfer or assignment other than a redemption, all distributions of Available Cash thereafter attributable to such Partnership Unit shall be made to the transferee Partner.

ARTICLE 12
ADMISSION OF PARTNERS

Section 12.1 Admission of Successor General Partner

A successor to all of the General Partner Interest pursuant to Section 11.2 hereof who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective upon such transfer. Any such transferee shall carry on the business of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission. In the case of such admission on any day other than the first day of a Partnership Year, all items attributable to the General Partner Interest for such Partnership Year shall be allocated between the transferring General Partner and such successor as provided in Section 11.6.D hereof.

Section 12.2 Admission of Additional Limited Partners

A. After the admission to the Partnership of the initial Limited Partners on the date hereof, a Person who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance in form satisfactory to the General Partner of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof and (ii) such other documents or instruments as may be required in the discretion of the General Partner in order to effect such Person's admission as an Additional Limited Partner.

B. Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's sole and absolute discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded on the books and records of the Partnership, following the consent of the General Partner to such admission.

C. If any Additional Limited Partner is admitted to the Partnership on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items allocable among Partners and Assignees for such Partnership Year shall be allocated among such Additional Limited Partner and all other Partners and Assignees by taking into account their varying interests during the Partnership Year in accordance with Section 706(d) of the Code, using any convention permitted by law and selected by the General Partner. Solely for purposes of making such allocations, each such item for the calendar month in which an admission of any Additional Limited Partner occurs shall be allocated among all of the Partners and Assignees, including such Additional Limited Partner; provided,

however, that the General Partner may adopt such other conventions relating

to allocations to Additional Limited Partners as it determines are necessary or appropriate. All distributions of Available Cash with respect to which the Partnership Record Date is before the date of such admission shall be made solely to Partners and Assignees, other than the Additional Limited Partner, and all distributions of Available Cash thereafter shall be made to all of the Partners and Assignees, including such Additional Limited Partner.

Section 12.3 Amendment of Agreement and Certificate of Limited

Partnership

For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if

required by law, shall prepare and file an amendment to the Certificate of Limited Partnership and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

ARTICLE 13
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 Dissolution

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the withdrawal of the General Partner, any successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and its affairs shall be wound up, only upon the first to occur of any of the following ("Liquidating Events"):

- A. the expiration of its term as provided in Section 2.5 hereof;
- B. an event of withdrawal of the General Partner, as defined in the Act (other than an event of bankruptcy), unless, within ninety (90) days after such event of withdrawal a majority in interest of the remaining Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of withdrawal, of a successor General Partner;
- C. from and after the date of this Agreement through December 31, 2055, an election to dissolve the Partnership made by the General Partner with the Consent of Partners holding eighty-five percent (85%) of the Percentage Interests of the Limited Partners (including Limited Partner Interests held by the Company);

D. on or after January 1, 2056, an election to dissolve the Partnership made by the General Partner, in its sole and absolute discretion;

E. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;

F. the sale of all or substantially all of the assets and properties of the Partnership; or

G. a final and non-appealable judgment is entered by a court of competent jurisdiction ruling that the General Partner is bankrupt or insolvent, or a final and non-appealable order for relief is entered by a court with appropriate jurisdiction against the General Partner, in each case under any federal or state bankruptcy or insolvency laws as now or hereafter in effect, unless prior to the entry of such order or judgment all of the remaining Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of a date prior to the date of such order or judgment, of a substitute General Partner.

Section 13.2 Winding Up -----

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Partners. No Partner shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner, or, in the event there is no remaining General Partner, any Person elected by a majority in interest of the Limited Partners (the General Partner or such other Person being referred to herein as the "Liquidator"), shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the General Partner, include shares of common stock in the Company) shall be applied and distributed in the following order:

- (1) First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the Partners;
- (2) Second, to the payment and discharge of all of the Partnership's debts and liabilities to the General Partner;
- (3) Third, to the payment and discharge of all of the Partnership's debts and liabilities to the other Partners; and

- (4) The balance, if any, to the General Partner and Limited Partners in accordance with their Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods.

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article 13.

B. Notwithstanding the provisions of Section 13.2.A hereof which require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Partners as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2.A hereof, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this Article 13 may be:

- (1) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Agreement;
or
- (2) withheld or escrowed to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld or escrowed amounts shall

be distributed to the General

Partner and Limited Partners in the manner and order of priority set forth in Section 13.2.A as soon as practicable.

Section 13.3 Compliance with Timing Requirements of Regulations

In the event the Partnership is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 13 to the General Partner and Limited Partners who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2).

If the General Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years or portions thereof, including the year during which such liquidation occurs, the General Partner shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3)). If any Limited Partner

has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years or portions thereof, including the year during which such liquidation occurs), each such Limited Partner shall be obligated to contribute cash to the capital of the Partnership in an amount equal to the lesser of (i) the amount required to increase its Capital Account as of such date to zero or (ii) such Limited Partner's Limited Partner Recourse Debt Percentage multiplied by the Recourse Debt Amount. Any such contribution required of a Partner hereunder shall be made on or before the later of (i) the end of the Partnership Year in which the interest of such Partner is liquidated or (ii) the ninetieth (90th) day following the date of such liquidation. Notwithstanding any provision hereof to the contrary, all amounts so contributed by a Limited Partner to the capital of the Partnership shall, upon the liquidation of the Partnership under Article XIII, be paid only to any then creditors of the Partnership, including Partners that are Partnership creditors (in the order provided in Section 13.2 hereof), and shall not be distributed to the other Partners then having positive balances in their respective Capital Accounts.

After the death of a Limited Partner, the executor of the estate of such Limited Partner may elect to reduce (or eliminate) the deficit Capital Account restoration obligation of such Limited Partner pursuant to this Section 13.3. Such election may be made by such executor by delivering to the General Partner a written notice setting forth the maximum deficit balance in his Capital Account that such executor agrees to restore under Section 13.3, if any. If such executor does not make a timely election pursuant to this Section 13.3 (whether or not the balance in his Capital Account is negative at such time), then such Limited Partner's estate (and the beneficiaries thereof who receive distribution of Partnership Interests therefrom) shall be deemed to have a deficit Capital Account restoration obligation as set forth pursuant to the terms of Section 13.3. Any Limited Partner which is itself a partnership may likewise elect, after the death of its respective partner, to reduce (or eliminate) its deficit Capital Account restoration obligation pursuant to Section 13.3 by delivering a similar written notice to the

General Partner within the time period specified herein. Any such partnership that does not make any such timely election shall similarly be deemed to have a deficit Capital Account restoration obligation as set forth pursuant to the terms of Section 13.3.

Section 13.4 Deemed Distribution and Recontribution

Notwithstanding any other provision of this Article 13, in the event the Partnership is considered "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Partnership's property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged, and the Partnership's affairs shall not be wound up. Instead, for federal income tax purposes and for purposes of maintaining Capital Accounts pursuant to Exhibit B hereto, the Partnership shall be deemed to have

distributed the property in kind to the General Partner and Limited Partners, who shall be deemed to have assumed and taken such property subject to all Partnership liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the General Partner and Limited Partners shall be deemed to have recontributed the Partnership property in kind to the Partnership, which shall be deemed to have assumed and taken such property subject to all such liabilities.

Section 13.5 Rights of Limited Partners

Except as otherwise provided in this Agreement, each Limited Partner shall look solely to the assets of the Partnership for the return of its Capital Contributions and shall have no right or power to demand or receive property other than cash from the Partnership. Except as otherwise provided in this Agreement, no Limited Partner shall have priority over any other Partner as to the return of its Capital Contributions, distributions, or allocations.

Section 13.6 Notice of Dissolution

In the event a Liquidating Event occurs or an event occurs that would, but for the provisions of an election or objection by one or more Partners pursuant to Section 13.1, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners.

Section 13.7 Termination of Partnership and Cancellation of Certificate

of Limited Partnership

Upon the completion of the liquidation of the Partnership's assets, as provided in Section 13.2 hereof, the Partnership shall be terminated, a certificate of cancellation shall be filed, and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 13.8 Reasonable Time for Winding-Up

A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

Section 13.9 Waiver of Partition

Each Partner hereby waives any right to partition of the Partnership property.

ARTICLE 14
AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS

Section 14.1 Amendments

A. Amendments to this Agreement may be proposed by the General Partner or by any Limited Partners (other than the Company) holding twenty percent (20%) or more of the Partnership Interests. Following such proposal, the General Partner shall submit any proposed amendment to the Limited Partners. The General Partner shall seek the written vote of the Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. For purposes of obtaining a written vote, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a vote which is consistent with the General Partner's recommendation with respect to the proposal. Except as provided in Section 7.3.A, 7.3.B, 13.1.C, 14.1.B, 14.1.C or 14.1.D, a proposed amendment shall be adopted and be effective as an amendment hereto if it is approved by the General Partner and it receives the Consent of Partners holding a majority of the Percentage Interests of the Limited Partners (including Limited Partner Interests held by the Company); provided, that, an action shall become effective at such time as the

requisite consents are received even if prior to such specified time.

B. Notwithstanding Section 14.1.A, the General Partner shall have the power, without the consent of the Limited Partners, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

- (1) to add to the obligations of the General Partner or surrender any right or power granted to the General Partner or any Affiliate of the General Partner for the benefit of the Limited Partners;
- (2) to reflect the admission, substitution, termination, or withdrawal of Partners in accordance with this Agreement;

- (3) to set forth and reflect in the Agreement the designations, rights, powers, duties, and preferences of the holders of any additional Partnership Interests issued pursuant to Section 4.2.A hereof;
- (4) to reflect a change that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement; and
- (5) to satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law.

The General Partner shall provide notice to the Limited Partners when any action under this Section 14.1.B is taken.

C. Notwithstanding Section 14.1.A and 14.1.B hereof, this Agreement shall not be amended without the Consent of each Partner adversely affected if such amendment would (i) convert a Limited Partner's interest in the Partnership into a General Partner Interest; (ii) modify the limited liability of a Limited Partner in a manner adverse to such Limited Partner; (iii) alter rights of the Partner (other than as a result of the issuance of Partnership Interests) to receive distributions pursuant to Article 5 or Article 13 or the allocations specified in Article 6 (except as permitted pursuant to Section 4.2 and Section 14.1.B(3) hereof); (iv) alter or modify the Redemption Right and REIT Shares Amount as set forth in Sections 8.6 and 11.2.B, and the related definitions, in a manner adverse to such Partner; (v) cause the termination of the Partnership prior to the time set forth in Sections 2.5 or 13.1; or (vi) amend this Section 14.1.C. Further, no amendment may alter the restrictions on the General Partner's authority set forth in Section 7.3.B without the Consent specified in that section. In addition, Section 8.7 may only be amended as provided therein.

D. Notwithstanding Section 14.1.A or Section 14.1.B hereof, the General Partner shall not (except in connection with amendments made to reflect the issuance of additional Partnership Interests and the relative rights, powers and duties incident thereto) amend Sections 4.2.A, 7.5, 7.6, 11.2 or 14.2 without the Consent of Limited Partners holding a majority of the Percentage Interests of the Limited Partners, excluding Limited Partner Interests held by the General Partner.

Section 14.2 Meetings of the Partners

A. Meetings of the Partners may be called by the General Partner and shall be called upon the receipt by the General Partner of a written request by Limited Partners (other than the Company) holding twenty percent (20%) or more of the Partnership Interests. The request shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Partners not less than seven (7) days nor more than thirty (30) days prior to the date of such meeting. Partners may vote in person or by proxy at such meeting. Whenever the vote or Consent of the Partners is permitted or required under this Agreement, such vote or Consent may be given at a meeting of the Partners or may be given in accordance with the procedure prescribed in Section 14.1.A hereof. Except as otherwise expressly provided in this Agreement, the Consent of holders of a majority of the Percentage Interests held by Limited Partners (including Limited Partnership Interests held by the Company) shall control.

B. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action so taken is signed by a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement). Such consent may be in one instrument or in several instruments, and shall have the same force and effect as a vote of a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement). Such consent shall be filed with the General Partner. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified.

C. Each Limited Partner may authorize any Person or Persons to act for him by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or his attorney-in-fact. No proxy shall be valid after the expiration of twelve (12) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Limited Partner executing it, such revocation to be effective upon the Partnership's receipt of written notice of such revocation from the Limited Partner executing such proxy.

D. Each meeting of the Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deems appropriate. Without limitation, meetings of Partners may be conducted in the same manner as meetings of the shareholders of the Company and may be held at the same time, and as part of, meetings of the shareholders of the Company.

ARTICLE 15
GENERAL PROVISIONS

Section 15.1 Addresses and Notice

Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner or Assignee at the address set forth in Exhibit A or such other address of which

the Partner shall notify the General Partner in writing.

Section 15.2 Titles and Captions

All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" and "Sections" are to Articles and Sections of this Agreement.

Section 15.3 Pronouns and Plurals

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.4 Further Action

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.5 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.6 Creditors

Other than as expressly set forth herein with respect to the Indemnities, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

Section 15.7 Waiver

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 15.8 Counterparts

This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.9 Applicable Law

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 15.10 Invalidity of Provisions

If any provision of this Agreement shall to any extent be held void or unenforceable (as to duration, scope, activity, subject or otherwise) by a court of competent jurisdiction, such provision shall be deemed to be modified so as to constitute a provision conforming as nearly as possible to the original provision while still remaining valid and enforceable. In such event, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is deemed to be void or unenforceable) shall not be affected thereby. Each other provision of this Agreement, unless specifically conditioned upon the voided aspect of such provision, shall remain valid and enforceable to the fullest extent permitted by law; any other provisions of this Agreement that are specifically conditioned on the voided aspect of such invalid provision shall also be deemed to be modified so as to constitute a provision conforming as nearly as possible to the original provision while still remaining valid and enforceable to the fullest extent permitted by law.

Section 15.11 Entire Agreement

This Agreement contains the entire understanding and agreement among the Partners with respect to the subject matter hereof and supersedes the Prior Agreement, any other prior written or oral understandings or agreements among them with respect thereto.

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

GENERAL PARTNER:

BOSTON PROPERTIES, INC.

By: _____

Name:

Title:

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LIMITED PARTNER SIGNATURE PAGE

The undersigned, desiring to become one of the within named Limited Partners of Boston Properties Limited Partnership, hereby becomes a party to the Amended and Restated Agreement of Limited Partnership of Boston Properties Limited Partnership by and among Boston Properties, Inc. and such Limited Partners, dated as of _____, 1997. The undersigned agrees that this signature page may be attached to any counterpart of said Agreement of Limited Partnership.

Signature line for Limited Partner:

[NAME]

By: _____

Name:

Title:

Address of Limited Partner: _____

Exhibit A

Partners Contributions and Partnership Interests

| Name and Address of Partner | Cash Partnership Contribution | Agreed Value of Percentage Contributed Property | Total Contribution | Units | Interest |
|-----------------------------|-------------------------------|---|--------------------|-------|----------|
|-----------------------------|-------------------------------|---|--------------------|-------|----------|

Exhibit B

Capital Account Maintenance

1. Capital Accounts of the Partners

A. The Partnership shall maintain for each Partner a separate Capital Account in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions and any other deemed contributions made by such Partner to the Partnership pursuant to this Agreement; and (ii) all items of Partnership income and gain (including income and gain exempt from tax) computed in accordance with Section 1.B hereof and allocated to such Partner pursuant to Section 6.1.A of the Agreement and Exhibit C hereof, and decreased by (x) the amount of cash or

Agreed Value of all actual and deemed distributions of cash or property made to such Partner pursuant to this Agreement; and (y) all items of Partnership deduction and loss computed in accordance with Section 1.B hereof and allocated to such Partner pursuant to Section 6.1.B of the Agreement and Exhibit C hereof.

B. For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Partners' Capital Accounts, unless otherwise specified in this Agreement, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes determined in accordance with Section 703(a) of the Code (for this purpose all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

- (1) Except as otherwise provided in Regulations Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Partnership, provided that the amounts of any adjustments to the adjusted bases of the assets of the Partnership made pursuant to Section 734 of the Code as a result of the distribution of property by the Partnership to a Partner (to the extent that such adjustments have not previously been reflected in the Partners' Capital Accounts) shall be reflected in the Capital Accounts of the Partners in the manner and subject to the limitations prescribed in Regulations Section 1.704(b)(2)(iv)(m)(4).
- (2) The computation of all items of income, gain, and deduction shall be made without regard to the fact that items described in Sections 705(a)(1)(B) or 705(a)(2)(B) of the Code are not includable gross income

or are neither currently deductible nor capitalized for federal income tax purposes.

- (3) Any income, gain or loss attributable to the taxable disposition of any Partnership property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Partnership's Carrying Value with respect to such property as of such date.
- (4) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year.
- (5) In the event the Carrying Value of any Partnership Asset is adjusted pursuant to Section 1.D hereof, the amount of any such adjustment shall be taken into account as gain or loss from the disposition of such asset.

C. Generally, a transferee (including an Assignee) of a Partnership Unit shall succeed to a pro rata portion of the Capital Account of the transferor; provided, however, that, if the transfer causes a termination of the Partnership

under Section 708(b)(1)(B) of the Code, the Partnership's properties shall be deemed solely for federal income tax purposes, to have been distributed in liquidation of the Partnership to the holders of Partnership Units (including such transferee) and recontributed by such Persons in reconstitution of the Partnership. In such event, the Carrying Values of the Partnership properties shall be adjusted immediately prior to such deemed distribution pursuant to Section 1.D(2) hereof. The Capital Accounts of such reconstituted Partnership shall be maintained in accordance with the principles of this Exhibit B.

- D. (1) Consistent with the provisions of Regulations Section 1.704-1(b)(2)(iv)(f), and as provided in Section 1.D(2), the Carrying Value of all Partnership assets shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as of the times of the adjustments provided in Section 1.D(2) hereof, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property and allocated pursuant to Section 6.1 of the Agreement.
- (2) Such adjustments shall be made as of the following times: (a) immediately prior to the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) immediately prior to the distribution by the Partnership to a Partner of more than a de minimis amount of property as consideration for an interest in the Partnership;

and (c) immediately prior to the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) provided, however, that adjustments pursuant to clauses

(a) and (b) above shall be made only if the General Partner determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership.

- (3) In accordance with Regulations Section 1.704-1(b)(2)(iv)(e), the Carrying Value of Partnership assets distributed in kind shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as of the time any such asset is distributed.
- (4) In determining Unrealized Gain or Unrealized Loss for purposes of this Exhibit B, the aggregate cash amount and fair market value of all

Partnership assets (including cash or cash equivalents) shall be determined by the General Partner using such reasonable method of valuation as it may adopt, or in the case of a liquidating distribution pursuant to Article 13 of the Agreement, shall be determined and allocated by the Liquidator using such reasonable methods of valuation as it may adopt. The General Partner, or the Liquidator, as the case may be, shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its sole and absolute discretion to arrive at a fair market value for individual properties).

E. The provisions of this Agreement (including this Exhibit B and other

Exhibits to this Agreement) relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify (i) the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership, the General Partner, or the Limited Partners) are computed; or (ii) the manner in which items are allocated among the Partners for federal income tax purposes in order to comply with such Regulations or to comply with Section 704(c) of the Code, the General Partner may make such modification without regard to Article 14 of the Agreement, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article 13 of the Agreement upon the dissolution of the Partnership. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q); and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section

1.704-1(b). In addition, the General Partner may adopt and employ such methods and procedures for (i) the maintenance of book and tax capital accounts; (ii) the determination and allocation of adjustments under Sections 704(c), 734 and 743 of the Code; (iii) the determination of Net Income, Net Loss, taxable loss and items thereof under this Agreement and pursuant to the Code; (iv) the adoption of reasonable conventions and methods for the valuation of assets and the determination of tax basis; (v) the allocation of asset value and tax basis; and (vi) conventions for the determination of cost recovery, depreciation and amortization deductions, as it determines in its sole discretion are necessary or appropriate to execute the provisions of this Agreement, to comply with federal and state tax laws, and are in the best interest of the Partners.

2. No Interest

No interest shall be paid by the Partnership on Capital Contributions or on balances in Partners' Capital Accounts.

3. No Withdrawal

No Partner shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Partnership, except as provided in Articles 4, 5, 7 and 13 of the Agreement.

Exhibit C

Special Allocation Rules

1. Special Allocation Rules

Notwithstanding any other provision of the Agreement or this Exhibit C, the following special allocations shall be made in the following order:

A. Minimum Gain Chargeback. Notwithstanding the provisions of Section 6.1 of the Agreement or any other provisions of this Exhibit C, if there is a net

decrease in Partnership Minimum Gain during any Partnership taxable year, each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6). This Section 1.A is intended to comply with the minimum gain chargeback requirements in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith. Solely for purposes of this Section 1.A, each Partner's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Section 6.1 of Partner Minimum Gain during such Partnership taxable year.

B. Partner Minimum Gain Chargeback. Notwithstanding any other provision of Section 6.1 of this Agreement or any other provisions of this Exhibit C (except

Section 1.A hereof), if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership taxable year, each Partner who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.702-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 1.B is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and shall be interpreted consistently therewith. Solely for purposes of the Section 1.B, each Partner's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Section 6.1 of the Agreement or this Exhibit with respect to such Partnership taxable year, other than allocations pursuant to Section 1.A hereof.

C. Qualified Income Offset. In the event any Partner unexpectedly receives

any adjustments, allocations or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), and after giving effect to the allocations required under Sections 1.A and 1.B hereof such Partner has an Adjusted Capital Account Deficit, items of Partnership income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income and gain for the Partnership taxable year) shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, its Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible.

D. Nonrecourse Deductions. Nonrecourse Deductions for any Partnership taxable

year shall be allocated to the Partners in accordance with their respective Percentage Interests. If the General Partner determines in its good faith discretion that the Partnership's Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, the General Partner is authorized, upon notice to the Limited Partners, to revise the prescribed ratio to the numerically closest ratio for such Partnership taxable year which would satisfy such requirements.

E. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any

Partnership taxable year shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

F. Code Section 754 Adjustments. To the extent an adjustment to the adjusted

tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis, and such item of gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

G. Curative Allocations. The allocations set forth in Section 1.A through 1.F

of this Exhibit C (the "Regulatory Allocations") are intended to comply with

certain requirements of the Regulations under Section 704(b) of the Code. The Regulatory Allocations may not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partner is hereby authorized to divide other allocations of income, gain, deduction and loss among the Partners so as to prevent the Regulatory Allocations from distorting the manner in which Partnership distributions will be divided among the Partners. In general, the Partners anticipate that, if necessary, this will be accomplished by specially allocating other items of income, gain, loss and deduction among the Partners so that the net amount of the Regulatory Allocations and such special allocations to

each person is zero. However, the General Partner will have discretion to accomplish this result in any reasonable manner; provided, however, that no

allocation pursuant to this Section 1.G shall cause the Partnership to fail to comply with the requirements of Regulations Sections 1.704-1(b)(2)(ii)(d), -2(e) or -2(i).

2. Allocations for Tax Purposes

A. Except as otherwise provided in this Section 2, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 6.1 of the Agreement and Section 1 of this Exhibit C.

B. In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, and deduction shall be allocated for federal income tax purposes among the Partners as follows:

- (1) (a) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners, consistent with the principles of Section 704(c) of the Code and the Regulations thereunder, to take into account the variation between the 704(c) Value of such property and its adjusted basis at the time of contribution; and
- (b) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1 of the Agreement and Section 1 of this Exhibit C.

- (2) (a) In the case of an Adjusted Property, such items shall
 - (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code and the Regulations thereunder to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Exhibit B; and

 - (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 2.B(1) of this Exhibit C; and

- (b) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the

same manner its correlative item of "book" gain or loss is allocated pursuant to Section 6.1 of the Agreement and Section 1 of this Exhibit C.

- (3) all other items of income, gain, loss and deduction shall be allocated among the Partners the same manner as their correlative item of "book" gain or loss is allocated pursuant to Section 6.1 of the Agreement and Section 1 of the Exhibit C.

C. To the extent that the Treasury Regulations promulgated pursuant to Section 704(c) of the Code permit the Partnership to utilize alternative methods to eliminate the disparities between the Carrying Value of property and its adjusted basis, the General Partner shall have the authority to elect the method to be used by the Partnership and such election shall be binding on all Partners.

3. No Withdrawal

No Partner shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Partnership, except as provided in Articles 4, 5, 8 and 13 of the Agreement.

Exhibit D

Notice of Redemption

The undersigned Limited Partner hereby irrevocably (i) redeems _____ Limited Partnership Units in Boston Properties Limited Partnership in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of Boston Properties Limited Partnership and the Redemption Right referred to therein; (ii) surrenders such Limited Partnership Units and all right, title and interest therein; and (iii) directs that the Cash Amount or REIT Shares Amount (as determined by the General Partner) deliverable upon exercise of the Redemption Right be delivered to the address specified below, and if REIT Shares are to be delivered, such REIT Shares be registered or placed in the name(s) and at the address(es) specified below. The undersigned hereby, represents, warrants, and certifies that the undersigned (a) has marketable and unencumbered title to such Limited Partnership Units, free and clear of the rights or interests of any other person or entity; (b) has the full right, power, and authority to redeem and surrender such Limited Partnership Units as provided herein; and (c) has obtained the consent or approval of all person or entities, if any, having the right to consent or approve such redemption and surrender.

Dated: _____

Name of Limited Partner: _____

Please Print

(Signature of Limited Partner)

(Street Address)

(City) (State) (Zip Code)

Signature Guaranteed by:

If REIT Shares are to be issued, issue to:

Name: _____

Please insert social security or identifying number: _____

Exhibit E

Designated Properties and Consenting Partners

Designated Property

Consenting Partners

Exhibit F

Recourse Debt Level Schedule

| Name of Limited Partner ----- | Recourse Debt Percentage ----- | Recourse Debt Amount ----- |
|----------------------------------|--------------------------------------|----------------------------------|
|----------------------------------|--------------------------------------|----------------------------------|

Total _____

BOSTON PROPERTIES, INC.

1997 STOCK OPTION AND INCENTIVE PLAN

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the Boston Properties, Inc. 1997 Stock Option and Incentive Plan (the "Plan"). The purpose of the Plan is to encourage and enable the officers, employees, Independent Directors and other key persons of Boston Properties, Inc. (the "Company"), and the employees and other key persons of Boston Properties Limited Partnership (the "Operating Partnership") and the Company's other Subsidiaries, upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

"Act" means the Securities Exchange Act of 1934, as amended from time to time.

"Administrator" is defined in Section 2(a).

"Award" or "Awards," except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Restricted Stock Awards, Deferred Stock Awards, Unrestricted Stock Awards, Performance Share Awards, Dividend Equivalent Rights and Other Stock-Based Awards.

"Board" means the Board of Directors of the Company as constituted from time to time.

"Change of Control" is defined in Section 16.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor Code, and related rules, regulations and interpretations.

"Committee" means the Committee of the Board referred to in Section 2.

"Company" means Boston Properties, Inc., a Delaware corporation, and any successor thereto.

"Deferred Stock Award" means Awards granted pursuant to Section 7.

"Dividend Equivalent Right" means Awards granted pursuant to Section 10.

"Effective Date" means the date on which the Plan is initially approved by stockholders as set forth in Section 18.

"Fair Market Value" on any given date means the last reported sale price at which Stock is traded on such date or, if no Stock is traded on such date, the next preceding date on which Stock was traded, as reflected on the principal stock exchange or, if applicable, any other national stock exchange on which the Stock is traded or admitted to trading. Notwithstanding the foregoing, the Fair Market Value on the first day of the Company's initial public offering of Stock shall be the initial public offering price as set forth in the final prospectus for the Company's initial public offering.

"Incentive Stock Option" means any Stock Option that qualifies as and is designated in writing in the related Option agreement as constituting an "incentive stock option" as defined in Section 422 of the Code.

"Independent Director" means a member of the Board who is not also an employee of the Company or any Subsidiary.

"Non-Qualified Stock Option" means any Stock Option that is not an Incentive Stock Option.

"Operating Partnership" means Boston Properties Limited Partnership, a Delaware limited partnership, and any successor thereto.

"Option" or "Stock Option" means any option to purchase shares of Stock granted pursuant to Section 5.

"Other Stock-Based Award" means Awards granted pursuant to Section 11.

"Performance Share Award" means Awards granted pursuant to Section 9.

"Restricted Stock Award" means Awards granted pursuant to Section 6.

"Stock" means the Common Stock, par value \$.01 per share, of the Company, subject to adjustments pursuant to Section 3.

"Subsidiary" means any corporation or other entity (other than the Company) in any unbroken chain of corporations or other entities beginning with the Company if each of the corporations or entities (other than the last corporation or entity in the unbroken chain) owns stock or other interests possessing 50 percent or more of the economic interest or the total combined voting power of all classes of stock or other interests in one of the other corporations or entities in the chain.

"Unrestricted Stock Award" means any Award granted pursuant to Section 8.

SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT AND

PARTICIPANTS AND DETERMINE AWARDS

(a) Committee. The Plan shall be administered by either the Board or a

committee of not less than two Independent Directors (in either case, the "Administrator"). Each member of the Committee shall be a "non-employee director" within the meaning of Rule 16b-3(b)(3)(i) promulgated under the Act, or any successor definition under said rule. From and after the date the Company becomes subject to Section 162(m) of the Code with respect to compensation earned under this Plan, each member of the Committee shall also be an "outside director" within the meaning of Section 162(m) of the Code and the regulations promulgated thereunder.

(b) Powers of Administrator. The Administrator shall have the power and

authority to grant Awards consistent with the terms of the Plan, including the power and authority:

(i) to select the individuals to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Restricted Stock Awards, Deferred Stock Awards, Unrestricted Stock Awards, Performance Share Awards, Dividend Equivalent Rights and Other Stock-Based Awards, or any combination of the foregoing, granted to any one or more participants;

(iii) to determine the number of shares of Stock to be covered by any Award;

(iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and participants, and to approve the form of written instruments evidencing the Awards;

(v) to accelerate at any time the exercisability or vesting of all or any portion of any Award;

(vi) subject to the provisions of Section 5(a)(iii), to extend at any time the post-termination period in which Stock Options may be exercised;

(vii) to determine at any time whether, to what extent, and under what circumstances Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the participant and whether and to what extent the Company shall pay or credit amounts constituting deemed interest (at rates determined by the Administrator) or dividends or deemed dividends on such deferrals; and

(viii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be made in the Administrator's sole and absolute discretion and shall be final and binding on all persons, including the Company and Plan participants.

(c) Delegation of Authority to Grant Awards. The Administrator, in its

discretion, may delegate to the Chief Executive Officer of the Company all or part of the Administrator's authority and duties with respect to Awards, including the granting thereof, to individuals who are not subject to the reporting and other provisions of Section 16 of the Act or "covered employees" within the meaning of Section 162(m) of the Code. Any such delegation by the Administrator shall include a limitation as to the amount of Awards that may be awarded during the period of the delegation and shall contain guidelines as to the determination of the exercise price of any Option, the conversion ratio or price of other Awards and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

SECTION3. STOCK ISSUABLE UNDER THE PLAN; RECAPITALIZATIONS; MERGERS; SUBSTITUTE

AWARDS

(a) Stock Issuable. The maximum number of shares of Stock reserved and

available for issuance under the Plan shall be such aggregate number of shares of Stock as does not exceed the sum of (i) 4,883,000 shares; plus (ii) as of January 1, 1998, 9.5 percent of any net increase since the Company's initial public offering in the total number of shares of Stock actually outstanding (assuming all units of partnership interests in the Operating Partnership that are subject to redemption rights are converted into Stock); plus (iii) as of each January 1 thereafter, 9.5 percent of any net increase since the preceding January 1 in the total number of shares of Stock actually outstanding (assuming all units of partnership interests in the Operating Partnership that are subject to redemption rights are converted into Stock). Notwithstanding the foregoing, the maximum number of shares of Stock for which Incentive Stock Options may be granted under the Plan shall not exceed 4,883,000 shares, reduced by the aggregate number of shares subject to outstanding Awards granted under the Plan. For purposes of this limitation, if any portion of an Award is forfeited, cancelled, reacquired by the Company, satisfied without the issuance of Stock or otherwise terminated, the shares of Stock underlying such portion of the Award shall be added back to the shares of Stock available for issuance under the Plan. Subject to such overall limitation, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that on and after the date the Company is first subject to the provisions of Section 162(m) of the Code

with respect to grants made or compensation earned under the Plan, Stock Options with respect to no more than 1,500,000 shares of Stock may be granted to any one individual participant during any one calendar year period. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Recapitalizations. If, through or as a result of any merger,

consolidation, sale of all or substantially all of the assets of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities, the Administrator may make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, (ii) the number of Stock Options that can be granted to any one individual participant, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, and (iv) the price for each share subject to any then outstanding Stock Options under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options) as to which such Stock Options remain exercisable. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

(c) Mergers. In contemplation of and subject to the consummation of a

consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of Stock are exchanged for securities, cash or other property of an unrelated corporation or business entity or in the event of a liquidation of the Company (in each case, a "Transaction"), the Board, or the board of directors of any corporation assuming the obligations of the Company, may, in its discretion, take any one or more of the following actions, as to outstanding Awards: (i) provide that such Awards shall be assumed or equivalent awards shall be substituted, by the acquiring or succeeding corporation (or an affiliate thereof), and/or (ii) upon written notice to the participants, provide that all Awards will terminate immediately prior to the consummation of the Transaction. In the event that, pursuant to clause (ii) above, Awards will terminate immediately prior to the consummation of the Transaction, all vested Awards, other than Options, shall be fully settled in cash or in kind at such appropriate consideration as determined by the Administrator in its sole discretion after taking into account the consideration payable per share of Stock pursuant to the business combination (the "Merger Price") and all Stock Options shall be fully settled, in cash or in kind, in an amount equal to the difference between (A) the Merger Price times the number of shares of Stock subject to such outstanding Stock Options (to the extent then exercisable at prices not in excess of the Merger Price) and (B) the aggregate exercise price of all such outstanding Stock Options; provided, however, that each participant shall be permitted, within a specified period determined by the Administrator prior to the consummation of the Transaction, to exercise all outstanding Stock Options, including those that are not then exercisable, subject to the consummation of the Transaction.

(d) Substitute Awards. The Administrator may grant Awards under the Plan

in substitution for stock and stock based awards held by employees of another corporation who become employees of the Company or a Subsidiary as the result of a merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Administrator may direct that the substitute awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances.

SECTION 4. ELIGIBILITY

Participants in the Plan will be such full or part-time officers and other employees, Independent Directors and key persons of the Company, the Operating Partnership and the Company's other Subsidiaries who are responsible for or contribute to the management, growth or profitability of the Company, the Operating Partnership and the Company's other Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

SECTION 5. STOCK OPTIONS

Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a "subsidiary corporation" within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

No Incentive Stock Option shall be granted under the Plan after June 10, 2007.

(a) Stock Options Granted to Employees and Key Persons. The Administrator

in its discretion may grant Stock Options to eligible employees and key persons of the Company or any Subsidiary. Stock Options granted pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the participant's election, subject to such terms and conditions as the Administrator may establish, as well as in addition to other compensation.

(i) Exercise Price. The exercise price per share for the Stock

covered by a Stock Option granted pursuant to this Section 5(a) shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant in the case of Incentive Stock Options, and 25 percent of the Fair Market Value on the date of grant, in the case of Non-Qualified Stock Options. If an employee owns or is deemed to own (by reason of the attribution

rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation and an Incentive Stock Option is granted to such employee, the option price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date.

(ii) Option Term. The term of each Stock Option shall be fixed by

the Administrator, but no Incentive Stock Option shall be exercisable more than ten years after the date the option is granted. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation and an Incentive Stock Option is granted to such employee, the term of such option shall be no more than five years from the date of grant.

(iii) Exercisability; Rights of a Stockholder. Stock Options shall

become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date; provided, however, that Stock Options granted in lieu of compensation shall be exercisable in full as of the grant date unless the Administrator otherwise provides in the Award agreement. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(iv) Method of Exercise. Stock Options may be exercised in whole or

in part, by giving written notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods to the extent provided in the Option Award agreement:

(A) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(B) In the form of shares of Stock that are not then subject to restrictions under any Company plan and that have been beneficially owned by the optionee for at least six months, if permitted by the Administrator in its discretion. Such surrendered shares shall be valued at Fair Market Value on the exercise date;

(C) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other

agreements as the Administrator shall prescribe as a condition of such payment procedure; or

(D) By the optionee delivering to the Company a promissory note if the Administrator has expressly authorized the loan of funds to the optionee for the purpose of enabling or assisting the optionee to effect the exercise of his Stock Option; provided that at least so much of the exercise price as represents the par value of the Stock shall be paid other than with a promissory note.

Payment instruments will be received subject to collection. The delivery of certificates representing the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Stock Option or applicable provisions of laws.

(v) Annual Limit on Incentive Stock Options. To the extent required

for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

(b) Reload Options. At the discretion of the Administrator and subject to

such restrictions, terms and conditions as the Administrator may establish, Options granted under the Plan may include a "reload" feature pursuant to which an optionee exercising an option by the delivery of a number of shares of Stock in accordance with Section 5(a)(iv)(B) hereof would automatically be granted an additional Option (with an exercise price equal to the Fair Market Value of the Stock on the date the additional Option is granted and with such other terms as the Administrator may provide) to purchase that number of shares of Stock equal to the number delivered to exercise the original Option with an Option term equal to the remainder of the original Option term unless the Administrator otherwise determines in the Award agreement for the original Option grant.

(c) Stock Options Granted to Independent Directors.

(i) Automatic Grant of Options.

(A) Each person who is an Independent Director on the effective date of the Company's initial public offering shall be granted on such date a Non-Qualified Stock Option to acquire 10,000 shares of Stock. The exercise price per share for the Stock covered by such Non-Qualified Stock Option shall

be the initial public offering price as set forth in the final prospectus for the Company's initial public offering.

(B) Each Independent Director who is first elected to serve as a Director after the effective date of the Company's initial public offering shall be granted, on the fifth business day after his election, a Non-Qualified Stock Option to acquire 10,000 shares of Stock.

(C) Each Independent Director who is serving as Director of the Company on the fifth business day after each annual meeting of shareholders, beginning with the 1998 annual meeting, shall automatically be granted on such day a Non-Qualified Stock Option to acquire 5,000 shares of Stock.

(D) The exercise price per share for the Stock covered by a Stock Option granted under this Section 5(c)(i)(B) and (C) shall be equal to the Fair Market Value of the Stock on the date the Stock Option is granted.

(E) The Board, in its discretion, may grant additional Non-Qualified Stock Options to Independent Directors. Any such grant may vary among individual Independent Directors.

(ii) Exercise; Termination.

(A) Unless otherwise determined by the Administrator, an Option granted under Section 5(c)(i)(A), (B) or (C) shall be exercisable with respect to 50 percent of the underlying shares on the first anniversary of the grant date and shall be exercisable with respect to all of the underlying shares on the second anniversary of the grant date. An Option granted under Section 5(c)(i)(E) shall be subject to such vesting and exercisability provisions as the Board may provide at the time of grant. An Option issued under this Section 5(c) shall not be exercisable after the expiration of ten years from the date of grant.

(B) Options granted under this Section 5(c) may be exercised only by written notice to the Company specifying the number of shares to be purchased. Payment of the full purchase price of the shares to be purchased may be made by one or more of the methods specified in Section 5(a)(iv). An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(d) Non-transferability of Options. No Stock Option shall be transferable

by the optionee otherwise than by will or by the laws of descent and distribution and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee. Notwithstanding the foregoing, the Administrator, in its sole discretion, may provide in the Award agreement regarding a given Option that the optionee may transfer, without consideration for the transfer,

his Non-Qualified Stock Options to members of his family, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable option agreement.

(e) Termination. Except as may otherwise be provided by the Administrator

either in the Award agreement, or subject to Section 14 below, in writing after the Award agreement is issued, an optionee's rights in all Stock Options shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 6. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Awards. A Restricted Stock Award is an

Award entitling the recipient to acquire, at par value or such other higher purchase price determined by the Administrator, shares of Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant ("Restricted Stock"). Conditions may be based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives. The grant of a Restricted Stock Award is contingent on the participant executing the Restricted Stock Award agreement. The terms and conditions of each such agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and participants.

(b) Rights as a Stockholder. Upon execution of the Restricted Stock Award

agreement and paying any applicable purchase price, a participant shall have the rights of a stockholder with respect to the voting of the Restricted Stock, subject to such terms and conditions as may be contained in the Restricted Stock Award agreement. Unless the Administrator shall otherwise determine, certificates evidencing the Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 6(d) below, and the participant shall be required, as a condition of the grant, to deliver to the Company a stock power endorsed in blank.

(c) Restrictions. Restricted Stock may not be sold, assigned, transferred,

pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award agreement. If a participant's employment (or other business relationship) with the Company and its Subsidiaries terminates for any reason, the Company shall have the right to repurchase Restricted Stock that has not vested at the time of termination at its original purchase price, from the participant or the participant's legal representative.

(d) Vesting of Restricted Stock. The Administrator at the time of grant

shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other

conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested." Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a participant's rights in any shares of Restricted Stock that have not vested shall automatically terminate upon the participant's termination of employment (or other business relationship) with the Company and its Subsidiaries and such shares shall be subject to the Company's right of repurchase as provided in Section 6(c) above.

(e) Waiver, Deferral and Reinvestment of Dividends. The Restricted Stock

Award agreement may require or permit the immediate payment, waiver, deferral or reinvestment (in the form of additional Restricted Stock) of dividends paid on the Restricted Stock.

SECTION 7. DEFERRED STOCK AWARDS

(a) Nature of Deferred Stock Awards. A Deferred Stock Award is an Award

of phantom stock units to a participant, subject to restrictions and conditions as the Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives. The grant of a Deferred Stock Award is contingent on the participant executing the Deferred Stock Award agreement. The terms and conditions of each such agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and participants. At the end of the deferral period, the Deferred Stock Award, to the extent vested, shall be paid to the participant in the form of shares of Stock.

(b) Election to Receive Deferred Stock Awards in Lieu of Compensation. The

Administrator may, in its sole discretion, permit a participant to elect to receive a portion of the cash compensation or Restricted Stock Award otherwise due to such participant in the form of a Deferred Stock Award. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with rules and procedures established by the Administrator. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate.

(c) Rights as a Stockholder. During the deferral period, a participant

shall have no rights as a stockholder; provided, however, that the participant may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Deferred Stock Award, subject to such terms and conditions as the Administrator may determine.

(d) Restrictions. A Deferred Stock Award may not be sold, assigned,

transferred, pledged or otherwise encumbered or disposed of during the deferral period.

(e) Termination. Except as may otherwise be provided by the Administrator

either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement

is issued, a participant's right in all Deferred Stock Awards that have not vested shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 8. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. The Administrator may, in its sole discretion, grant (or sell at par value or such other higher purchase price determined by the Administrator) an Unrestricted Stock Award to any participant pursuant to which such participant may receive shares of Stock free of any restrictions ("Unrestricted Stock") under the Plan. Unrestricted Stock Awards may be granted or sold as described in the preceding sentence in respect of past services or other valid consideration, or in lieu of any cash compensation due to such participant.

SECTION 9. PERFORMANCE SHARE AWARDS

(a) Nature of Performance Share Awards. A Performance Share Award is an Award entitling the recipient to acquire shares of Stock upon the attainment of specified performance goals. The Administrator may make Performance Share Awards independent of or in connection with the granting of any other Award under the Plan. The Administrator in its sole discretion shall determine whether and to whom Performance Share Awards shall be made, the performance goals applicable under each such Award, the periods during which performance is to be measured, and all other limitations and conditions applicable to the awarded Performance Shares; provided, however, that the Administrator may rely on the performance goals and other standards applicable to other performance unit plans of the Company in setting the standards for Performance Share Awards under the Plan.

(b) Rights as a Stockholder. A participant receiving a Performance Share Award shall have the rights of a stockholder only as to shares actually received by the participant under the Plan and not with respect to shares subject to the Award but not actually received by the participant. A participant shall be entitled to receive a stock certificate evidencing the acquisition of shares of Stock under a Performance Share Award only upon satisfaction of all conditions specified in the written instrument evidencing the Performance Share Award (or in a performance plan adopted by the Administrator).

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a participant's rights in all Performance Share Awards shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

(d) Acceleration, Waiver, Etc. At any time prior to the participant's termination of employment (or other business relationship) by the Company and its Subsidiaries, the

Administrator may in its sole discretion accelerate, waive or, subject to Section 14, amend any or all of the goals, restrictions or conditions imposed under any Performance Share Award.

SECTION 10. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right is an Award

entitling the recipient to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the recipient. A Dividend Equivalent Right may be granted hereunder to any participant as a component of another Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the grant. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other award.

(b) Interest Equivalents. Any Award under this Plan that is settled in

whole or in part in cash on a deferred basis may provide in the grant for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

(c) Termination. Except as may otherwise be provided by the Administrator

either in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a participant's rights in all Dividend Equivalent Rights or interest equivalents shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 11. OTHER STOCK-BASED AWARDS

(a) Nature of Other Stock-Based Awards. An Other Stock-Based Award

includes other Awards of Stock and other Awards that are valued in whole or in part by reference to, or are otherwise based on, Stock, including without limitation, convertible preferred stock, convertible debentures, exchangeable securities and Awards valued by reference to book value or subsidiary performance. An Other Stock-Based Award may be granted to any participant either along side or in addition to or in tandem with Stock Options, Restricted Stock or Deferred Stock granted under the Plan and/or cash awards made outside of the Plan. Stock (including securities convertible into Stock) issued on a bonus basis under this Section 11 may

be issued for no cash consideration. Stock (including securities convertible into Stock) purchased with a purchase right awarded under this Section 11 shall be priced at at least 25 percent of the Fair Market Value of the Stock on the date of grant. The grant of an Other Stock-Based Award may be subject to restrictions and conditions as the Administrator may determine at the time of grant, including conditions based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives. The grant of an Other Stock-Based Award is contingent on the participant executing the Award agreement. The terms and conditions of each such agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and participants.

(b) Rights as a Stockholder. Until such time as an Other Stock-Based Award

is actually paid out in shares of Stock, a participant shall have no rights as a holder of Stock.

(c) Restrictions. An Other Stock-Based Award may not be sold, assigned,

transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Award agreement.

(d) Termination. Except as may otherwise be provided by the Administrator

in the Award agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a participant's right in his Other Stock-Based Awards that have not vested shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 12. TAX WITHHOLDING -----

(a) Payment by Participant. Each participant shall, no later than the date

as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the participant for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the participant. The Company's obligation to deliver stock certificates to any participant is subject to and conditioned on tax obligations being satisfied by the participant.

(b) Payment in Stock. Subject to approval by the Administrator, a

participant may elect to have such tax withholding obligation satisfied, in whole or in part, by (i) authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due, or (ii) transferring to the Company shares of Stock owned by the participant with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due.

SECTION 13. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

(a) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or

(b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the written policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

SECTION 14. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's written consent. The Administrator may provide substitute Awards at the same or reduced exercise or purchase price or with no exercise or purchase price in a manner not inconsistent with the terms of the Plan, but such price, if any, must satisfy the requirements which would apply to the substitute or amended Award if it were then initially granted under this Plan, but no such action shall adversely affect rights under any outstanding Award without the holder's written consent. If and to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code or ensure that compensation earned under Stock Options granted under the Plan qualifies as performance-based compensation under Section 162(m) of the Code, if and to the extent intended to so qualify, Plan amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 14 shall limit the Board's authority to take any action permitted pursuant to Section 3(c).

SECTION 15. STATUS OF PLAN

Unless the Administrator shall otherwise expressly determine in writing, with respect to the portion of any Award which has not been exercised and any payments in cash, Stock or other consideration not received by a participant, a participant shall have no rights greater than those of a general creditor of the Company. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 16. CHANGE OF CONTROL PROVISIONS

(a) Upon the occurrence of a Change of Control as defined in this Section 16, each Award shall be subject to such terms, if any, with respect to a Change of Control as have been provided by the Administrator either in the Award agreement or, subject to Section 14 above, in writing after the Award agreement is issued.

(b) "Change of Control" shall mean the occurrence of any one of the following events:

(i) any "person," as such term is used in Sections 13(d) and 14(d) of the Act (other than the Company, any of its Subsidiaries, Mortimer B. Zuckerman, Edward H. Linde, any "affiliate" or "associate" (as such terms are defined in Rule 12b-2 under the Act) of Mortimer B. Zuckerman or Edward H. Linde, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 25 percent or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Company's Board of Directors ("Voting Securities") (other than as a result of an acquisition of securities directly from the Company); provided that for purposes of determining the "beneficial ownership" (as such term is defined in Rule 13d-3 under the Act) of any "group" of which Mortimer B. Zuckerman, Edward H. Linde or any of their affiliates or associates is a member (each such entity or individual, a "Related Party"), there shall not be attributed to the "beneficial ownership" (as such term is defined in Rule 13d-3 under the Act) of such group any shares beneficially owned by any Related Party; or

(ii) persons who, as of the effective date of the Company's initial public offering of Stock, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason, including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board, provided that any person becoming a director of the Company subsequent to such date shall be considered an Incumbent Director if such person's election was approved by or such person was nominated for election by either (A) a vote of at least two-thirds of the Incumbent Directors or (B) a vote of at least a majority of the Incumbent Directors who are members of a nominating committee comprised, in the majority, of Incumbent Directors; or

(iii) the stockholders of the Company shall approve (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, "beneficially own" (as such term is defined in Rule 13d-3 under the Act), directly or

indirectly, shares representing in the aggregate 60 percent or more of the voting shares of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), (B) any sale, lease, exchange or other transfer to an unrelated party (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company or (C) any plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of shares of Voting Securities beneficially owned by any person (as defined in the foregoing clause (i)) to 25 percent or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if such person shall

thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company), then a "Change of Control" shall be deemed to have occurred for purposes of the foregoing clause (i).

SECTION 17. GENERAL PROVISIONS

(a) No Distribution; Compliance with Legal Requirements. The Administrator

may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

No shares of Stock shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange or similar requirements have been satisfied. The Administrator may require the placing of such stop-orders and restrictive legends on certificates for Stock and Awards as it deems appropriate.

(b) Delivery of Stock Certificates. Stock certificates to be delivered to

participants under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the participant, at the participant's last known address on file with the Company.

(c) Other Compensation Arrangements; No Employment Rights. Nothing

contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards shall not confer upon any employee any right to continued employment with the Company or any Subsidiary and shall not interfere in any way with the right of the Company or any Subsidiary to terminate the employment of any of its employees at any time.

(d) Trading Policy Restrictions. Option exercises and other Awards under

the Plan shall be subject to such Company insider-trading-policy-related restrictions, terms and conditions as may be established by the Administrator, or in accordance with policies set by the Administrator, from time to time.

SECTION 18. EFFECTIVE DATE OF PLAN

This Plan shall become effective upon approval by the holders of a majority of the votes cast at a meeting of stockholders at which a quorum is present or by a unanimous written consent of stockholders. Subject to such approval by the stockholders and to the requirement that no Stock may be issued hereunder prior to such approval, Stock Options and other Awards may be granted hereunder on and after adoption of this Plan by the Board.

SECTION 19. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: June 11, 1997

DATE APPROVED BY STOCKHOLDERS: June 11, 1997

FORM OF EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the ___ day of June, 1997 by and between _____ residing at _____, _____, _____ (hereinafter referred to as "Employee") and Boston Properties, Inc., a Delaware corporation, with a principal place of business at 8 Arlington Street, Boston, Massachusetts 02116 (hereinafter referred to as the "Company").

1. TERM. The term of this Agreement shall commence on the closing of the initial public offering (the "IPO") of the Company's common stock and shall terminate on the third anniversary of the closing of the IPO (the "Term"). The Term shall be extended automatically for additional one-year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other not less than thirty (30) days prior to the expiration of the Term (as extended by any Renewal Term). (The period of Employee's employment hereunder within the Term (as extended by any Renewal Term) is herein referred to as the "Employment Period").

2. EMPLOYMENT/DUTIES.

(a) During the Employment Period, Employee shall be employed in the business of the Company and its affiliates. Employee shall serve as an officer of the Company with the title _____ and, upon the reasonable request of the Board of Directors of the Company, as director and/or officer of any of its affiliates. Employee's duties and authority shall be commensurate with his title and position with the Company.

(b) Employee agrees to his employment as described in this Paragraph 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties hereunder, except as otherwise approved by the Board of Directors. Notwithstanding the foregoing, nothing herein shall be interpreted to preclude Employee from (i) engaging in Minority Interest Passive Investments (as defined below), including Minority Interest Passive Investments in, or relating to the ownership, development, operation, management, or leasing of, commercial real estate properties, or (ii) participating as an officer or director of, or advisor to, any charitable or other tax exempt organization; PROVIDED that such activities and related duties and pursuits do not restrict Employee's ability to fulfill his obligations as an officer and employee of the Company as set forth herein.

Engaging in a "MINORITY INTEREST PASSIVE INVESTMENT" means acquiring, holding, and exercising the voting rights associated with an investment made through (i) the purchase of securities (including partnership interests) that represent a non-controlling,

minority interest in an entity or (ii) the lending of money, in either case with the purpose or intent of obtaining a return on such investment but without management by Employee of the property or business to which such investment directly or indirectly relates and without any business or strategic consultation by Employee with such entity.

3. COMPENSATION.

(a) BASE SALARY. The Company shall pay Employee an annual salary of _____ during the Employment Period ("Base Salary").

Base Salary shall be payable in accordance with the Company's normal business practices (including tax withholding), but in no event less frequently than monthly. Employee's Base Salary shall be reviewed no less frequently than annually by the Company and may be increased but not decreased during the Employment Period.

(b) BONUSES. Commencing on the first annual compensation

determination date established by the Company during the Employment Period and on each such date thereafter, the Company shall review the performance of the Company and of Employee during the prior year, and the Company may provide Employee with additional compensation as a bonus if the Board of Directors, or any compensation committee thereof, in its discretion, determines that Employee's contribution to the Company warrants such additional payment and the Company's anticipated financial performance for the present period permits such payment.

4. BENEFITS.

(a) MEDICAL/DENTAL INSURANCE. During the Employment Period, Employee

shall be entitled to participate in any and all medical and dental insurance plans as in effect from time to time for senior executives of the Company and based on Employee's Base Salary. Such participation shall be subject to (i) the terms of the applicable plan documents, (ii) generally applicable policies of the Company, and (iii) the discretion of the Board of Directors of the Company or any administrative or other committee provided for in, or contemplated by, such plan.

(b) LIFE INSURANCE/DISABILITY INSURANCE. During the Employment

Period, the Company shall provide Employee with such life and/or disability insurance as the Company may from time to time make available to senior executives of the Company.

(c) EXPENSES. The Company shall promptly reimburse Employee for all reasonable business expenses incurred by Employee during the Employment Period in accordance with the practices of the Company for senior executives of the Company, as in effect from time to time.

(d) VACATION. During the Employment Period, Employee shall receive paid vacation annually in accordance with terms determined for such Employee by the Company, but in no event shall Employee receive less than four weeks of paid vacation per year.

(e) STOCK OPTIONS. During the Employment Period, Employee shall be entitled to stock options in an amount to be determined by the Board of Directors, or any compensation committee thereof, in its discretion under the Boston Properties, Inc. 1997 Stock Option and Incentive Plan (the "Stock Option Plan").

(f) AUTOMOBILE. During the Employment Period, the Company shall provide Employee with a reasonable automobile allowance, such amount to be determined in the Company's sole discretion and to be paid to Employee no less frequently than monthly.

(g) OTHER BENEFITS. During the Employment Period, the Company shall provide to Employee such other benefits, including the right to participate in such retirement or pension plans, as are made generally available to employees of the Company from time to time. Such participation shall be subject to (i) the terms of the applicable plan documents, (ii) generally applicable policies of the Company, and (iii) the discretion of the Board of Directors of the Company or any administrative or other committee provided for in, or contemplated by, such plan.

5. INDEMNIFICATION. To the full extent permitted by law and subject to the Company's Certificate of Incorporation and Bylaws, the Company shall indemnify Employee with respect to any actions commenced against Employee in his capacity as a director or officer or former director or officer of the Company, or any affiliate thereof for which he may serve in such capacity, and the Company shall advance on a timely basis any expenses incurred in defending such actions. The obligation to indemnify hereunder shall survive the termination of this Agreement. The Company agrees to use its best efforts to secure and maintain directors' and officers' liability insurance with respect to Employee.

6. COMPANY AUTHORITY/POLICIES. Employee agrees to observe and comply with the rules and regulations of the Company as adopted by its Board of Directors respecting the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board of Directors.

7. RECORDS/NONDISCLOSURE/COMPANY POLICIES.

(a) GENERAL. All records, financial statements and similar documents obtained, reviewed or compiled by Employee in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Employee shall have no rights in such documents upon any termination of this Agreement.

(b) CONFIDENTIAL INFORMATION. Employee will not disclose to any person or entity (except as required by applicable law, the rules of the New York Stock Exchange, or otherwise in connection with the performance of his duties and responsibilities hereunder), or use for his own benefit or gain, any confidential information of the Company obtained by him incident to his employment with the Company. Employee shall take all reasonable steps to safeguard any confidential information and to protect such confidential information against disclosure, misuse, loss, or theft. The term "CONFIDENTIAL INFORMATION" includes, without limitation, financial information, business plans, prospects, and opportunities which have been discussed or considered by the management of the Company, but does not include any information which has become part of the public domain by means other than Employee's non-observance of his obligations hereunder.

This Paragraph 7 shall survive the termination of this Agreement.

8. TERMINATION/SEVERANCE.

(a) GENERAL.

(i) AT WILL EMPLOYMENT. Employee's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without cause, at the option of the Company, subject only to the severance obligations under this Paragraph 8.

(ii) NOTICE OF TERMINATION. Except for termination as specified in Subparagraph 8(b), any termination of Employee's employment by the Company or any such termination by Employee shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "NOTICE OF TERMINATION" shall mean a notice which shall indicate the specific termination provision hereunder relied upon by the terminating party.

(iii) DATE OF TERMINATION. "DATE OF TERMINATION" shall mean: (A) if Employee's employment is terminated by his death, the date of his death; (B) if Employee's employment is terminated on account of disability under Subparagraph 8(c), the date on which Notice of Termination is given; (C) if Employee's employment is terminated by the Company under Subparagraph 8(d), thirty (30) days after the date on which a Notice of Termination is given; (D) if Employee's employment is terminated by the Company under

Subparagraph 8(e)(i), ninety (90) days after the date on which a Notice of Termination is given; and (E) if Employee's employment is terminated by Employee under Subparagraph 8(e)(ii) or 8(f), thirty (30) days after the date on which a Notice of Termination is given.

(b) DEATH. Employee's employment hereunder shall terminate upon his death. If Employee's employment terminates by reason of his death, the Company shall, within ninety (90) days of death, pay in a lump sum amount to such person as Employee shall designate in a notice filed with the Company or, if no such person is designated, to Employee's estate, Employee's accrued and unpaid Base Salary to his date of death, plus his accrued and unpaid bonus under Paragraph 3. All unvested stock options and stock-based grants shall immediately vest in Employee's estate or other legal representatives and become exercisable or nonforfeitable, and Employee's estate or other legal representatives shall have one (1) year from the Date of Termination, or remaining option term, if earlier, to exercise the stock options. For a period of one (1) year following the Date of Termination, the Company shall pay such health insurance premiums as may be necessary to allow Employee's spouse and dependents to receive health insurance coverage substantially similar to the coverage they received prior to the Date of Termination. In addition to the foregoing, any payments to which Employee's spouse, beneficiaries, or estate may be entitled under any employee benefit plan shall also be paid in accordance with the terms of such plan or arrangement. Such payments, in the aggregate, shall fully discharge the Company's obligations hereunder.

(c) DISABILITY. If, as a result of Employee's incapacity due to physical or mental illness, Employee shall have been absent from his duties hereunder on a full-time basis for one hundred eighty (180) calendar days in the aggregate in any twelve (12) month period, the Company may terminate Employee's employment hereunder. During any period that Employee fails to perform his duties hereunder as a result of incapacity due to physical or mental illness, Employee shall continue to receive his accrued and unpaid Base Salary and accrued and unpaid bonus under Paragraph 3, until Employee's employment is terminated due to disability in accordance with this Subparagraph (c) or until Employee terminates his employment in accordance with Subparagraph (e)(ii) or (f), if earlier. All unvested stock options and stock-based grants shall immediately vest and become exercisable or nonforfeitable, and Employee shall have one (1) year from the Date of Termination, or remaining option term, if earlier, to exercise the stock options. For a period of one (1) year following the Date of Termination, the Company shall pay such health insurance premiums as may be necessary to allow Employee, Employee's spouse and dependents to receive health insurance coverage substantially similar to the coverage they received prior to the Date of Termination. In addition to the foregoing, any payments to which Employee may be entitled under any employee benefit plan shall also be paid in accordance with the terms of such plan or arrangement. Such payments, in the aggregate, shall fully discharge the Company's obligations hereunder.

(d) TERMINATION BY THE COMPANY FOR CAUSE.

(i) At any time during the Employment Period, the Company may terminate Employee's employment hereunder for Cause. "CAUSE" shall mean: (A) gross negligence or willful misconduct by Employee in connection with the performance of his material duties hereunder; (B) a breach by Employee of any of his material duties hereunder (for reasons other than physical or mental illness) and the failure of Employee to cure such breach within thirty (30) days after written notice thereof by the Company; (C) conduct by Employee against the material best interests of the Company or a material act of common law fraud against the Company or its affiliates or employees; or (D) conviction of Employee of a felony and such conviction has a material adverse affect on the interests or reputation of the Company.

(ii) If Employee's employment is terminated by the Company for Cause, then the Company shall, through the Date of Termination, pay Employee his accrued and unpaid Base Salary. Thereafter, the Company shall have no further obligations to Employee except as otherwise provided hereunder; PROVIDED that any such termination shall not adversely affect or alter Employee's rights under any employee benefit plan of the Company in which Employee, at the Date of Termination, has a vested interest, unless otherwise provided in such employee benefit plan or any agreement or other instrument attendant thereto. Notwithstanding the foregoing and in addition to whatever other rights or remedies the Company may have at law or in equity, all stock options and other stock-based grants held by Employee, whether vested or unvested as of the Date of Termination, shall immediately expire on the Date of Termination if Employee's employment is terminated by the Company for Cause.

(e) TERMINATION BY THE COMPANY WITHOUT CAUSE OR BY EMPLOYEE FOR GOOD REASON.

(i) At any time during the Employment Period, the Company may terminate Employee's employment hereunder without Cause if such termination is approved by the Board of Directors. Any termination by the Company of Employee's employment hereunder which does not (A) constitute a termination for Cause under Subparagraph (d)(i), (B) result from the death or disability of the Employee under Subparagraph (b) or (c), or (C) result from the expiration of the Term (as extended by any Renewal Term), shall be deemed a termination without Cause.

(ii) At any time during the Employment Period, Employee may terminate his employment hereunder for Good Reason. "GOOD REASON" shall mean: (A) a substantial adverse change, not consented to by Employee, in the nature or scope of Employee's responsibilities, authorities, powers, functions, or duties under this Agreement or (B) a breach by the Company of any of its material obligations hereunder and the failure of the Company to cure such breach within thirty (30) days after written notice thereof by Employee.

(iii) If Employee's employment is terminated during the Employment Period by the Company without Cause or if Employee terminates his employment during the Employment Period for Good Reason, then the Company shall, through the Date of Termination, pay Employee his accrued and unpaid Base Salary and his accrued and unpaid bonus under Paragraph 3. In addition, subject to signing by Employee of a general release of claims in a form and manner satisfactory to the Company,

(A) the Company shall pay Employee an amount (the "Severance Amount") equal to the sum of (x) his Base Salary under Subparagraph 3(a) payable for the period in which the noncompetition provision of Paragraph 9 is in effect or would have been in effect but for the last subparagraph of Paragraph 9 (the "Noncompetition Period") and (y) the amount of his cash bonus, if any, received in respect of the immediately preceding year under Subparagraph 3(b) multiplied by the number of full and fractional calendar years during the Noncompetition Period. Notwithstanding the foregoing, in the event the Company, in its sole discretion, elects to waive the noncompetition provision of Paragraph 9, the Company shall not be obligated to pay or continue to pay a Severance Amount in excess of the sum of (xx) Employee's annual Base Salary under Subparagraph 3(a) and (yy) the amount of his cash bonus, if any, received in respect of the immediately preceding year under Subparagraph 3(b). The Severance Amount shall be paid in monthly installments over a 12-month period, or if longer, the Noncompetition Period; and

(B) Employee shall receive all rights and benefits granted or in effect with respect to Employee under the Stock Option Plan and agreements with Employee pursuant thereto. The vesting and exercise of any stock options and the forfeitability of any stock-based grants held by Employee shall be governed by the terms of the Stock Option Plan and the related agreements between Employee and the Company.

(f) VOLUNTARY TERMINATION BY EMPLOYEE. At any time during the Employment Period, Employee may terminate his employment hereunder for any reason, including, but not limited to, Good Reason in accordance with Subparagraph (e)(ii). If Employee's employment is terminated by Employee other than for Good Reason, then the Company shall, through the Date of Termination, pay Employee his accrued and unpaid Base Salary. Thereafter, the Company shall have no further obligations to Employee except as otherwise expressly provided hereunder; PROVIDED any such termination shall not adversely affect or alter Employee's rights under any employee benefit plan of the Company in which Employee, at the Date of Termination, has a vested interest, unless otherwise provided in such employee benefit plan or any agreement or other instrument attendant thereto.

(g) NO MITIGATION. Without regard to the reason for the termination of Employee's employment hereunder, Employee shall be under no obligation to mitigate damages with respect to such termination under any circumstances and in the event Employee

is employed or receives income from any other source, there shall be no offset against the amounts due from the Company hereunder.

9. NONCOMPETITION. Because Employee's services to the Company are special and because Employee has access to the Company's confidential information, Employee covenants and agrees that during the Employment Period and until the later of (i) the end of the Term and (ii) the end of a one-year period following the termination of Employee's employment with the Company for any reason, Employee shall not, without the prior written consent of the Company (which shall be authorized by approval of the Board of Directors of the Company, including the approval of a majority of the independent Directors of the Company), directly or indirectly:

(a) engage, participate or assist in, either individually or as an owner, partner, employee, consultant, director, officer, trustee, or agent of any business that engages or attempts to engage in, directly or indirectly, the acquisition, development, construction, operation, management, or leasing of any commercial real estate property in any of the Company's Markets (as hereinafter defined) at the time of Employee's termination of employment;

(b) intentionally interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between the Company or its affiliates and any tenant, supplier, contractor, lender, employee, or governmental agency or authority; or

(c) call upon, compete for, solicit, divert, or take away, or attempt to divert or take away any of the tenants or employees of the Company or its affiliates, either for himself or for any other business, operation, corporation, partnership, association, agency, or other person or entity.

"Market" as used herein means an area covering a 25 mile radius around (x) any property or land owned by the Company, under development by the Company or with respect to which the Company has an agreement or option to acquire a property, development or land or (y) any property or development for which the Company provides third party development or management services; PROVIDED that for any such property, development or land located in New York City, no such radial area shall extend beyond New York City.

This Paragraph 9 shall not be interpreted to prevent Employee from engaging in Minority Interest Passive Investments or any other activity permitted under Subparagraph 2(b). This Paragraph 9 shall survive the termination of this Agreement.

Notwithstanding anything to the contrary herein, the noncompetition provision of this

Paragraph 9 shall not apply if Employee's employment terminates after a Change of Control. For this purpose a "Change of Control" shall be deemed to occur if persons who, as of the effective date of the Company's IPO, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason, including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board, provided that any person becoming a director of the Company subsequent to such date whose election was approved by a vote of at least two-thirds of the Incumbent Directors or whose nomination for election was approved by a nominating committee comprised of Incumbent Directors shall, for purposes of this Agreement, be considered an Incumbent Director.

10. CONFLICTING AGREEMENTS. Employee hereby represents and warrants that the execution of this Agreement and the performance of his obligations hereunder will not breach or be in conflict with any other agreement to which he is a party or is bound, and that he is not now subject to any covenants against competition or similar covenants which would affect the performance of his obligations hereunder.

11. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice for the parties are as shown above, or as subsequently modified by written notice.

12. MISCELLANEOUS. This Agreement (i) constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, (ii) may not be assigned by Employee without the prior written consent of the Company, and (iii) may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

13. AMENDMENT. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective.

14. ARBITRATION; OTHER DISPUTES. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in Boston, Massachusetts, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered in any court having jurisdiction. Notwithstanding the above, the Company shall be entitled to seek a restraining order or injunction in any court of competent jurisdiction to prevent any continuation of any violation of Paragraph 7 or 9 hereof.

In the event that the Company terminates Employee's employment for Cause under Subparagraph 8(d)(i) and Employee contends that Cause did not exist, then the Company's only obligation shall be to submit such claim to arbitration and the only issue before the arbitrator will be whether Employee was in fact terminated for Cause. If the arbitrator determines that Employee was not terminated for Cause by the Company, then the only remedies that the arbitrator may award are (i) the Severance Amount specified in Subparagraph 8(e)(iii)(A), (ii) the costs of arbitration, (iii) Employee's attorneys' fees, and (iv) the acceleration of Employee's stock options in accordance with Subparagraph 8(e)(iii)(B). If the arbitrator finds that Employee was terminated for Cause, the arbitrator will be without authority to award Employee anything, and the parties will each be responsible for their own attorneys' fees, and they will divide the costs of arbitration equally. Furthermore, should a dispute occur concerning Employee's mental or physical capacity as described in Subparagraph 8(c), a doctor selected by Employee and a doctor selected by the Company shall be entitled to examine Employee. If the opinion of the Company's doctor and Employee's doctor conflict, the Company's doctor and Employee's doctor shall together agree upon a third doctor, whose opinion shall be binding. This Paragraph 14 shall survive the termination of this Agreement.

15. LITIGATION AND REGULATORY COOPERATION. During and after Employee's employment, Employee shall reasonably cooperate with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while Employee was employed by the Company; PROVIDED that such cooperation shall not materially and adversely affect Employee or expose Employee to an increased probability of civil or criminal litigation. Employee's cooperation in connection with such claims or actions shall include, without limitation, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after Employee's employment, Employee also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while Employee was employed by the Company. The Company shall also provide Employee with compensation on an hourly basis calculated at his final base compensation rate for requested litigation and regulatory cooperation that occurs after his termination of employment, and reimburse Employee for all costs and expenses incurred in connection with his performance under this Paragraph 15, including, without limitation, reasonable attorneys' fees and costs.

16. EFFECTIVENESS. This Agreement is conditioned and shall become effective only upon the completion of the IPO.

17. SEVERABILITY. If any provision of this Agreement shall to any extent be held void or unenforceable (as to duration, scope, activity, subject or otherwise) by a court of competent jurisdiction, such provision shall be deemed to be modified so as to constitute a

provision conforming as nearly as possible to the original provision while still remaining valid and enforceable. In such event, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is deemed to be void or unenforceable) shall not be affected thereby. Each other provision of this Agreement, unless specifically conditioned on the voided aspect of such provision, shall remain valid and enforceable to the fullest extent permitted by law; any other provisions of this Agreement that are specifically conditioned on the voided aspect of such invalid provision shall also be deemed to be modified so as to constitute a provision conforming as nearly as possible to the original provision while still remaining valid and enforceable to the fullest extent permitted by law.

18. GOVERNING LAW. This Agreement shall be construed and regulated in all respects under the laws of the State of Delaware.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

BOSTON PROPERTIES, INC.

By:
Name: David G. Gaw
Title: Chief Financial Officer

May 23, 1997

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of this ___ day of ___, 1997 by and between Boston Properties, Inc., a Delaware corporation (the "Company"), Boston Properties Limited Partnership, a Delaware limited partnership (the "Operating Partnership"), Boston Properties Management, Inc., a Delaware corporation (the "Development and Management Company," and, together with the Company and the Operating Partnership, "Indemnitors") and ----- ("Indemnitee").

WHEREAS, Indemnitors desire to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as directors and/or executive officers of one or more of such Indemnitors; and

WHEREAS, Indemnitors recognize Indemnitee's need for protection against personal liability, and in order to assure Indemnitee's continued service to one or more of such Indemnitors, Indemnitors wish to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee.

NOW, THEREFORE, Indemnitors and Indemnitee hereby agree as follows:

1. Indemnification.

(a) Third-Party Proceedings. Indemnitors shall indemnify Indemnitee

to the full extent permitted now or hereafter by applicable law, as from time to time amended, subject to the exceptions provided in Section 8 of this Agreement. Without limiting the foregoing but subject to the provisions of this Agreement, Indemnitors shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of Indemnitors) by reason of Indemnitee's past, present or future service as a director or executive officer of any Indemnitor, or, at any such Indemnitor's request, of another enterprise or entity in which any Indemnitor had, directly or indirectly, an interest at the time of such service, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by Indemnitors, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee in connection with investigating, preparing for, defending or settling such action or proceeding. Indemnitors hereby agree to indemnify Indemnitee's spouse (whether by statute or at common law and without regard to the location of the governing jurisdiction) and children (including by way of adoption) as express third-party beneficiaries hereunder to the same extent and subject to the same limitations applicable to Indemnitee hereunder for claims arising out of the status of such person as a spouse or child of Indemnitee, including claims seeking damages from marital property (including community property) or property held by Indemnitee

and such spouse or property transferred to such spouse or child. The indemnification provided under this Agreement may not be amended, modified or limited in a manner adverse to the rights of Indemnitee without the consent of Indemnitee, and Indemnitee shall be deemed to be serving in his capacity as an officer and/or director of any Indemnitor in reliance on the terms of this Agreement.

(b) Proceedings By or in the Right of Indemnitors. Subject to the

provisions of this Agreement, Indemnitors shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of Indemnitors or any subsidiary of Indemnitors to procure a judgment in its favor by reason of Indemnitee's past, present or future service as a director or officer of any Indemnitor, or, at any such Indemnitor's request, of another enterprise or entity in which any Indemnitor had, directly or indirectly, an interest at the time of such service, against expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement, in each case to the extent actually and reasonably incurred by Indemnitee in connection with investigating, preparing for, defending or settling such action or proceeding.

2. Expenses; Indemnification Procedure.

(a) Advancement of Expenses. Indemnitors shall advance all expenses

incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in Section 1(a) or (b) hereof (but not amounts actually paid in settlement of any such action or proceeding). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined, in accordance with Section 2(c), that Indemnitee is not entitled to be indemnified by Indemnitors as authorized hereby. The advances to be made hereunder shall be paid by Indemnitors to Indemnitee within twenty (20) days following delivery of a written request therefor by Indemnitee to Indemnitors.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall, as a

condition precedent to his right to be indemnified under this Agreement, give Indemnitors notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Such notice shall contain the written affirmation of Indemnitee that the standard of conduct necessary for indemnification hereunder has been satisfied. Notice to any Indemnitor shall be directed to the President and Chief Operating Officer of the Company in the manner provided in Section 13 hereof. Indemnitee shall give each Indemnitor such information and cooperation as it may reasonably require and as shall be within Indemnitee's power. A delay in giving notice under this Section 2(b) shall invalidate the Indemnitee's right to indemnity under this Agreement only to the extent that such delay prejudices the defense of the claim or the availability to Indemnitors of insurance coverage for such claim.

(c) Procedure. Any indemnification provided for in Section 1 shall be

made no later than forty-five (45) days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under, respectively, any provision of the Company's Certificate of Incorporation or Bylaws, the Operating Partnership's Agreement of Limited Partnership, or the Development and Management Company's Certificate of Incorporation or Bylaws, providing for indemnification, is not paid in full by the applicable Indemnitor within forty-five (45) days after a written request for payment thereof that complies with the requirements of this Agreement has first been received by such Indemnitor, Indemnitee may, but need not, at any time thereafter bring an action against such Indemnitor to recover the unpaid amount of the claim and, subject to Section 12 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct that made it permissible under applicable law for such Indemnitor to indemnify Indemnitee for the amount claimed, but Indemnitee shall be entitled to receive interim payments of expenses pursuant to Subsection 2(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if such Indemnitor contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of such Indemnitor (including its Board of Directors or general partner, as applicable, any committee or subgroup of the Board of Directors, independent legal counsel or its equity holders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by such Indemnitor (including its Board of Directors or general partner, as applicable, any committee or subgroup of the Board of Directors, independent legal counsel or its equity holders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) Notice to Insurers. If, at the time of the receipt of a notice of

a claim pursuant to Section 2(b) hereof, Indemnitors have directors' and officers' liability insurance in effect, Indemnitors shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. Indemnitors shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) Selection of Counsel. In the event Indemnitors shall be obligated

under Section 2(a) hereof to pay the expenses of any proceeding against Indemnitee, Indemnitors, unless Indemnitee determines that a conflict of interest exists between the Indemnitee and Indemnitors with respect to a particular claim, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, upon the delivery to Indemnitee of written notice of its election so to do. After

delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by Indemnitors, Indemnitors will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding; provided that (i) Indemnitee

shall have the right to employ his own separate counsel in any such proceeding in addition to or in place of any counsel retained by Indemnitors on behalf of Indemnitee at Indemnitee's expense, and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by Indemnitors, (B) Indemnitee shall have concluded that there may be a conflict of interest between Indemnitors and Indemnitee in the conduct of any such defense, or (C) Indemnitors shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of Indemnitors.

3. Nonexclusivity of Indemnification Rights. The indemnification

provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation or Bylaws, the Operating Partnership's Agreement of Limited Partnership, the Development and Management Company's Certificate of Incorporation or Bylaws, any agreement, any vote of equity holders or disinterested Directors, applicable law, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office.

4. Partial Indemnification. If Indemnitee is entitled under any

provision of this Agreement to indemnification by Indemnitors for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action or proceeding, but not, however, for the total amount thereof, Indemnitors shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

5. Mutual Acknowledgment. Both Indemnitors and Indemnitee acknowledge

that in certain instances, federal law or applicable public policy may prohibit Indemnitors from indemnifying their respective directors and officers under this Agreement or otherwise. Indemnitee understands and acknowledges that Indemnitors have undertaken and may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of Indemnitors' right under public policy to indemnify Indemnitee.

6. Directors' and Officers' Liability Insurance. The Company currently

intends to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the directors and officers of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement, subject to its good faith determination from time to time whether or not it is practicable for the Company to obtain or maintain such insurance. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of directors' and officers' liability

insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company.

7. Severability. Nothing in this Agreement is intended to require or

shall be construed as requiring Indemnitors to do or fail to do any act in violation of applicable law. Indemnitors' inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then Indemnitors shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. Exceptions. Any other provision herein to the contrary

notwithstanding, Indemnitors shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee in the following circumstances:

(a) Excluded Acts. Each Indemnitor shall not be obligated to

indemnify Indemnitee for any acts or omissions or transactions from which a person serving in Indemnitee's capacity with respect to such Indemnitor may not be relieved of liability under the jurisdiction of such Indemnitor's organization;

(b) Claims Initiated by Indemnitee. Indemnitors shall not be

obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law in accordance with Section 1(b) hereof, but such indemnification or advancement of expenses may be provided by any Indemnitor in specific cases if such Indemnitor's Board of Directors or general partner, as applicable, has approved the initiation or bringing of such suit;

(c) Insured Claims. Indemnitors shall not be obligated to indemnify

Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) to the extent that Indemnitee has otherwise actually received payment, or payments have been made on behalf of Indemnitee, with respect to such expense or liability (under any insurance policy, provision of the Company's Certificate of Incorporation or Bylaws, the Operating

Partnership's Agreement of Limited Partnership, the Development and Management Company's Certificate of Incorporation or Bylaws, or otherwise) of amounts otherwise indemnifiable hereunder; or

(d) Claims Under Section 16(b). Indemnitors shall not be obligated to

indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. Construction of Certain Phrases.

(a) For purposes of this Agreement, references to "Indemnitors" shall

include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "another enterprise"

or "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an

employee benefit plan; and references to "serving at the request of Indemnitors" shall include any service as a director, officer, employee or agent of Indemnitors which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries.

10. Counterparts. This Agreement may be executed in one or more

counterparts, each of which shall constitute an original and all of which together shall constitute a single agreement.

11. Successors and Assigns. This Agreement shall be binding upon

Indemnitors and their respective successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

12. Attorneys' Fees. In the event that any action is instituted by

Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent

jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of Indemnitors under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

13. Notice. All notices, requests, demands and other communications

under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to any party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

14. Choice of Law. This Agreement shall be governed by and its

provisions construed in accordance with the laws of the State of Delaware as applied to contracts between Delaware residents entered into and to be performed entirely within the State of Delaware.

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

BOSTON PROPERTIES, INC.

By: _____

Name:
Title:

Address:
8 Arlington Street
Boston, MA 02116

BOSTON PROPERTIES LIMITED
PARTNERSHIP

By: Boston Properties, Inc.,
as General Partner

By: _____

Name:
Title:

Address:
8 Arlington Street
Boston, MA 02116

BOSTON PROPERTIES MANAGEMENT, INC.

By: _____

Name:
Title:

Address:
8 Arlington Street
Boston, MA 02116

AGREED TO AND ACCEPTED:

INDEMNITEE:

Address:

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT is entered into as of the ____ day of April, 1997 (this "Amendment"), by and between LEXREAL ASSOCIATES, a New York general partnership ("Borrower") and MITSUI SEIMEI AMERICA CORPORATION, a New York corporation ("Lender").

R E C I T A L S:

WHEREAS, Lender and Borrower entered into that certain Loan Agreement, dated April 6, 1990 (as amended by that certain First Amendment to Loan Agreement, dated as of July 19, 1990, by and between Lender and Borrower, the "Loan Agreement"), pursuant to which Lender agreed to make a loan to Borrower in the aggregate principal sum of Four Hundred Ten Million Dollars (\$410,000,000) (the "Loan"). All capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Loan Agreement.

WHEREAS, on July 19, 1990, in connection with the Loan, Borrower executed and delivered to Lender various other loan documents, including, without limitation, (i) that certain Amended and Restated Promissory Note in the original principal sum of Two Hundred Sixty-Seven Million Dollars (\$267,000,000) (the "Initial Note"), (ii) that certain Supplemental Note, in the original principal sum of One Hundred Forty-Three Million Dollars (\$143,000,000) (the "Supplemental Note"), (iii) that certain Amended and Restated Mortgage and Security Agreement, made by and between Borrower and Lender, encumbering the Project (the "Initial Mortgage"), (iv) that certain Amended and Restated Supplemental Mortgage and Security Agreement, made by and between Borrower and Lender, encumbering the Project (the

"Supplemental Mortgage"), and (v) that certain Option Agreement (the "Option Agreement"), by and among Lender, Borrower, 599 Lexington Avenue Associates Limited Partnership ("599 Lex"), 599 Lexington Corp. ("Lexcorp") and Linlex, Incorporated ("Linlex").

WHEREAS, Borrower and certain Affiliates of Borrower desire to form a real estate investment trust (the "REIT") and to offer for sale to the public shares of such REIT in an initial public offering (the "IPO"), and, in connection with the IPO, to make a partial prepayment of the Loan and to transfer 99% of its partnership interests to a Delaware limited partnership (the "Operating Partnership") and 1% of its partnership interests to an Affiliate of the Operating Partnership in exchange for Operating Partnership Units ("OPUs") in the Operating Partnership. On the date of consummation of the IPO, the REIT shall become the sole general partner of the Operating Partnership and shall control (but not wholly-own) the Operating Partnership through its ownership of OPUs in the Operating Partnership. Upon such transfer of partnership interests in the Borrower, the Borrower intends to convert its status from a New York general partnership to a New York limited partnership in which the Operating Partnership's interest in the Borrower will be held as a limited partner.

WHEREAS, the Loan Documents prohibit any prepayment of the Loan or the transfer of interests in Borrower to the Operating Partnership and/or any Affiliate of such Operating Partnership.

WHEREAS, in consideration of the amendments contemplated hereby, Lender is willing to accept a partial prepayment of the Loan and to modify the Loan Documents to

permit the partnership transfers described in these Recitals (such partnership transfers being hereinafter referred to as the "Partner Transfers").

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lender and Borrower hereby agree as follows:

1. Partner Transfers and Partial Prepayment.

(a) Despite provisions to the contrary contained in the Loan Agreement and other Loan Documents, but subject in all respects to the Borrower's compliance with the terms and conditions of this Agreement, Lender hereby agrees to permit and consents to the Partner Transfers heretofore described in the Recitals, and agrees to accept a partial prepayment of the Loan, in the manner hereinafter described, in the principal amount of One Hundred Eighty Five Million Dollars (\$185,000,000), plus accrued and unpaid interest and the Premium described in (c) below, provided that, upon consummation of the IPO, the Project is included among the portfolio of properties owned directly or indirectly by the Operating Partnership.

(b) Notwithstanding any provision of the Loan Agreement, including, without limitation Paragraph 3.3(c) thereof, or of any other Loan Document to the contrary, Borrower may, subject to and in accordance with the terms hereof, prepay the Supplemental Note in full and make a partial prepayment of the Initial Note so long as such prepayment occurs on or before October 1, 1997 (the "Outside Date").

(c) Simultaneously with the consummation of the IPO, Borrower shall (i) make a principal prepayment with respect to the Initial Note in the amount of Forty-Two

Million Dollars (\$42,000,000) plus all accrued and unpaid Interest and late charges through and including the Closing Date, (ii) make a prepayment in full of all amounts due under the Supplemental Note, and (iii) pay to Lender a prepayment premium (the "Premium") equal to Five Million Five Hundred Fifty

Thousand Dollars (\$5,550,000). The amounts described in (i) through (iii) shall hereinafter collectively be referred to as the "Prepayment."

(d) Borrower shall provide Lender at least 15 days prior notice as to the anticipated date that the IPO will be consummated and the Prepayment will be made. Borrower shall give Lender at least three business days prior notice as to the final date (the "Closing Date") that the IPO will be consummated and the Prepayment will be made. The Closing Date must occur on or before the Outside Date.

2. Conditions to Prepayment.

(a) Borrower shall make, and Lender shall accept, the Prepayment as provided in Section 1 hereof, upon consummation of the IPO on or before the

Outside Date. The consummation of the IPO and the Prepayment shall occur simultaneously.

(b) Lender shall not be required to accept the Prepayment if, on the Closing Date:

(i) there shall exist an uncured Event of Default by Borrower under this Agreement or the Loan Documents; or

(ii) there shall be pending any proceeding by or against Borrower under the bankruptcy laws of the United States.

Lender shall have the right, in its sole discretion, to waive satisfaction of any condition set forth in this Section 2.

3. Closing Deliveries. At the closing of the Prepayment (the "Closing"),

the following shall occur:

(a) Borrower shall deliver to Lender the following:

(i) an amount equal to the Prepayment in immediately available funds by wire transfer in accordance with instructions provided by Lender no later than one business day before the Closing Date, and receipt shall have been confirmed by Lender;

(ii) original counterparts, signed on behalf of Borrower and all parties other than Lender, of (A) the Amended and Restated Loan Agreement in the form of Exhibit 1 attached hereto and made a party hereof (the "Amended

and Restated Loan Agreement"), (B) the Amended and Restated Option Agreement in the form of Exhibit 2 attached hereto and made a part hereof (the "Amended

and Restated Option Agreement"), (C) the First Amendment to Mortgage in the form of Exhibit 3 attached hereto and made a part hereof (the "Mortgage Amendment"),

(D) the First Amendment to Management Agreement in the form of Exhibit 4

attached hereto and made a part hereof (the "Management Agreement Amendment"),

(E) the Collateral Assignment of Partnership Interest in the form of Exhibit 5

attached hereto and made a part hereof, together with UCC-1 financing statements from the assignors thereunder (the "Collateral Assignment"), (F) the First Amendment to Amended and Restated Promissory Note in the form of Exhibit 6

attached hereto and made a part hereof (the "Note Amendment"), and (G) the First Amendment to the Collateral Assignment of Rents and

Leases in the form of Exhibit 7 attached hereto and made a part hereof (the "Assignment Amendment"), which documents shall become effective on the Closing Date;

(iii) a certificate from an authorized Partner of Borrower certifying to Lender that all conditions set forth in Section 2 hereof have -----
been satisfied in full (or will be satisfied in full simultaneously with the Closing);

(iv) evidence reasonably satisfactory to Lender that all actions contemplated by this Agreement have been approved by all necessary partnership action of Borrower, together with a copy of the Amended and Restated Agreement of Limited Partnership of Borrower which Amended and Restated Agreement shall be substantively identical to the Partnership Agreement, other than for changes necessary as a result of the Partner Transfers and the conversion to a limited partnership;

(v) evidence of payment of all fees and costs for which Borrower is obligated pursuant to the provisions of Section 5 hereof.

(b) Lender shall deliver to Borrower the following:

(i) original counterparts of the Amended and Restated Loan Agreement, Amended and Restated Option Agreement, Collateral Assignment, Mortgage Amendment, Note Amendment, and Assignment Amendment, signed on behalf of Lender, together with evidence reasonably satisfactory to Borrower that all actions contemplated by this Agreement have been approved and authorized by all necessary corporate action of Lender;

(ii) the original Supplemental Note marked "canceled," together with a satisfaction of the Supplemental Mortgage and a release of that certain unrecorded Collateral

Assignment of Leases, Rents and Profits, dated July 19, 1990, and executed in connection with the Supplemental Mortgage.

All actions to be taken pursuant to this Section 3 shall be deemed taken simultaneously and no action shall be deemed taken until all are taken in their entirety.

4. Initial Note. Borrower and Lender agree that upon the partial prepayment of the Initial Note in accordance with the provisions of Section 1 hereof, the outstanding principal amount of the Initial Note shall be Two Hundred Twenty-Five Million Dollars (\$225,000,000). From and after the Closing Date, interest on such principal amount outstanding shall be payable as provided in the Initial Note, as amended by the Note Amendment, at the annual rate of seven percent (7%). Upon receipt by Lender of the Prepayment, there shall be affixed to the Initial Note by the Lender a legend reflecting the partial principal repayment in the sum of Forty-Two Million Dollars (\$42,000,000) and that, as of the date of the Closing Date, the then outstanding principal amount of the Initial Note is Two Hundred Twenty-Five Million Dollars (\$225,000,000).

5. Representations and Warranties.

(a) Borrower represents and warrants to Lender as follows:

(i) Formation, Qualification and Powers. Borrower is a general partnership duly formed and validly existing under the laws of the State of New York. Associates, Lex and Linlex are the only partners of Borrower owning, respectively, 99.9%, .05% and .05% general partnership interests in the Borrower. Borrower has all requisite power and authority to conduct its business, to own, subject to the provisions of the Loan

Documents, lease, mortgage and transfer its properties, and to execute, deliver and perform all of its obligations hereunder. The sole business of Borrower is the ownership and operation of the Project.

(ii) Authority and Compliance with Instruments and Government

Regulations. The execution, delivery and performance by Borrower of this

Agreement has been duly authorized by all necessary action and does not and will not on the Closing Date:

(A) require any consent or approval not heretofore obtained of any Person;

(B) violate any provision of the Partnership Agreement or any Partner's charter documents of formation and organization;

(C) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others, or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to the Collateral;

(D) to Borrower's knowledge, violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award applicable to Borrower; or

(E) result in a breach or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any of the Collateral is bound or affected;

and to the Borrower's knowledge, there does not exist a default by Borrower under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in subparagraphs (D) and (E) above where such default would have a material adverse effect on the ability of Borrower to perform its obligations under this Agreement or which would otherwise be materially adverse to the interests of the Lender with respect to the Prepayment.

(iii) No Governmental Approvals Required. No authorization,

consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is required to authorize, or is otherwise required in connection with, the execution, delivery and performance by Borrower of this Agreement.

(iv) Binding Obligations. To Borrower's knowledge, and in

reliance upon the advice of its legal counsel, this Agreement is the legal, valid and binding obligation of Borrower.

(v) Compliance with Laws. To Borrower's knowledge, Borrower

is in compliance in all material respects with all Laws applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, permits and exemptions from, and has accomplished all filings, registrations or qualifications with, any Governmental Agency necessary for the transaction of its business.

(vi) Litigation. There are no actions, suits or proceedings

pending or, to Borrower's knowledge, overtly threatened against or affecting Borrower or any Partner

before any Governmental Agency which would have a material adverse effect upon Borrower's ability to perform its obligations under this Agreement.

(vii) Misrepresentations. To Borrower's knowledge, no

information furnished in writing to Lender in connection with the execution and delivery of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not materially misleading as of the date given.

(b) Lender represents and warrants to Borrower as follows:

(i) Formation, Qualification and Powers. Lender is a

corporation duly formed and validly existing under the laws of the state of its formation. Lender has all requisite power and authority to conduct its business, to own, lease, mortgage and transfer its properties, and to execute, deliver and perform all of its obligations under this Agreement.

(ii) Authority and Compliance with Instruments. The execution,

delivery and performance by Lender of this Agreement has been duly authorized by all necessary corporate action and does not and on the Closing Date will not:

(A) require any consent or approval not heretofore obtained of any Person; provided, however, that it shall not be a breach of this representation and warranty if, but only if, the failure to obtain any consent or approval does not (i) result in or cause the Closing to be delayed or postponed to a date subsequent to the Closing Date, nor (ii) prevent Lender from performing its obligations hereunder on the Closing Date;

(B) violate any provision of the Lender's documents of formation and organization;

(C) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature upon or with respect to any property now owned or leased or hereafter acquired by Lender;

(D) to its knowledge, violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award having applicability to Lender; or

(E) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture, loan or credit agreement or any other agreement, lease or instrument to which Lender is a party or by which Lender or any property of Lender is bound or affected; and to its knowledge, Lender is not in default in respect under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in subparagraphs (D) and (E) above, where such default would have a material adverse effect on the ability of Lender to perform its obligations under this Agreement.

(iii) Binding Obligations. To its knowledge, and in reliance

upon the advice of its legal counsel, this Agreement is a legal, valid and binding obligation of Lender. The representations and warranties made herein shall be true and correct on the date hereof and on the Closing Date.

6. Fees and Costs. In consideration of Lender's agreements set forth

herein, Borrower agrees to pay any and all reasonable costs and expenses incurred by Lender in connection with the negotiation, execution and delivery of this Agreement and the acceptance

of the Prepayment. Such costs and expenses shall include, but not be limited to, attorneys' fees and costs of Lender's counsel, fees and costs of accountants and other advisors, the investment advisory fee (the "JLW Fee") payable to Jones

Lang Wootton USA ("JLW") pursuant to a separate letter agreement among

Borrower, Lender and JLW, any and all applicable title insurance costs, transfer and recording taxes or fees due and payable in connection with this Agreement and the actions contemplated hereby. Borrower acknowledges and agrees that the sums due hereunder shall be payable by Borrower upon presentation of invoices therefor and, with the exception of the JLW Fee, shall be due and payable whether or not the Prepayment is made. The provisions of this Section shall survive termination or expiration of this Agreement.

7. Failure to Make Prepayment. If Borrower fails to make the Prepayment

because the IPO (of shares of the REIT which includes among its portfolio of properties the Project) does not occur prior to the Outside Date, the parties agree that, on and after the Outside Date, neither party shall have any further rights or obligations hereunder (other than obligations expressly stated to survive this Agreement), this Agreement shall be null and void and the terms and conditions of the Loan Documents shall continue to govern the Loan. The parties agree that, unless Prepayment is made in strict accordance with this Agreement, Borrower shall have no right to transfer any interest in the Partnership or the Project to the Operating Partnership, the REIT or otherwise except as expressly provided in the Loan Agreement, and any such transfer shall constitute an Event of Default. Except as specifically modified hereby, the terms and conditions of the Loan Documents are hereby ratified and confirmed.

8. Default by Borrower. This Agreement shall be deemed a Loan Document,

and any default by Borrower hereunder, including without limitation, any transfer of any interest in the Partnership, the Project or any interest therein other than as expressly permitted by the Loan Documents, or a failure to make the Prepayment upon consummation of the IPO which includes among its portfolio of properties the ownership, directly or indirectly, of the Project, shall constitute an Event of Default under the Loan Agreement.

9. Default by Lender. Upon Lender's failure to accept the Prepayment

made in strict accordance with the terms of this Agreement and permit the Partner Transfers in accordance with the terms of this Agreement, Borrower shall have all remedies available at law and in equity, including without limitation, the right to seek specific performance of Lender's obligation to accept the Prepayment, to permit the Partner Transfers of partnership interests in the Borrower hereinabove described in the Recitals, and all other Lender's obligations on its part required to be performed under this Agreement at the Closing.

10. Confidentiality. The parties hereto agree that the matters set forth

herein are strictly confidential and each agrees, on behalf of itself, its officers, directors, shareholders and Affiliates, to keep the existence and contents of this Agreement in confidence, except for disclosure (a) to its accountants, attorneys and other advisors (collectively, its "Authorized

Representatives") with a need to know, so long as such Authorized

Representatives agree to be bound by the provisions of this Section 10, and (b)

by Borrower, in connection with the IPO as required by law, rule or regulation; provided that any disclosure including the identity of

Lender shall require the prior written consent of Lender (which consent shall not be unreasonably withheld), and (c) by Lender, if required by any Governmental Agency.

11. Governing Law. This Agreement shall be governed by, and construed and

enforced in accordance with, the laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

12. Severability. Any provision of this Agreement that is held to be

inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable. Notwithstanding anything to the contrary contained in the preceding sentence, the rights and obligations of the Borrower and Lender respecting the Prepayment and Partner Transfers shall not be severable; that is to say, the partial prepayment of the Loan is expressly conditioned upon the ability of the Borrower to effect the Partner Transfers, and, concomitantly, the Partner Transfers may not be effected if for any reason the Prepayment is determined to be unenforceable.

13. Time of the Essence. Time is of the essence with respect to the

parties' obligations under this Agreement.

14. Consent to Jurisdiction; Waiver of Trial by Jury. Borrower and Lender

irrevocably and unconditionally (a) agree that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York or the

courts of the United States located in the State of New York; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts.

IN ANY ACTION HEREUNDER, EACH OF BORROWER AND LENDER WAIVES THE RIGHT TO DEMAND TRIAL BY JURY.

15. Successors and Assigns. This Amendment shall be binding upon Lender

and Borrower and their respective successors and assigns.

16. Counterparts. This Agreement may be signed in counterparts, all of

which taken together shall constitute one original.

IN WITNESS WHEREOF, the parties hereto have duly executed and sealed this Amendment as of the day and year first above written.

BORROWER:

LEXREAL ASSOCIATES, a New York general partnership

By: 599 LEXINGTON AVENUE ASSOCIATES
LIMITED PARTNERSHIP, a Massachusetts
limited partnership, Managing General Partner

By: 599 LEXINGTON AVENUE GENERAL
ASSOCIATES, Managing General Partner

By: _____
Mortimer B. Zuckerman, General Partner

By: EHL 1984 LIMITED PARTNERSHIP,
General Partner

By: _____
Edward H. Linde, General Partner

By: 599 LEXINGTON CORP., a Delaware corporation,
General Partner

By: _____
Mortimer B. Zuckerman, President

By: LINLEX, INCORPORATED, a New York
corporation, General Partner

By: _____
Mortimer B. Zuckerman, President

LENDER:

MITSUI SEIMEI AMERICA CORPORATION,
a New York corporation

By: _____
Shinjiro Goto, President

AMENDED AND RESTATED

LOAN AGREEMENT

BETWEEN

LEXREAL ASSOCIATES LIMITED PARTNERSHIP

AND

MITSUI SEIMEI AMERICA CORPORATION

DATED AS OF _____, 1997

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(iii)

AMENDED AND RESTATED LOAN AGREEMENT

This Amended and Restated Loan Agreement (this "Agreement"), dated and effective as of _____, 1997, is entered into by and between MITSUI SEIMEI AMERICA CORPORATION, a corporation organized and existing under the laws of the State of New York ("Lender") and LEXREAL ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the State of New York, being the successor to Lexreal Associates, a New York general partnership; and the term "Borrower", when referenced in this Agreement as a Loan Party to Loan Documents executed prior to the effective date hereof, shall mean Lexreal Associates, a New York general partnership, which has been converted to the New York limited partnership identified herein as Lexreal Associates Limited Partnership.

RECITALS

WHEREAS, on April 6, 1990, Borrower and Lender entered into that certain Loan Agreement (as amended by that certain First Amendment to Loan Agreement, dated as of July 19, 1990, by and between Borrower and Lender, the "Loan Agreement"), pursuant to which Lender made a loan to Borrower in the original aggregate principal sum of Four Hundred Ten Million Dollars (\$410,000,000) (the "Loan").

WHEREAS, on July 19, 1990, in connection with the Loan, Borrower executed and delivered to Lender various other loan documents, including, without limitation, (i) that certain Amended and Restated Promissory Note in the original principal sum of Two Hundred Sixty-Seven Million Dollars (\$267,000,000), made by and between Borrower and Lender (the "Initial Note"), (ii) that certain Supplemental Note, in the original principal sum of One Hundred Forty-Three Million Dollars (\$143,000,000) (the "Supplemental Note"), (iii) that certain Amended and Restated Mortgage and Security Agreement, made by and between Borrower and Lender (the "Initial Mortgage"), encumbering the Project and (iv) that certain Amended and Restated Supplemental Mortgage and Security Agreement, made by and between Borrower and Lender (the "Supplemental Mortgage"), encumbering the Project.

WHEREAS, on July 19, 1990, also in connection with the Loan, Borrower, Lender, 599 Lexington Avenue Associates Limited Partnership ("599 Lex"), 599 Lexington Corp. ("Lexcorp") and Linlex, Incorporated ("Linlex") entered into that certain Option Agreement (the "Option Agreement"), which granted to Lender an exclusive and irrevocable option to purchase a general partnership interest in the Partnership in accordance with the terms thereof.

WHEREAS, on April 14, 1997, Borrower and Lender entered into a Loan Modification Agreement (the "Loan Modification Agreement"), which contemplated a partial prepayment of the Loan and a transfer of a 99% limited partnership interest in Borrower to Boston Properties Limited Partnership, a Delaware limited partnership ("BPLP") and a 1% general partnership interest in Borrower to Boston Properties L.L.C., a limited liability company organized under the laws of Delaware ("BPLLC") in exchange for partnership units in BPLP ("OPUs") subject to and in accordance with the terms of the Loan Modification Agreement;

WHEREAS, contemporaneously herewith, Borrower and certain Affiliates (hereinafter defined) thereof are forming a real estate investment trust known as Boston Properties, Inc. (the "REIT") and are offering for sale to the public shares of such REIT in an initial public offering (the "IPO"), and, in connection with the IPO, are making a partial prepayment of the Loan and are transferring the partnership interests to BPLP and BPLLC in exchange for OPUs, as contemplated by the Loan Modification Agreement.

WHEREAS, contemporaneously herewith, the REIT is becoming the sole general partner of BPLP and is acquiring Control (but not 100% ownership) of BPLP through its ownership of OPUs, and upon such transfer of its partnership interest in Borrower, Borrower is converting its status from a New York general partnership to a New York limited partnership in which BPLP's interest in Borrower will be held as a limited partner, as contemplated by and permitted under the Loan Modification Agreement.

WHEREAS, as contemplated by the Loan Modification Agreement, Borrower and Lender hereby amend and restate the Loan Agreement as of the date hereof as follows:

ARTICLE I - DEFINITIONS, ACCOUNTING TERMS AND EXHIBITS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth respectively after each: .

"Affiliate" means (a) any Partner, or (b) any other Person (as hereinafter defined) (i) which directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, Borrower or any Partner, or (ii) twenty-five percent (25%) or more of the voting securities or equity interests of which are held beneficially or of record by Borrower or any Partner.

"Agreement" means this Amended and Restated Loan Agreement, as the same may be amended from time to time.

"Annual Operating Budget" means a budget of all projected revenues and expenses of the Project.

"Assignment of Leases" means that certain Collateral Assignment of Leases and Rents, dated as of July 19, 1990, made by Borrower for the benefit of Lender, and recorded in the public records of New York County in Reel 1712, Page 280.

"Banking Day" means any day other than a day on which banks located in New York City, New York or Tokyo, Japan are authorized or required by law to close.

"Borrower's knowledge" means any state of facts of which any of the following have notice or actual knowledge: (a) Borrower, (b) Borrower's Partners, (c) the general partners,

members, officers or directors of such Partners, (d) the members, officers or employees of the management company retained by Borrower to manage the Project who are charged with the responsibility for on-site management of the Project, or (e) the persons employed by such management company to whom such on-site managers report.

"BP Lex LLC" means BP Lex L.L.C., a Delaware limited liability company.

"BPLLC" means Boston Properties L.L.C., a Delaware limited liability company.

"BPLP" means Boston Properties Limited Partnership, a Delaware limited partnership.

"Collateral" means, collectively, all property on or in which Borrower has granted to Lender a lien or security interest pursuant to the Security Documents.

"Collateral Assignment of Partnership Interests" means the Collateral Assignment of Partnership Interests, dated as of the date hereof, made by BPLP and BPLLC for the benefit of Lender.

"Control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities or equity interests, by contract, by family relationship or otherwise.

"Environmental Activity" means any use, storage, release, threatened release, emission, remediation, discharge, generation, processing, abatement, removal or disposition of any Hazardous Materials from, under, into or on the Project or any handling, transportation or treatment of Hazardous Materials arranged by or on behalf of Borrower and relating to the Project.

"Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement of judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of (a) the existence of Hazardous Materials (i) upon or beneath the Project, or (ii) migrating or threatening to migrate to or from the Project, or (b) an Environmental Activity violating any Law pertaining to the Project regardless of whether the existence of such Hazardous Materials or the violation of Law arose prior to the present ownership or operation of the Project, and including, without limitation:

(a) damages for personal injury, or injury to property or natural resources occurring upon the Project, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Borrower, with respect to which Borrower waives, for the benefit of Lender

only, any immunity to which it may be entitled under any industrial or worker's compensation Laws;

(b) diminution in the value of the Project, and damages for the loss of or restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Project; and

(c) "reasonable fees incurred for the services of attorneys, engineers, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Law including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work required by any federal, state or local Governmental Agency or political subdivision, or reasonably necessary to make full economic use of the Project or any other property or otherwise expended in connection with such conditions, and including without limitation any reasonable attorneys' fees, costs and expenses incurred in enforcing the Initial Mortgage or collecting any sums due hereunder.

"Estoppel Certificate(s)" means a Tenant Estoppel substantially in the form attached hereto as Exhibit A.

"Event of Default" means the occurrence of any one of those events so designated in Section 7.1.

"Flood Hazard Area" means an area which has been designated as a special flood hazard area or subject to comparable risks by the Federal Emergency Management Agency or any successor to such agency.

"Governmental Agency" means (a) any government, municipality or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court, administrative tribunal or public utility, or (d) any central bank or comparable authority, any of which, pursuant to applicable Law, have authority to exercise jurisdiction over any Loan Party or the Project, or whose consent or approval is required as a prerequisite to (x) the use, operation or occupancy of the Project, or (y) the performance of any act or obligation or the observance of any agreement, provision or condition herein contained.

"Hazardous Materials" means (a) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined in the following statutes and their implementing regulations: the Hazardous Materials Transportation Act, 49 U.S.C. (S) 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. (S) 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. (S) 9601 et seq., the Clean Water Act, 33 U.S.C. (S) 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. (S) 2601 et seq., the Clean Air Act, 42 U.S.C. (S) 7401 et seq., (b) petroleum, including crude oil and

any fractions thereof, (c) natural gas, synthetic gas, and any mixtures thereof, (d) asbestos and/or any material which contains 1% or more, by weight, of any hydrated mineral silicate, including but not limited to chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable, (e) PCBs, or PCB-containing materials or fluids, and (f) any additional substance or material which at such time is classified or considered to be hazardous or toxic under any federal, New York or any other Law applicable to the Project. Notwithstanding anything to the contrary contained in this definition of Hazardous Materials, no material shall be deemed to be a Hazardous Material if such Hazardous Material is contained in legally permissible containers in legally permissible amounts.

"Improvements" means the buildings, structures or other improvements

located on the Property, generally consisting of an office and retail building containing two (2) stories below grade and fifty (50) stories above grade (including three (3) mechanical stories) and containing approximately one million (1,000,000) rentable square feet.

"Initial Mortgage" means that certain Amended and Restated Mortgage and

Security Agreement dated as of July 19, 1990, by and between Lender and Borrower, recorded in the public records of New York County in Reel 1712, Page 680, as amended by that certain First Amendment to Amended and Restated Mortgage, by and between Lender and Borrower, dated as of the date hereof, securing the Initial Note, as the same may be further amended from time to time.

"Initial Note" means that certain Amended and Restated Note, dated July 19,

1990, in the original principal sum of Two Hundred Sixty-Seven Million Dollars (\$267,000,000) made by Borrower to the order of Lender, as amended by that certain First Amendment to Amended and Restated Promissory Note, by and between Lender and Borrower, dated as of the date hereof, as the same may be further amended from time to time.

"Interest" means all interest payable pursuant to this Agreement and the

Initial Note.

"Involuntary Rate" means three percent (3%) per annum in excess of' the

Prime Rate, but in no event in excess of the maximum rate allowed by applicable Law.

"Laws" means, collectively, all federal, state and local laws, rules,

regulations, ordinances, and codes, all opinions of the New York State Court of Appeals and the requirements of any insurance companies, applicable to the Project and/or any Loan Party.

"Lease" means any lease, rental contract, occupancy agreement, license or

other written or oral arrangement (a) with respect to which Borrower is the lessor or grantor, or has succeeded to the interest of such lessor or grantor, and (b) pursuant to which any Person uses, possesses or occupies or has the right to use, possess or occupy all or any part of the Project, a schedule of which is attached hereto as Exhibit G.

"Leased Space" means, with respect to any Lease, that portion of the

Property and Improvements covered thereby.

"Leasing Parameters" means the guidelines for proposed Leases, set forth in Exhibit H hereto, which have been approved by Lender as of the date hereof or from time to time in accordance with Section 6.11(a)(vii) hereof.

"Loan" means that certain loan made by Lender to Borrower in the current outstanding principal amount of Two Hundred Twenty-Five Million Dollars (\$225,000,000), as evidenced by the Initial Note and the Loan Documents.

"Loan Documents" means, collectively, this Agreement, the Initial Mortgage, the Initial Note, the Loan Modification Agreement and the Security Documents.

"Loan Modification Agreement" means that certain Loan Modification Agreement, dated as of April 14, 1997, by and between Borrower and Lender.

"Loan Party" means any of Borrower or any Partner.

"Lock-Up Agreement" means that certain Registration Rights and Lock-Up Agreement of even date herewith, by and between the REIT and certain shareholders of the REIT or partners of BPLP, including but not limited to Edward H. Linde and Mortimer B. Zuckerman, as amended.

"Major Lease" means those Leases of the Project for more than fifty thousand (50,000) square feet, including but not limited to those set forth on Exhibit E hereto and those entered into after the date hereof in accordance with Section 6.11. For purposes hereof, all Leases with a particular Tenant, and all agreements adding space to any Lease, shall be aggregated in determining whether or not a Lease constitutes a Major Lease.

"Majority Partners" means those Partners at any time collectively owning at least 50.1% of the partnership interests in Borrower.

"Management Agreement" means the management agreement between Borrower and Boston Properties, a Massachusetts business trust, dated as of January 1, 1990, the manager's interest in which has been assigned to BP Lex LLC and as such agreement has been amended on the date hereof.

"Maturity Date" means, subject to the terms of Section 8.1 of this Agreement and Sections 5.01(1), 5.02, 6.03, 8.02 and 9.01 of the Restated Option Agreement, July 19, 2005.

"Obligations" means all obligations of Borrower of every nature under the Loan Documents.

"Partners" means the partners of Borrower which, as of the date hereof, are BPLP and BPLLC, and their successors and assigns to the extent such successors and assigns are Permitted Transferees.

"Partnership Agreement" means the Partnership Agreement of the Borrower

dated as of December 21, 1983, as amended on April 6, 1990 and as further
amended and restated on the date hereof.

"Permitted Exceptions" means the matters identified in Exhibit B hereto and

any other matter approved in writing by Lender as a Permitted Exception.

"Permitted Transferee" means (A) a Person (i) in which Edward H. Linde

("EHL") and/or Mortimer B. Zuckerman ("MBZ"), or their respective heirs

devises or personal representatives (which heirs and devisees are spouses,
parents, siblings, nieces, nephews or lineal descendants of EHL or MBZ,
respectively), have an indirect or direct ownership interest of at least fifty-
one percent (51%) in the aggregate, (ii) which Controls the Borrower, (iii)
which Controls (by itself or through an Affiliate) the day-to-day operations and
management of the Project, and (iv) which has the right to make all significant
economic and management decisions on behalf of Borrower without the need for the
vote, approval or consent of any other Person other than a Permitted Transferee,
or (B) the REIT, or (C) a Person (i) in which the REIT has an indirect or direct
ownership interest of at least fifty-one percent (51%) in the aggregate, (ii)
which is Controlled by the REIT, (iii) which Controls (by itself or through an
Affiliate) the day-to-day operations and management of the Project, and (iv)
which has the right to make all significant economic and management decisions on
behalf of Borrower without the need for the vote, approval or consent of any
other Person other than a Permitted Transferee.

"Person" means any natural person, corporation, firm, trust, partnership,

association, Governmental Agency or other entity, whether acting in an
individual, fiduciary or other capacity.

"Personal Property" means all of Borrower's right, title and interest,

whether now existing or hereafter acquired, in and to all furniture,
furnishings, fixtures, machinery, equipment, inventory and other personal
property of every kind, tangible or intangible, now or hereafter located at,
upon or about the Project and used or to be used in connection with or related
or arising with respect to the Project, including but not limited to art work in
public places and all other property described in the Initial Mortgage.

"Prime Rate" means the rate of interest publicly announced by Citibank,

N.A. in New York, New York from time to time as its prime, reference or base
rate.

"Project" means the Property, Personal Property and Improvements.

"Property" means the real property described in Exhibit D hereto, together

with all easements, rights, privileges and appurtenances (including any air or
development rights) thereto.

"REIT" means Boston Properties, Inc., a Delaware corporation.

"Restated Option Agreement" means that certain Amended and Restated

Option Agreement to be entered into by and among Borrower, the Partners and
Lender, in form and substance identical to Exhibit I hereto.

"Security Documents" means, collectively, the Initial Mortgage, the

Assignment of Leases, the Collateral Assignment of Partnership Interests, and
any other mortgage, deed of trust, security agreement or assignment executed to
secure Borrower's obligations under the Loan.

"Statement of Operations" means a report of revenues and expenses of

Borrower in a form reasonably acceptable to Lender, certified by the general
partner of Borrower.

"Tenant" means any tenant, lessee, licensee or other Person having a

right to use, possess or occupy all or any part of the Project pursuant to a
Lease.

"Tenant Estoppel" means, as to any Lease, an estoppel agreement

substantially in the form attached hereto as Exhibit A.

"Title Companies" means, collectively, Ticor Title Guarantee Insurance

Company, Chicago Title Insurance Company and Lawyers Title Insurance
Corporation, as Co-Insurers.

"Title Policy" means the mortgagee's policy of title insurance issued

by the Title Companies, dated July 19, 1990, and insuring the lien of the
Initial Mortgage covering the Property.

"Transit Agreement" means that certain Agreement dated as of February

6, 1984 between Borrower and the New York County Transit Authority recorded in
the office of the New York County Register at Reel 782, Page 533, as the same
has been amended.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer

to all members of the relevant class, and any defined term used in the singular
shall refer to any number of the members of the relevant class. Any reference
to any of the Loan Documents or any exhibits thereto and any other instruments,
documents and agreements shall include such Loan Documents, exhibits and other
instruments, documents and agreements as originally executed or existing or as
the same may from time to time be restated, supplemented, modified or amended.

1.3 Accounting Terms. All accounting terms not specifically defined in

this Agreement shall be construed in conformity with, and all financial data
required to be submitted by this Agreement shall be prepared in conformity with,
generally accepted accounting principles customarily used in the real estate
industry, applied on a consistent basis.

1.4 Exhibits. All exhibits to this Agreement, either as now existing or

as the same may from time to time be supplemented, modified or amended, are
incorporated herein by this reference.

ARTICLE II - INTENTIONALLY DELETED

ARTICLE III - THE LOAN

3.1 Amount of the Loan. The outstanding principal balance under the Loan

as of the date hereof is Two Hundred Twenty-Five Million Dollars (\$225,000,000).

3.2 Interest. Interest shall be computed on the basis of a year of 365

days and the actual number of days elapsed and shall be payable on the unpaid
principal balance hereof outstanding from time to time from the date hereof
until payment in full at the rate of interest set forth in the Initial Note.

3.3 Payments.

(a) The obligation of Borrower to repay the Loan is evidenced by the
Initial Note. The principal balance of the Initial Note, together with all
accrued and unpaid Interest and all other Obligations not otherwise paid prior
to the Maturity Date, shall be due and payable on the Maturity Date.

(b) Interest accruing on the Initial Note is payable quarterly in
arrears on the first day of each March, June, September and December during the
term of the Loan unless any such day is not a Banking Day, in which event
Interest shall be paid on the next Banking Day immediately following such date.

(c) All payments on the Initial Note shall be applied first to
Interest then due. Except during the period of any extension of the Maturity
Date specifically provided for herein or in the Restated Option Agreement,
Borrower shall have no right to repay all or any portion of the principal sum of
the Loan prior to the Maturity Date.

(d) Borrower shall make each payment hereunder in U.S. dollars, by
federal wire transfer of immediately available funds so as to be received by
Lender not later than 2:00 P.M. (New York City time) on the day when due,
pursuant to wiring instructions furnished in writing from time to time by
Lender.

3.4 Collateral.

(a) Nature of Collateral. The indebtedness evidenced by the Initial

Note, together with all other Obligations, shall be secured by the Collateral
set forth in the Security Documents.

(b) Release of Collateral. Unless expressly provided for in this

Agreement or in any other Loan Document or Lender shall otherwise consent in
writing, none of the Collateral shall be released until (i) the Initial Note has
been paid in full and canceled, (ii) all other monetary Obligations then due
have been paid and performed in full, and (iii) all other

Obligations have been satisfied or bonded or otherwise secured to the reasonable satisfaction of Lender.

ARTICLE IV - INTENTIONALLY DELETED

ARTICLE V - REPRESENTATIONS AND WARRANTIES BY BORROWER

As a material inducement to Lender's entry into this Agreement, Borrower makes the following representations and warranties to the Lender as of the date hereof. Lender agrees that, absent fraud by Borrower, Lender's sole remedy for breach of a representation made as of the date hereof shall be limited to termination of this Agreement and the Loan Modification Agreement and termination of Lender's obligation to complete the transactions contemplated by the Loan Modification Agreement.

5.1 Formation, Qualification and Powers of Borrower. Borrower is a

limited partnership duly formed and validly existing under the laws of the State of New York. BPLP and BPLLC are the only partners of Borrower owning, respectively, a 99% limited partnership interest and a 1% general partnership interest in the Borrower. Borrower has all requisite power and authority to conduct its business, to own, lease, mortgage and transfer its properties, and to execute and deliver, and perform all of the Obligations. The sole business of Borrower is the ownership and operation of the Project.

5.2 Authority and Compliance with Instruments and Government Regulations.

The execution, delivery and performance by Borrower of each Loan Document to which it is or will be a party have been duly authorized by all necessary action and do not:

- (a) require any consent or approval not heretofore obtained of any Person;
- (b) violate any provision of the Partnership Agreement or any Partner's charter documents of formation and organization;
- (c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to the Collateral;
- (d) to Borrower's knowledge, violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award; or
- (e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement (including but not limited to the Transit Agreement), lease or instrument to which Borrower is a party or by which Borrower or any of the Collateral is bound or affected;

and, to Borrower's knowledge, there does not exist a default by Borrower under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in subparagraphs (d) and (e) of this Section 5.2 where such default would have a material adverse effect on the ability of Borrower to perform its obligations under the Loan Documents or which would otherwise be materially adverse to the interests of the Lender with respect to the Loan.

5.3 No Governmental Approvals Required. No authorization, consent,

approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is required to authorize, or is otherwise required in connection with:

(a) the execution, delivery and performance by Borrower of any Loan Document; or

(b) the creation of the liens, security interests or other charges or encumbrances described in the Security Documents;

except that filing and/or recording will be required to perfect the Lender's interest under the Security Documents.

5.4 Binding Obligations. To Borrower's knowledge, and in reliance upon

the advice of its legal counsel, this Agreement is the legal, valid and binding obligation of Borrower.

5.5 Financial Statements. Borrower has furnished to Lender a copy of its

financial statement dated December 31, 1996 relating to its financial condition, and such financial statement presents fairly its financial position as of the date thereof.

5.6 No Material Adverse Change. There has been no material adverse change

in the projected financial condition of Borrower since the date of the financial statement described in Section 5.5; since that date Borrower has not entered into any material transaction not disclosed in such financial statement; Borrower has no material liabilities or material contingent liabilities not reflected or disclosed in such financial statement; there are no mortgages, deeds of trust, pledges, liens, security interests, claims, charges, rights of others or encumbrances (including liens or retained security titles of conditional vendors) of any nature whatsoever on any property of Borrower, other than the Permitted Exceptions, and no material indebtedness not disclosed in such financial statement.

5.7 Tax Liability. Each Loan Party has filed all applicable tax returns

required by Law to be filed and (unless otherwise specifically disclosed in writing by Borrower to Lender) has paid all taxes shown thereon to be due and all property taxes due and payable, including interest and penalties, if any.

5.8 Compliance with Laws. To Borrower's knowledge, Borrower is in

compliance in all material respects with all Laws applicable to its business and with all covenants,

conditions and restrictions contained in documents constituting Permitted Exceptions, and has obtained all authorizations, consents, approvals, orders, licenses, permits and exemptions from, and has accomplished all filings, registrations or qualifications with, any Governmental Agency necessary for the transaction of its business.

5.9 Litigation. There are no actions, suits or proceedings pending or, to

Borrower's knowledge, overtly threatened against or affecting Borrower or any Partner before any Governmental Agency which would have a material adverse effect upon Borrower's ability to perform its obligations under the Loan Documents.

5.10 Title to Property. In reliance upon the Title Policy, Borrower has

good and marketable title to the Project and there are no mortgages, liens, pledges or other encumbrances of any character on the Project, other than the Permitted Exceptions.

5.11 Pension Plan. Borrower does not maintain or contribute to any

employee pension benefit plan.

5.12 Insurance. Borrower has paid all premiums necessary to maintain all

insurance policies currently in effect with respect to the Project.

5.13 Misrepresentations. To Borrower's knowledge, no information, exhibit

or report furnished in writing by any Loan Party to Lender in connection with the execution and delivery of the Loan Documents contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not materially misleading as of the date given. All representations set forth in the other Loan Documents are true and correct in all material respects.

5.14 Environmental. (a) Borrower has not engaged in any Environmental

Activity nor, to Borrower's knowledge, has any Environmental Activity otherwise occurred, in either case, in violation of any applicable Law; (b) no investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Agency that have not been disclosed to Lender in writing are pending or, to Borrower's knowledge, overtly threatened in connection with any Environmental Activity or alleged Environmental Activity; (c) to Borrower's knowledge, there are no Hazardous Materials present in, on or under the Project the nature, amount or concentration of which would entitle any Governmental Agency to undertake or require the owner or operator of the Project to undertake removal or remediation of such Hazardous Materials; (d) to Borrower's knowledge, the use of the Project for office and retail (or retail service) purposes (as distinct from the manner of such use) will not result in any Environmental Activity in violation of any applicable Law; and (e) to Borrower's knowledge, there is not constructed, placed, deposited, stored, disposed of nor located on the Project any polychlorinated biphenyls (PCBs) or transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs, or any asbestos or any insulating material containing urea formaldehyde. No underground treatment or storage tanks, or water, gas or oil wells are located on the Project, the use and maintenance of which do not comply with applicable Law.

5.15 Leases. (a) Borrower is the holder of the landlord's interest under

all Leases; (b) Borrower has not, except in connection with the Initial Mortgage, executed any prior assignment of the Leases or of its right, title and interest therein or the rents to accrue thereunder, that affects the Leases as of the date hereof; (c) Borrower has not accepted rent under any of the Leases for any period subsequent to the current period for which rent has already become due and payable (other than the first month's rent and security deposits); (d) except as may have been otherwise disclosed to Lender in writing, there is no default in the payment of rent and, to Borrower's knowledge, no material non-monetary default under any Lease which has existed for a period of more than one (1) month; (e) Borrower has not executed or granted any modification or amendment whatsoever of any Lease, either orally or in writing, except for modifications or amendments heretofore furnished to Lender or as described in any Estoppel Certificate executed with respect to a Lease and delivered to Lender; (f) each Lease identified in Exhibit G hereto is in full

force and effect according to the terms and conditions thereof as contained in the copies thereof heretofore furnished to Lender; and (g) the schedule of Leases attached as Exhibit G is a true, correct and complete schedule of all

Leases.

5.16 Development Rights. Borrower has not sold, conveyed, assigned or

otherwise transferred or agreed to sell, convey or otherwise transfer any development, air or floor-area-ratio rights with respect to the Property and Improvements, except as may be set forth in any instrument constituting a Permitted Exception.

5.17 Management Agreement. Except for the Management Agreement, a true,

correct and fully executed copy of which has been delivered to Lender, there exists no contract, agreement or understanding of any nature pursuant to which Borrower or any party has been engaged to manage or operate the Project.

ARTICLE VI - AFFIRMATIVE AND NEGATIVE COVENANTS

From the date hereof until payment of the Initial Note in full and performance of all Obligations of Borrower, unless Lender shall otherwise consent in writing:

6.1 Compliance with Laws and Other Requirements. Borrower shall comply in

all material respects with (a) all conditions, covenants and restrictions as are contained in the Permitted Exceptions, (b) all Leases, and (c) all applicable Laws relating to the Project; provided, however, that Borrower may defer

compliance so long as Borrower shall be contesting the validity or applicability thereof pursuant to Section 3.8 of the Initial Mortgage. Borrower shall obtain all necessary approvals, consents, licenses and permits of any Governmental Agency, including without limitation those set forth in Section 5.8 hereof.

6.2 Annual Operating Budget. No later than thirty (30) days prior to the

expiration of each calendar year throughout the term of the Loan, Borrower shall submit to Lender for its information an Annual Operating Budget for the succeeding year. The submission of an

Annual Operating Budget shall be solely for informational purposes and Lender shall have no right to approve such Annual Operating Budget.

6.3 Protection Against Liens and Claims. Borrower agrees to pay when due

all claims for labor performed and materials furnished to the Project unless Borrower is contesting the same in compliance with Section 3.8 of the Initial Mortgage.

6.4 Sale or Other Encumbrances.

(a) Borrower represents and agrees that, unless Lender otherwise consents in writing, no junior lien of any nature against all or any portion of the Project shall be given, permitted or suffered by Borrower, including without limitation any assignment of rents or proceeds from the Project. Lender's consent pursuant to this Section 6.4(a) may be withheld or denied in Lender's sole and unfettered discretion for any reason or no reason (it being understood that Lender currently foresees no circumstances in which it would grant its consent).

(b) Because Lender has found Borrower's particular expertise to be an important element in Lender's decision to enter into this Agreement, and because Lender continues to rely upon such expertise to ensure the satisfactory operation of the Project, Borrower agrees that, unless Lender otherwise consents in writing, Borrower will not sell, transfer or convey, directly or indirectly, or permit to be sold, transferred or conveyed, directly or indirectly, at any time, by agreement for sale or in any other manner, directly or indirectly, any portion of the Project or Borrower's interest therein or in the Loan Documents. In furtherance of the foregoing and without limitation thereto, and except as otherwise specifically permitted by this Agreement, no Partner shall sell, convey, transfer or encumber, directly or indirectly, or permit to be sold, conveyed, transferred or encumbered, directly or indirectly, its interest in Borrower without the prior written consent of Lender. Lender's consent pursuant to this Section 6.4(b) may be withheld or denied in Lender's sole and unfettered discretion for any reason or no reason (it being understood that Lender currently foresees no circumstances in which it would grant its consent). Notwithstanding the foregoing, transfers of partnership interests in Borrower (subject to the lien of the Collateral Assignment of Partnership Interests) may be made to Permitted Transferees. Borrower shall comply with all provisions in Section 5.4 of the Initial Mortgage with respect to such transfers to Permitted Transferees. Moreover, except as set forth in the Lock-Up Agreement, none of the provisions of this Section 6.4(b) (or like provisions provided elsewhere in this Agreement) shall be read, interpreted or construed as prohibiting the sale, transfer, encumbering or other disposition of ownership interests held by any Person in a Partner of the Borrower so long as from and after the date of such sale, transfer, encumbrance or other disposition, Borrower is under common Control with the REIT.

6.5 Removal of Personalty. Except as otherwise provided in the Initial

Mortgage, Borrower shall not:

(a) install in or otherwise use in connection with the Project any materials, equipment or fixtures under any security agreement or similar agreement however denominated whereby the right is reserved or accrued to anyone to remove or repossess any such items or whereby any person other than Lender reserves or acquires a lien upon such items; provided, however, that Borrower

may lease Operating Equipment (as defined in the Initial Mortgage) so long as Borrower furnishes Lender with a true and correct copy of each such lease and that such lease shall include an agreement from the lessor thereunder to the effect that the lease may (in the event of a foreclosure or sale of the Project according to the terms of the Initial Mortgage) be assumed by Lender or its successor in interest at the same rental charges and under the same terms and conditions as are then contained in such lease;

(b) remove or permit the removal of any fixtures or personalty located on the Property or used in connection with the Project, except for (i) obsolete fixtures or personalty, (ii) fixtures or personalty of Tenants under Leases which grant such Tenants removal rights, and (iii) fixtures and personalty removed in connection with the alteration, remodeling or demolition of Tenant improvements with respect to the re-leasing of any portion of the Project, unless actually replaced by an article of equal or greater suitability and value, owned by Borrower free and clear of any lien or security interest other than the Security Documents or leases of Operating Equipment in accordance with subparagraph (a) above; or

(c) without the consent of Lender, permit the storage of any Personal Property at any location other than the Property except for Personal Property stored in a bonded warehouse facility (the location of which has been provided to Lender in writing), segregated and separately identified to the Project, and insured to the reasonable satisfaction of Lender.

6.6 Payment of Taxes, Assessments and Charges. Borrower shall pay, prior

to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Project or any part thereof; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, in accordance with Section 3.8 of the Initial Mortgage. Borrower shall not consent to any special tax that affects or may affect any of the Project.

6.7 Insurance. Borrower shall procure and maintain the policies of

insurance described in the Initial Mortgage.

6.8 Books and Records. Borrower shall (a) maintain full and complete

books of account and other records reflecting the results of its operations in accordance with generally accepted accounting principles customarily used in the real estate industry applied on a consistent basis, and (b) permit Lender and its agents, from time to time during normal business hours upon not less than two (2) Banking Days' prior written notice, to inspect and copy all of such books and records at the offices of Borrower in Boston, Massachusetts or New York, New York, including without limitation any books and records pertaining to the Project.

6.9 Entry and Inspection. Lender and its agents shall, upon not less than

two (2) Banking Days' prior written notice, during normal business hours, and subject to the Tenants' rights under the Leases, have the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished in and about the Project.

6.10 Reporting Requirements. Borrower shall cause to be delivered to

Lender, in form and detail reasonably satisfactory to Lender:

(a) as soon as practicable and in any event within five (5) days of Borrower's learning thereof, notice of:

(i) any litigation affecting or relating to (A) Borrower, or (B) the Project;

(ii) any dispute involving any Governmental Agency relating to the Project, the adverse determination of which might materially adversely affect the Project;

(iii) any threat or commencement of proceedings in condemnation or eminent domain relating to the Project;

(iv) any Event of Default or event which, with the giving of notice and/or the passage of time or both, could become an Event of Default, together with a written statement setting forth the nature of the Event of Default and the action Borrower proposes to take with respect thereto; and

(v) any default of any Tenant pursuant to the terms of a Major Lease.

(b) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year, (i) a statement of financial position, including capital account and change in financial position of each Partner and (ii) a statement of financial position of Borrower as of the end of such fiscal year, and the related Statements of Operations, capital accounts and changes in financial position for such fiscal year, all with accompanying notes and schedules, in sufficient detail to enable Lender to determine the financial condition of Borrower and the Project, and stating in comparative form the figures as of the end of such fiscal year and for the previous fiscal year, which statements shall be unaudited, prepared in accordance with generally accepted accounting principles customarily used in the real estate industry consistently applied and certified by BPLLC or the managing member of BP Lex LLC, so long as BP Lex LLC is the manager of the Project under the Management Agreement;

(c) as soon as available and in any event (i) within sixty (60) days after the end of each calendar quarter, a Statement of Operations and (ii) within forty-five (45) days after the end of each calendar quarter, a report as to the status of leasing of the Project including leasing schedules and reports, executed copies of any Leases entered into during such quarter, a rent roll for the Project, a list of all Leases then pending or the subject of negotiation

by Borrower and such other leasing information as Lender shall reasonably request with respect to the Leases and the Project;

(d) not later than thirty (30) days prior to the end of each calendar year, the Annual Operating Budget for the Project;

(e) such other information relating to the Loan Parties or the Project as Lender may reasonably request from time to time;

(f) Lender shall have the right, at its sole cost and expense, to have audited financial statements of Borrower prepared by a major accounting firm selected by Lender, with respect to any fiscal year during the term of the Loan. If such audited financial statements show net income which deviates by more than five percent (5%) from that shown in Borrower's unaudited financial statements for such fiscal year, then Borrower shall reimburse Lender for the accounting fees and expenses reasonably incurred in connection with the audit.

6.11 Leases.

(a) With respect to the Leases, Borrower hereby agrees as follows:

(i) Subject to the obligation of Lender to execute and deliver subordination, non-disturbance and attornment agreements in accordance with Section 6.11(b), any Lease hereafter entered into shall expressly provide that it is absolutely subject and subordinate to the liens of the Initial Mortgage, and that at Lender's option exercised by notice to any Tenant thereunder, such Lease shall be made superior to the lien of the Initial Mortgage. Each Lease shall also provide that, in the event of the enforcement by the Lender of the remedies provided for by Law or by the Initial Mortgage, the Tenant thereunder will, at the option and upon request of any Person succeeding to the interest of the Borrower as a result of such enforcement, automatically become the Tenant of such successor in interest, without change in the terms or other provisions of such Lease; provided, however, that such successor in interest shall not (A) be

liable for any default (as defined in such Lease), act or omission of Borrower as landlord under the Lease, (B) be subject to any offset not expressly provided for in the Lease which shall have accrued prior to the time at which such person succeeded to Borrower's interest, or (C) be bound by any payment of rent or additional rent for more than one (1) month in advance, except (to the extent such security has been turned over to such successor in interest) prepayment in the nature of security for the performance by the Tenant of its obligations under its Lease. Each Lease shall also provide that, upon request by such successor in interest, such Tenant shall execute and deliver an instrument or instruments confirming such attornment. Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Lender the benefits of such section in connection with the Initial Mortgage.

(ii) Any agreement to pay leasing commissions in respect of the Leases shall provide that the obligation to pay such commissions shall not be enforceable

against any party other than the party who entered into such agreement, and that such agreement shall be subordinate to the Initial Mortgage.

(iii) Borrower agrees not to collect rent for more than one (1) month in advance, except (A) upon the execution of a new Lease by the parties thereto, provided that such advance rent in excess of one (1) month's rent is applied to the rents at the beginning of the term of such Lease; and (B) as a security deposit to be applicable either against the rent due at the end of the term of the Lease or in respect of damage to the Leased Space, or to be refunded upon the expiration of the term thereof.

(iv) Borrower shall not, without providing Lender with ten (10) days' notice:

(A) cancel, serve any notice of cancellation, terminate, or accept a surrender or suffer or permit any cancellation, termination or surrender of any Lease;

(B) modify any Lease having an unexpired term of more than two (2) years, so as to reduce the term thereof or the rent payable thereunder or to change any renewal provisions therein contained; or

(C) commence any summary proceeding or other action to recover possession of any Leased Space, other than a proceeding brought in good faith by reason of a default of any Tenant, provided that no adjudication in such proceeding that the same was brought by Borrower in bad faith shall be conclusive evidence as between Borrower and Lender that the proceeding was not brought in good faith.

(v) Borrower shall not, without Lender's prior written consent, which consent shall not be unreasonably withheld, enter into any Lease other than a Lease (i) with a Tenant approved by Lender and (ii) which conforms to the Leasing Parameters. Borrower shall submit to Lender, promptly upon commencing negotiations with a prospective Tenant, the name of the Tenant and all information available to Borrower concerning the Tenant's business operations and financial condition. If Lender fails to object to such Tenant within four (4) Banking Days following receipt of such information, the Tenant shall be deemed to have been approved. With respect to Leases which do not conform to the Leasing Parameters, Borrower shall deliver a term sheet or other instrument identifying the essential economic terms of the leasing transaction, including fixed rent, escalations, term, renewal and expansion options, tenant improvement allowances or work letter and any other concessions. If the Tenant has not yet been approved, then the submission shall include the information described above reasonably necessary to obtain Lender's approval thereof. If Lender fails to object to such leasing terms, or any revisions thereof which may subsequently be submitted for approval (and, if not theretofore approved, such Tenant), within four (4) Banking Days from receipt of such documentation then the same shall be deemed to have been approved.

(vi) Borrower shall not, without Lender's prior written consent, which consent shall not be unreasonably withheld, cancel, terminate or amend any Major

Lease; consent to assignment of or subletting under any Major Lease (unless such consent is required to be given by the landlord in accordance with the express terms of such Lease), or commence any summary proceeding or other action to recover possession of any space leased pursuant to a Major Lease. If Lender has not responded to Borrower's request for approval of any of the foregoing within ten (10) Banking Days following receipt thereof, Lender's prior approval shall be deemed to have been granted.

(vii) Every six (6) months during the term hereof, Borrower shall deliver to Lender its proposed Leasing Parameters for space which is, or is anticipated to become, vacant during the succeeding six (6) months. If Lender fails to approve such Leasing Parameters (which approval shall not be unreasonably withheld) within twenty (20) Banking Days from receipt thereof, then the same shall be deemed approved.

(viii) Borrower shall deliver Estoppel Certificates to Lender with respect to Leases as required by Section 6.19.

(ix) Borrower shall duly and punctually perform and observe all of the terms, covenants and conditions of all Leases required to be performed and observed by it as landlord thereunder.

(b) Within ten (10) Banking Days after receipt of Borrower's written request, Lender shall (i) execute and deliver a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit F, for each

Lease entered into subsequent to the date hereof pursuant to Section 6.11(a)(v) above or (ii) if the agreement is not in the form of Exhibit F, provide comments

with respect to the proposed form. Borrower shall pay, upon presentation of invoices therefor, Lender's actual, reasonable out-of-pocket costs incurred in connection with any such agreements. Notwithstanding the previous sentence, Borrower shall not be liable for such out-of-pocket costs if such agreement is presented to Lender and is executed in the form of Exhibit F (unmodified) and,

when presented to Lender, is accompanied by a letter from Borrower or Borrower's counsel certifying that such agreement is in the form of Exhibit F (unmodified).

6.12 Management of Property. Borrower shall not enter into any new

agreement providing for the management, leasing or operation of the Project or any termination, amendment, modification or supplement to the Management Agreement without the prior written consent of Lender. For purposes of the foregoing, as of the date hereof, the Management Agreement is deemed approved by Lender.

6.13 Preservation of Existence. Borrower shall preserve and maintain its

existence and its licenses, rights, franchises and privileges in the State of New York and all authorizations, consents, approvals, orders, licenses, permits or exemptions from, or registrations or qualifications with, any Governmental Agency that are necessary for the transaction of its business, except that the failure to preserve and maintain any particular license, right, franchise, privilege, authorization, consent, approval, order, permit, exemption,

registration or qualification that is not material to the business or financial condition of Borrower will not constitute a violation of this covenant. Notwithstanding the foregoing provisions of this Section 6.13, Borrower may, as permitted by the provisions of Section 6.4(b), make transfers to Permitted Transferees. The termination, liquidation or dissolution, or the sale, purchase, transfer or other disposition of the partnership interests held by the partners of the Borrower shall not violate the provisions of this Agreement or any other of the Loan Documents so long as, (i) immediately thereafter, the Borrower is reconstituted pursuant to the provisions of the Partnership Agreement or applicable Law (ii) such transactions do not vitiate or alter in any respect the rights and interests of Lender under the Loan Documents and the Restated Option Agreement (and the newly constituted Borrower shall execute and deliver to Lender such documents as Lender may reasonably deem necessary to confirm the same), and (iii) all of the partners in the reconstituted Partnership are Partners or Permitted Transferees.

6.14 Amendment of Partnership Agreement. Except as specifically provided

in the Restated Option Agreement, Borrower shall not permit the amendment of the Partnership Agreement in any manner without the prior written consent of Lender. Notwithstanding the provisions of the foregoing sentence, amendments of the Partnership Agreement necessitated by transfers (a) of partnership interests in the Borrower to Permitted Transferees or (b) resulting from disposition of partnership interests pursuant to the last sentence of Section 6.13 shall not require the prior written consent of Lender.

6.15 Change in Nature of Business. Borrower shall not engage in any

business other than as set forth in the Partnership Agreement as of the date hereof.

6.16 Operation and Maintenance of Project. Borrower shall (a) use its best

efforts to keep the Property and the Improvements fully leased in a manner consistent with the highest commercial use thereof and at prevailing rates, (b) enter into appropriate Leases, service contracts and maintenance or operating agreements and (c) make all necessary and customary capital improvements, repairs, replacements, additions, renovations or refurbishing of or to the Project to maintain it as a first-class office building as further provided in the Initial Mortgage. Borrower shall incur and pay or cause to be paid all costs, expenses and charges necessary or appropriate to comply with the requirements of this Section 6.16.

6.17 Environmental. Borrower shall establish and maintain a procedure to

monitor any Environmental Activity so as to ensure the compliance of such Environmental Activity with all applicable Laws and shall deliver to Lender, promptly following the discovery of such event by Borrower, notice of any event, the occurrence of which would render any of the representations contained in Section 5.14 inaccurate in any respect if made at the time of such discovery. If the monitoring required by this Section 6.17 reveals any Environmental Activity which would require remedial action either under applicable Law or good business practice followed by prudent owners of projects similar to the Project, Borrower shall promptly commence all such remedial action and complete the same as soon as is reasonably possible.

6.18 Indebtedness. Borrower shall not have outstanding at any time any

indebtedness which exceeds Twenty-Five Million Dollars (\$25,000,000), whether
from third parties or Affiliates.

6.19 Future Tenant Estoppels. Upon (a) the occurrence of an Event of

Default, or (b) one other occasion during the term of the Loan, Borrower shall,
within forty-five (45) days following request by Lender, deliver to Lender an
Estoppel Certificate with respect to any Major Lease and shall use all
reasonable efforts to deliver to Lender such Estoppel Certificates with respect
to any or all of the Leases as requested by Lender. Each Estoppel Certificate
delivered to Lender pursuant to this Section 6.19 shall be executed by Borrower
and each other party to the appropriate Lease. If Borrower is unable to deliver
any such Estoppel Certificate to Lender because, despite Borrower's reasonable
efforts, the Tenant from whom it has been requested has not delivered it to
Borrower, Borrower shall deliver to Lender an Estoppel Certificate signed by
Borrower and shall deliver to Lender an Estoppel Certificate signed by Tenant
within two (2) Banking Days of Borrower's receipt thereof.

ARTICLE VII - EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

7.1 Events of Default. The occurrence of any one or more of the following

shall constitute an Event of Default hereunder:

(a) Borrower shall fail to pay (i) any payment of principal of the
Initial Note when due or (ii) any installment of Interest on the Initial Note
when due; provided, however, that Borrower shall have, in any period of four (4)

consecutive quarters during the term of the Loan, an aggregate of five (5) days'
grace for payments of interest on the Initial Note (it being understood that if
Borrower does not utilize all five (5) days in any such four-quarter period, no
unused days may be carried over into the next four-quarter period), or (iii) any
other amount owing under this Agreement or the other Loan Documents and such
failure to pay such other amount shall remain unremedied for five (5) Banking
Days after written demand therefor shall have been made by Lender.

Notwithstanding the foregoing, if Borrower's failure to make any payment timely
is attributable to force majeure, such as computer failure in the federal wire

transfer system, then Borrower shall have a grace period of five (5) days in
which to cure such failure. Such force majeure grace period shall be separate

from, and shall not be charged against, the other grace periods provided above;
or

(b) Borrower or any Loan Party shall fail to perform or observe any
other term, covenant or agreement contained in any of the Loan Documents on its
part to be performed or observed (other than the failure to make a payment
described in Section 7.1(a)) and any such failure shall remain unremedied after
notice from Lender and the expiration of the grace period provided in such Loan
Documents or, if no such grace period is provided, thirty (30) days after
written notice thereof shall have been given to Borrower by Lender or, if such
failure is of such a nature that it cannot be completely remedied within the
grace period provided in such Loan Document or, if applicable, within said
thirty (30) day period, if Borrower shall not (i) promptly upon Lender's
giving of notice of such failure, advise Lender

in writing of the specific measures Borrower intends to institute to remedy such failure, (ii) promptly institute and thereafter diligently pursue all such measures necessary to remedy the same, and (iii) effect such remedy within a reasonable period of time after the date of the giving of said notice by Lender; or

(c) any representation or warranty in any Loan Document or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with any Loan Document proves to have been incorrect in any material respect when made; or

(d) Borrower is dissolved and is not immediately reconstituted in accordance with the last sentence of Section 6.13 above, or is liquidated or all or substantially all of the assets of Borrower are sold or otherwise transferred without Lender's prior written consent; or

(e) Borrower or any of its Partners files a petition for relief under the Bankruptcy Reform Act of 1978, as amended, or any other present or future federal or state insolvency, bankruptcy or similar Law (all of the foregoing hereinafter collectively called "applicable Bankruptcy Law") or admits its insolvency, or files an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition pursuant to applicable Bankruptcy Law or an involuntary petition for relief is filed against Borrower or any of its Partners under any applicable Bankruptcy Law and such petition, writ of attachment or similar process is not released, bonded or dismissed within ninety (90) days after such filing, entry or levy thereof unless such writ of attachment or similar process is stayed and is being contested by Borrower or any such Partner in good faith by appropriate proceedings, or an order for relief naming Borrower or such Partner is entered under any applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Borrower or any of its Partners; or

(f) Borrower or any Partner becomes insolvent, or makes a transfer constituting a fraud against Borrower's or such Partner's creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due; or

(g) a receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Borrower, any Partner or the Project, either in a proceeding brought by or against Borrower or such Partner, and such appointment is not discharged or such possession is not terminated within sixty (60) days after the effective date thereof or Borrower or such Partner consents to or acquiesces in such appointment or possession; or

(h) except as otherwise expressly provided for in this Agreement, Borrower ceases to be Controlled by the Person or Persons who Control Borrower as of the date of this Agreement; or

(i) except as otherwise expressly provided for in this Agreement, any Partner ceases to be Controlled by the Person or Persons who Control such Partner as of the date of this Agreement; or

(j) if, except for (x) the transfers expressly permitted by this Agreement, (y) the disposition of Operating Equipment pursuant to Section 3.7 of the Initial Mortgage or (z) the leasing of space pursuant to any Lease in accordance with the terms hereof, any of the following occurs without the prior written consent of Lender (which consent may be withheld for any reason or no reason): (i) Borrower sells, exchanges, assigns (including, without limitation, an assignment in liquidation, winding up or dissolution of Borrower), transfers, conveys or otherwise disposes of all or any part of the Project or any interest therein; or (ii) any Partner sells, exchanges, assigns (including, without limitation, an assignment in liquidation, winding up or dissolution of Borrower), transfers, conveys or otherwise disposes of all or any part of its interest in Borrower; or (iii) the title to the Project, or any interest therein, is vested in any other party, in any manner whatsoever, by operation of Law, including, without limitation, merger, consolidation or reorganization, or otherwise; or

(k) any Loan Party assigns any rights or interests under any Loan Document without the prior written consent of Lender, other than the transfers expressly permitted hereby; or

(l) an Event of Default under the Restated Option Agreement occurs;
or

(m) BP Lex LLC is Manager under the Management Agreement and BP Lex LLC is not Controlled by EHL and/or MBZ; provided, however, that the death or incapacity of MBZ or EHL shall not constitute an Event of Default so long as after such death or incapacity, BP Lex LLC is Controlled by the REIT or BPLP; or

(n) either EHL or MBZ sells, transfers or otherwise disposes of OPUS or shares of common stock in the REIT in contravention of the Lock-Up Agreement.

7.2 Remedies upon Default.

(a) Upon the occurrence of any Event of Default, Lender may, at its option, do any or all of the following:

(i) declare the principal of all amounts owing under the Initial Note, this Agreement and the other Loan Documents, including all obligations secured by the Security Documents, together with Interest thereon, to be forthwith due and payable, regardless of any other specified maturity or due date, without further notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, and without the necessity of prior recourse to any security; provided, however, that the acceleration provided by this subsection (i) shall

be automatic with no action by Lender required upon the occurrence of an Event of Default pursuant to Section 7.1(e);

(ii) if the Event of Default may be cured by payment of money, Lender shall have the right (but not the obligation) to make such payment; provided that (A) the making of such payment by Lender shall not be deemed to cure such Event of Default, and the same shall not be so cured unless and until Borrower shall have reimbursed Lender for such payment, and (B) if Lender advances its own funds for such purposes, such funds shall be secured advances under the Initial Note and shall be secured by the Security Documents, notwithstanding that such advances may cause the total amount advanced hereunder to exceed the face amount of the Initial Note or the amount committed to be advanced pursuant to this Agreement, and Borrower shall within five (5) Banking Days of demand reimburse Lender therefor with interest at the Involuntary Rate, from the date of such advance until the date of reimbursement; and

(iii) without further notice to or demand upon Borrower, which are expressly waived by Borrower, exercise any and all of its rights and remedies under the Loan Documents and such other rights and remedies as are provided by Law or equity, including but not limited to the right to take possession of and foreclose on any security, and exercise any other rights with respect to any security, whether under the Security Documents or any other agreement or as provided by Law, all in such order and in such manner as Lender in its sole discretion may determine.

(b) The order and manner in which Lender's rights and remedies are to be exercised shall be determined by Lender in its sole discretion. Regardless of how Lender may treat the payments for the purpose of its own accounting, for the purpose of computing Borrower's obligations hereunder and under the Initial Note, the payments shall be applied first, to the reasonable out-of-pocket costs

and expenses (including reasonable attorneys' fees and disbursements) of Lender; second, to the payment of accrued and unpaid Interest on the Initial Note to and

including the date of such application; third, to the payment of the unpaid

principal of the Initial Note; and fourth, to the payment of all other amounts

(including fees) then owing to Lender under the Loan Documents. No application of the payments will cure any Event of Default or prevent acceleration or continued acceleration of amounts payable under the Loan Documents, or prevent the exercise or continued exercise of rights or remedies of Lender hereunder, under any of the Security Documents or under Law.

(c) Upon the occurrence of an Event of Default, Borrower shall deliver to Lender promptly upon demand all security deposits, operating reserves and other deposits, reserves and sums held by Borrower in connection with the Project and the Leases together with a written accounting thereof.

7.3 Cumulative Remedies; No Waiver. All remedies of Lender provided for

herein are cumulative and shall be in addition to any and all other rights and remedies provided in the other Loan Documents or provided by Law from time to time. The exercise of any right or remedy by Lender under the Loan Documents shall not in any way constitute a cure or waiver of any default hereunder or under any of the other Loan Documents, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice Lender in the exercise of any rights hereunder or under the other Loan Documents. No waiver by Lender of any default

by Borrower hereunder shall be implied from any omission or delay by Lender to take action on account of such default if such default persists or is repeated. Any waiver of any covenant, term or condition contained in any of the Loan Documents must be in writing. Any such express written waiver shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition, nor shall it affect any default other than the default expressly made the subject of the waiver. Any such express waiver shall be operative only for the time and to the extent therein stated. The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent act.

7.4 Late Charge. If any payment of principal, Interest or other

Obligation is not paid when due because of the application of any grace or notice periods, and if the Involuntary Rate is not in effect with respect to such non-payment, then Lender may collect a "late charge" equal to interest on such delinquent payment at the Prime Rate from the date due until paid, to reimburse Lender for its lost investment income and for its administrative costs in connection with such delinquent payment.

ARTICLE VIII - INTENTIONALLY DELETED

ARTICLE IX - MISCELLANEOUS

9.1 Performance by Lender. Borrower agrees that, upon the occurrence of a

default under this Agreement with respect to the failure of Borrower to perform any act or to take any action which Borrower is required to perform or take hereunder, or to pay any money which Borrower is required to pay hereunder, the Lender may, but shall not be obligated to, perform or cause to be performed on Borrower's behalf, such act or take such action or pay such money, and any reasonable out-of-pocket expenses so incurred and any money so paid by Lender (including but not limited to reasonable attorneys' fees and disbursements) shall be due and payable by Borrower within five (5) Banking Days after notice from Lender, and Lender, upon making such payment, shall be subrogated to all of the rights of the Person receiving such payment. Notwithstanding the foregoing, Lender shall not have the right to perform on Borrower's behalf unless an Event of Default has occurred and is continuing or in Lender's reasonable judgment such performance is necessary to avoid civil or criminal penalties or to protect life or property. Any amounts due and owing by Borrower to the Lender pursuant to this Section 9.1 shall bear interest from the date of expenditure until paid at the Involuntary Rate and shall be a part of the indebtedness secured by the Initial Mortgage.

9.2 Nonliability of Lender. Borrower acknowledges and agrees that:

(a) any inspections of the Project made by or through Lender are for purposes of administration of the Loan only and Borrower is not entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship or otherwise; Borrower shall make its own determination of the quality of the Improvements;

(b) by accepting or approving anything required to be observed, performed, fulfilled or given to Lender pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, survey, appraisal, lease or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Lender;

(c) Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction;

(d) The relationship of Borrower and Lender under the Loan Documents is, and shall at all times remain, solely that of borrower and lender, and Lender does not undertake or assume any responsibility or duty to Borrower or to any other Person with respect to the Collateral or the Loan, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (i) Lender is not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or the Partners and Lender does not intend to assume such status; (ii) Lender shall not be liable for any debts, expenses or losses incurred or sustained by Borrower; (iii) Lender does not intend ever to assume any responsibility to any Person for the quality, suitability, safety or condition of the Project; and (iv) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or the Partners; and

(e) Lender shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any Person or property arising from any construction on, or occupancy or use of, the Project, or any portion thereof, including without limitation any loss, claim, cause of action, liability, indebtedness, damage or injury caused by, or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower, the Partners or any of Borrower's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property and Improvements or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower, any of Borrower's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property and Improvements in a safe condition; and (v) any nuisance made or suffered on any part of the Property and Improvements.

9.3 Consents. Except as otherwise expressly provided herein, whenever in

Lender's or Borrower's judgment, as the case may be, consent or approval is required for any matter, or Lender or Borrower shall have an option or election hereunder, such judgment, the decisions as to whether to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Lender or Borrower, as applicable. If, where this Agreement requires Lender or Borrower, as the case may be, to be reasonable in granting such consent or approval, Borrower or Lender shall request such consent or approval and Lender or Borrower,

as the case may be, shall unreasonably withhold or delay granting same, Borrower's or Lender's sole remedy shall be to seek specific performance of such consent or approval, it being agreed by Lender and Borrower that neither party shall be entitled to damages as a result of the other party's failure to grant any consent or approval hereunder.

9.4 No Third Parties Benefited. This Agreement is made for the purpose of

defining and setting forth certain obligations, rights and duties of Borrower and Lender in connection with the Loan. It is made for the sole protection of Borrower and Lender, and, subject to the provisions of Section 9.7, Borrower's and Lender's successors and assigns. No other Person shall have any rights of any nature hereunder or by reason hereof.

9.5 Indemnity. Borrower hereby indemnifies and agrees to save and hold

harmless Lender from any and all liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other out-of-pocket costs or expenses, including reasonable attorneys' fees and disbursements (collectively "Claims") which Lender may suffer or incur as a

consequence of: (a) any action or proceeding to which Lender is made a party by reason of Lender's holding of an interest in the Collateral, including, without limitation, any action by a shareholder of the REIT, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Project occurring prior to Lender's gaining possession and assuming control thereof, (c) any use, non-use or condition of the Project made or existing prior to Lender's gaining possession and assuming control thereof, (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Agreement or the Loan Documents, (e) the performance of any labor or services or the furnishing of any materials or other property in respect of the Project prior to the Lender's gaining possession and assuming control thereof, or (f) the failure of any surviving representation or warranty made pursuant to this Agreement or in any of the other Loan Documents to have been true and correct when made in any material respect; provided, however, Borrower shall have no

obligation to indemnify Lender for any such Claims arising by reason of any intentional tort, willful misconduct or gross negligence of Lender. If any action, suit or proceeding is brought against Lender for which indemnity is being sought by Lender against Borrower, (i) Lender shall give prompt notice to Borrower in reasonable detail of any such action, suit or proceeding, (ii) Borrower may, at Borrower's expense, resist and defend such action, suit or proceeding by counsel designated by Borrower and approved by Lender (which approval shall not be unreasonably withheld or delayed) or by counsel appointed by Borrower's insurance carrier, and (iii) if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding in respect of any such Claims without the prior consent in writing of Borrower (which consent shall be not be unreasonably withheld or delayed), unless Lender waives its right to the foregoing indemnification. Except as otherwise specifically provided herein, any amounts payable to Lender under this Section 9.7 which are not paid within five (5) Banking Days after written demand and presentation of bills therefor by Lender (the "Payment Date") shall bear interest (x) if Lender has actually paid such

amounts, at the Prime Rate from the date of demand through the Payment Date, and (y) whether or not Lender has actually paid such amounts, at the Involuntary Rate from the Payment Date to the date of payment by Borrower.

9.6 Brokerage. Borrower and Lender each represent to the other, that it

has not dealt with any broker or finder in connection with the Loan except for Jones Lang Wootton USA ("JLW") and that no commission, brokerage fee or similar

charge is or will be payable in connection with the Loan, except to JLW, which fee Borrower agrees will be paid by Borrower pursuant to a separate agreement. Borrower and Lender shall each indemnify, save and hold harmless the other from any and all claims arising as a result of the inaccuracy of the representation provided in this Section 9.6.

9.7 Binding Effect: Assignment. This Agreement shall be binding upon and

inure to the benefit of Borrower and Lender and their respective successors and assigns, provided that except as permitted by the provisions of this Agreement and the other Loan Documents, Borrower may not assign its rights or interest under this Agreement or any of the other Loan Documents without the prior written consent of Lender. Lender shall have the right, in its sole and absolute discretion, to transfer, assign or sell in its entirety all of its rights and interests in and under the Restated Option Agreement, Initial Note, this Agreement and the other Loan Documents without the prior consent of or notice to Borrower; provided, however, that Lender agrees to give Borrower notice of any such transfer, assignment or sale within 30 days after the completion thereof.

9.8 Execution in Counterparts. This Agreement and any other Loan Document

may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, taken together will be deemed to be but one and the same instrument.

9.9 Amendments; Consents. No amendment, modification, supplement,

termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

9.10 Costs and Expenses. Borrower shall pay to Lender:

(a) the reasonable out-of-pocket costs and expenses of Lender in connection with any modification of any Loan Document or in connection with the enforcement (following the occurrence and during the continuance of an Event of Default) of this Agreement and any other Loan Document and any litigation or dispute with respect thereto (including any proceedings pursuant to applicable Bankruptcy Law), including without limitation the reasonable fees and out-of-pocket disbursements of any legal counsel, independent public accountants and other outside experts retained by Lender; and

(b) all reasonable out-of-pocket costs and expenses, fees, taxes, premiums and other charges relating or arising with respect to the Loan Documents or any transactions contemplated thereby or the compliance with any of the terms and conditions thereof, including

but not limited to recording fees, filing fees, release or reconveyance fees and title insurance premiums.

All sums paid or expended by Lender under the terms of this Agreement and the other Loan Documents shall be considered to be a part of the Loan. Any amounts payable to Lender under this Section 9.10 which are not paid within five (5) Banking Days after demand therefor by Lender (the "Due Date"), shall bear

interest at the Involuntary Rate from the Due Date until paid.

9.11 Survival of Representations and Warranties. Except as otherwise

expressly provided or limited in this Agreement or in any of the other Loan Documents, the representations and warranties of Borrower contained herein and all representations and warranties of any Loan Party contained in the other Loan Documents shall survive the making of the Loan until it is paid in full; provided, however, that the representation and warranty set forth in Section

5.17 of the Initial Mortgage shall survive for the period expressly provided in the Initial Mortgage.

9.12 Notices. Any notice, request, demand or other communication required

or permitted hereunder or under the Initial Note or under the Loan Documents shall be given in writing by delivering the same in person to the intended addressee; by first class registered or certified mail, postage prepaid, return receipt requested; or by air courier, sent to the intended addressee at the address or addresses set forth below, or to such different address as the addressee shall have designated by written notice sent in accordance herewith.

To Borrower:

Lexreal Associates Limited Partnership
c/o Boston Properties, Inc.
8 Arlington Street
Boston, Massachusetts 02116-3495
Attention: President

Copy to:

Bingham, Dana & Gould LLP
150 Federal Street, 23rd Floor
Boston, Massachusetts 02110
Attention: Peter Van, Esq.

To Lender:

Mitsui Seimei America Corporation
200 Park Avenue
16th Floor
New York, New York 10166

Attention: President

Copy to:

Jones Lang Wootton USA
101 East 52nd Street
New York, New York 10022
Attention: R. Gary Barth

Copy to:

Gibson Dunn & Crutcher LLP
200 Park Avenue
47th Floor
New York, New York 10166
Attention: Kimmarie Sinatra, Esq.

Each such notice shall be deemed to have been given as of the date of receipt in the case of personal delivery or air courier delivery or, in the case of mailing, as of the date of first attempted delivery at the address provided herein.

9.13 Further Assurances. Borrower shall, at its sole expense and without -----
expense to Lender, do such further acts and execute and deliver such further documents as Lender from time to time may reasonably require solely for the purpose of assuring and confirming unto Lender (a) the rights hereby created or intended now or hereafter so to be created by any of the Loan Documents, or (b) the validity of any security interest or lien granted hereby.

9.14 Governing Law. This Agreement shall be governed by, and construed and -----
enforced in accordance with, the laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

9.15 Severability of Provisions. Any provision of this Agreement that is -----
held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable.

[NO SECTION 9.16, SHOULD THESE BE RENUMBERED?]

9.17 Integration. This Agreement, together with the other Loan Documents, -----
comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. The Loan Documents were drafted with the joint participation of Borrower and Lender and shall be construed neither against nor in favor of either.

9.18 Captions. The captions and headings hereof are for convenience of

reference only and shall not be construed to define, limit, describe or otherwise affect the scope or intent of this Agreement.

9.19 No Agency, Partnership or Joint Venture. Lender is not the agent or

representative of Borrower, and Borrower is not the agent or representative of Lender. Lender and Borrower intend and agree that the relationship created by this Agreement is and shall be solely that of lender and borrower. Nothing herein shall be construed to create a partnership or joint venture between Lender and Borrower.

9.20 Usury Savings Clause. All agreements in this Agreement and in the

other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement or acceleration of maturity of the Obligations, or otherwise, shall the amount paid or agreed to be paid hereunder for the use, forbearance or detention of money exceed the highest lawful rate permitted under applicable usury Laws. If, from any circumstance whatsoever, fulfillment of any provision of the Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable Law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if, from any circumstance whatsoever, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and shall be canceled automatically or, if theretofore paid, such excess shall be credited against the principal amount of the Obligations to which the same may lawfully be credited (without premium or fee), and any portion of such excess not capable of being so credited shall be rebated to Borrower.

9.21 Time of the Essence. Time is of the essence with respect to Lender's

and Borrower's obligations under this Agreement.

9.22 Construction. As used in this Agreement, the masculine shall include

the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

9.23 Limitation on Recourse. The recourse of Lender under this Agreement

and under the other Loan Documents shall be limited to (a) the Collateral, (b) subject to the terms of the applicable Loan Documents (including, without limitation, the rights of Borrower to apply insurance proceeds or condemnation awards as provided therein), any sums held by Lender pursuant to the Loan Documents and any insurance proceeds or condemnation awards paid or payable to Borrower with respect to the Collateral, (c) any proceeds of the sale or other conversion of any portion of the Collateral not permitted by the Loan Documents or this Agreement, and (d) the rents, issues and profits of the Collateral and all other revenues arising therefrom thereafter coming due or held by Borrower. Neither Borrower nor any of the Partners thereof, nor any of the members or partners of the Partners, nor any of the partners, officers, shareholders, principals, directors or agents of any of the foregoing shall have any personal liability for or on account of any non-payment of the Loan or any amounts that may become due under any of the Loan Documents or otherwise in connection with the Loan, or

for any non-performance of any of the Obligations under this Agreement to be performed by Borrower, or for any breach of any covenant, representation or warranty made by Borrower under this Agreement or by any Loan Party under any other of the Loan Documents. Except as herein expressly provided otherwise in clauses (i), (ii) and (iii) of the immediately succeeding sentence, the Lender, for itself and its successors, endorsees, participants and assigns, hereby waives any right to enforce collection of any money judgment against any assets (other than the Collateral, including without limitation the items specified in clauses (a), (b), (c) and (d) above) of the Borrower, any of the Partners thereof, any of the members or partners of the Partners, or any of the partners, officers, shareholders, principals, directors or agents of any of the foregoing. The foregoing notwithstanding, Lender shall have the right to proceed against or recover from Borrower (but not from the Partners) for damages suffered or incurred by Lender and directly attributable to (i) any claim for damages by Lender against Borrower arising out of the actions of Borrower in failing to cause the Loan as evidenced by the Initial Note to be used for the purposes provided in this Agreement, or in misapplying any insurance proceeds or condemnation awards with respect to the Collateral (but only to the extent of the proceeds and/or awards so misapplied), (ii) any claim or cause of action by Lender for fraud on the part of the Borrower, or (iii) any claim or cause of action by Lender for failure of Borrower to pay any income tax or other impositions attributable to Borrower, to the extent such failure results in the creation of liens on any portion of the Project which would be prior to the lien of the Initial Mortgage. Nothing contained in this Section 9.23 shall (x) be deemed to be a release or impairment of the indebtedness evidenced by the Initial Note or the lien of the Initial Mortgage or the other Loan Documents upon the Collateral, or (y) preclude Lender from foreclosing on the Initial Mortgage or, except as otherwise expressly stated in this Section 9.23, from enforcing any of the other rights of Lender or (z) be deemed to release or otherwise affect the obligations of any Person other than Borrower, any of the Partners, any of the members or partners of the Partners, or any of the officers, shareholders, principals, directors or agents of any of the foregoing, under any Loan Document executed by such Person.

9.24 Lender Estoppel Certificates; Discharges. If Lender has not exercised

its option pursuant to the Restated Option Agreement, within ten (10) Banking Days after request by Borrower, but no earlier than sixty (60) days prior to the Maturity Date, Lender shall deliver to Borrower an estoppel certificate, duly executed and acknowledged by Lender, stating the outstanding principal amount of the Loan and whether there exists any Event of Default (or knowledge of any event which, with notice or the passage of time or both, will become an Event of Default if not cured) under any of the Loan Documents. If Borrower shall pay, in full, the Loan, Interest and other charges due and payable under the Initial Note and other Loan Documents in accordance with the terms thereof, Lender shall promptly execute and deliver to Borrower such discharges, assignments or satisfactions as Borrower may reasonably request and shall accommodate Borrower by appearing at the closing of such assignment, discharge or satisfaction or make such other arrangement with respect thereto mutually satisfactory to Lender and Borrower, provided that Borrower shall pay, upon presentation of invoices therefor, Lender's actual, reasonable out-of-pocket costs with respect thereto. Nothing set forth in this Section 9.24 shall imply that the Loan is prepayable, in whole or in part, prior to the Maturity Date.

9.25 Consent to Jurisdiction; Waiver of Trial by Jury. Borrower

irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York or the courts of the United States located in the State of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. In any action hereunder, each of Borrower and Lender waives the right to demand a trial by jury.

9.26 Amended Loan Documents. From and after the date hereof, all

references in the Initial Note, the Initial Mortgage or any of the other Loan Documents to the Loan Agreement shall be deemed to be a reference to this Agreement, and all references in the Restated Option Agreement, the Initial Note, the Initial Mortgage, or any of the other Loan Documents to the Loan Documents shall be deemed to be a reference to the Loan Documents, as amended hereby.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of this
_____ day of _____, 1997.

BORROWER:
LEXREAL ASSOCIATES LIMITED
PARTNERSHIP, a New York limited partnership

By: BOSTON PROPERTIES, LLC, a Delaware
limited liability company, General Partner

By: BOSTON PROPERTIES LIMITED
PARTNERSHIP, a Delaware limited
partnership, Managing Member

By: BOSTON PROPERTIES, INC.,
a Delaware corporation,
General Partner

By: _____
Name:
Title:

By: BOSTON PROPERTIES LIMITED
PARTNERSHIP, a Delaware limited
partnership, Limited Partner

By: BOSTON PROPERTIES, INC.,
a Delaware corporation, General
Partner

By: _____
Name:
Title:

LENDER:

MITSUI SEIMEI AMERICA CORPORATION, a
New York corporation

By: _____
Name: Shinjiro Goto
Title: President

AMENDED AND RESTATED OPTION AGREEMENT

AMONG

BOSTON PROPERTIES LIMITED PARTNERSHIP and BOSTON PROPERTIES L.L.C.,
collectively Optionors,

and

LEXREAL ASSOCIATES LIMITED PARTNERSHIP,

and

MITSUI SEIMEI AMERICA CORPORATION, Optionee

Dated as of _____, 1997

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EXHIBITS

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- Exhibit A Legal Description of Property
- Exhibit B Permitted Exceptions
- Exhibit C Form of Assignment of Partnership Interest
- Exhibit D Form of Amended and Restated Partnership Agreement

AMENDED AND RESTATED OPTION AGREEMENT

This Amended and Restated Option Agreement (this "Agreement") is made as of

this _____ day of _____, 1997 by and among BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership ("BPLP"), BOSTON PROPERTIES

L.L.C., a Delaware limited liability company ("BPLLC"), (BPLP and BPLLC are

together with their successors and assigns, to the extent such successors and assigns are each Permitted Transferees, each referred to hereinafter as

"Optionor" and collectively as "Optionors"), LEXREAL ASSOCIATES LIMITED

PARTNERSHIP, a New York limited partnership, being the successor to Lexreal Associates, a New York general partnership (the "Partnership"), each of BPLP,

BPLLC and the Partnership having an address at c/o Boston Properties, Inc., 8 Arlington Street, Boston, Massachusetts and MITSUI SEIMEI AMERICA CORPORATION, a corporation organized and existing under the laws of the State of New York, having its principal office at 200 Park Avenue, 16th Floor, New York, New York ("Optionee");

W I T N E S S E T H:

WHEREAS, the Partnership is owner of the Project (as hereinafter defined);

WHEREAS, the Partnership and Optionee entered into that certain Loan Agreement, dated April 6, 1990 (as amended by that certain First Amendment to Loan Agreement, dated as of July 19, 1990, by and between the Partnership and Optionee, the "Loan Agreement"), pursuant to which Optionee made a loan to the

Partnership in the original aggregate principal sum of Four Hundred Ten Million Dollars (\$410,000,000) (the "Loan").

WHEREAS, on July 19, 1990, in connection with the Loan, the Partnership executed and delivered to Optionee various other loan documents, including, without limitation, (i) that certain Amended and Restated Promissory Note in the original principal sum of Two Hundred Sixty-Seven Million Dollars (\$267,000,000), made by and between the Partnership and Optionee (the "Initial

Note"), (ii) that certain Supplemental Note, in the original principal sum of

One Hundred Forty-Three Million Dollars (\$143,000,000) (the "Supplemental

Note"), (iii) that certain Amended and Restated Mortgage and Security Agreement, made by and between the Partnership and Optionee (the "Initial Mortgage"),

encumbering the Project, and (iv) that certain Amended and Restated Supplemental Mortgage and Security Agreement, made by and between the Partnership and Optionee (the "Supplemental Mortgage"), encumbering the Project.

WHEREAS, on July 19, 1990, also in connection with the Loan, Borrower, Optionee, 599 Lexington Avenue Associates Limited Partnership ("599 Lex"), 599

Lexington Corp. ("Lexcorp") and Linlex, Incorporated ("Linlex") entered into

that certain Option Agreement (the "Option Agreement"), which granted to

Optionee an exclusive and irrevocable option to purchase a 49.9% general partnership interest in the Partnership in accordance with the terms thereof.

WHEREAS, on April 14, 1997, the Partnership and Optionee entered into a Loan Modification Agreement (the "Loan Modification Agreement"), which

contemplated a partial

prepayment of the Loan and a transfer of a 99% limited partnership interest in the Partnership to BPLP and a 1% general partnership interest in the Partnership to BPLLC in exchange for partnership units in BPLP ("OPUs") subject to and in

accordance with the terms of the Loan Modification Agreement;

WHEREAS, contemporaneously herewith, the Partnership and certain Affiliates (hereinafter defined) of the Partnership are forming a real estate investment trust known as Boston Properties, Inc. (the "REIT") and are offering for sale to

the public shares of such REIT in an initial public offering (the "IPO"), and,

in connection with the IPO, are making a partial prepayment of the Loan, and 599 Lex, Lexcorp and Linlex are transferring their partnership interests to BPLP and BPLLC in exchange for OPUs, as contemplated by the Loan Modification Agreement.

WHEREAS, contemporaneously herewith, the REIT is becoming the sole general partner of BPLP and is acquiring Control (but not 100% ownership) of BPLP through its ownership of OPUs, and upon such transfer of its partnership interest in the Partnership, the Partnership is converting its status from a New York general partnership to a New York limited partnership in which BPLP's interest in the Partnership will be held as a limited partner, as contemplated by and permitted under the Loan Modification Agreement.

WHEREAS, contemporaneously herewith, the Partnership and Optionee are entering into an Amended and Restated Loan Agreement, the terms of which, from this day forward shall supersede the terms of the Loan Agreement. (All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in such Amended and Restated Loan Agreement.)

WHEREAS, Optionors, as partners of the Partnership, are receiving a material benefit as a result of Optionee's completion of the transactions contemplated by and permitted under the Loan Modification Agreement, and in accordance with the terms of the Loan Modification Agreement, have agreed to amend and restate the Option Agreement as set forth below.

WHEREAS, Optionee desires to acquire from Optionors, and Optionors desire to grant to Optionee, an exclusive and irrevocable option to purchase a thirty-three and one third percent (33-1/3) limited partnership interest in the Partnership (the "33-1/3% Partnership Interest"). If Optionee exercises the Option granted hereby, (a) Optionors will assign, transfer and set over to Optionee the 33-1/3% Partnership Interest by executing and delivering to Optionee an Assignment of Partnership Interest in the form attached hereto as Exhibit C, (b) the Existing Partnership Agreement, as hereinafter defined, will

(subject to the further provisions of this Agreement) be amended and restated pursuant to the First Amended and Restated Agreement of Limited Partnership to be entered into among Optionee and Optionors in the form attached hereto as Exhibit D (such form, as it may be amended from time to time, hereinafter

referred to as the "Amended and Restated Partnership Agreement"), and (c) Optionee will pay to Optionors the Purchase Price (as hereinafter defined), all upon and subject to the terms and conditions hereof.

A G R E E M E N T

- - - - -

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, including the Optionee's agreement to amend and modify the Loan and thereby benefiting the Optionors, the receipt and sufficiency of which are hereby acknowledged, Optionors, Optionee and the Partnership hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following terms when used in this Agreement shall have the respective meanings set forth below. All capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Amended Loan Agreement (hereinafter defined):

Amended and Restated Partnership Agreement means that certain First Amended

and Restated Partnership Agreement to be entered into among Optionee and Optionors in the form attached hereto as Exhibit D.

Amended Initial Mortgage means that certain Amended and Restated Mortgage

and Security Agreement, dated as of July 19, 1990, by and between the Partnership and Optionee and encumbering the Project, as amended by that certain First Amendment to Amended and Restated Mortgage, dated as of the date hereof, by and between the Partnership and Optionee.

Amended Initial Note means that certain Amended and Restated Promissory

Note, dated as of July 19, 1990, in the original principal amount of Two Hundred Sixty-Seven Million Dollars (\$267,000,000), as amended by that certain First Amendment to Amended and Restated Promissory Note, dated as of the date hereof, by and between the Partnership and Optionee.

Affiliate means (a) any Partner, or (b) any other Person (as hereinafter

defined) (i) which directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, any Optionor or the Partnership, or (ii) twenty-five percent (25%) or more of the voting securities or equity interests of which are held beneficially or of record by any Optionor or the Partnership.

Assignment of Partnership Interests means that certain Assignment of

Partnership Interests to be executed by the Optionors in the form attached hereto as Exhibit C.

Banking Day means any day other than a day on which banks located in New

York City, New York or Tokyo, Japan are authorized or required by law to close.

Brokerage Agreements is defined in Section 5.01(d).

Brokerage Commission Certificate means a certificate executed by an

Optionor certifying that as of the date of such certificate neither the Partnership nor any Optionor on behalf of the Partnership has entered into any Brokerage Agreement which provides for the payment of any Brokerage Commissions on or after the Closing Date, except as set forth in (a) the Brokerage Commission Schedule, with respect to the certificate delivered pursuant to 5.01(d) or (b) the Updated Brokerage Commission Schedule, with respect to the certificate delivered pursuant to Section 6.02(a)(iv).

Brokerage Commission Schedule is defined in Section 5.01(d).

Brokerage Commissions is defined in Section 5.01(d).

Certificate of No Other Partners means a certificate executed by each of

the Optionors certifying as of the Closing Date that (a) Optionors own, both legally and beneficially, 100% of the partnership interests in the Partnership, (b) no Person has any right or option to become a partner or obtain any interest in the Partnership, except for a right or option which (i) has been consented to in writing by Optionee in its sole and unfettered discretion or (ii) does not affect the interest in the Partnership to be acquired by Optionee and is held by a Permitted Transferee, and (c) there are no liens on any of the Optionors' partnership interests in the Partnership, except those in favor of Optionee.

Closing is defined in Section 6.01.

Closing Certificate means a certificate executed by each of the Optionors

certifying that, as of the Closing Date, there has been no material adverse change from the facts set forth in each of the Closing Financial Statements, Updated Brokerage Commission Schedule, Updated Insurance Policy Schedule, Updated Litigation Schedule, Updated Other Agreements Schedule, Updated Service Contract Schedule and Lease Certificate, each as delivered on the Pre-Closing Delivery Date.

Closing Date is defined in Section 6.01.

Closing Financial Statements is defined in Section 6.02(a).

Collateral Assignment means the Collateral Assignment of Partnership

Interests, of even date herewith, between Optionee and Optionors, as the same may be amended from time to time.

Condemnation Certificate means a certificate executed by each of the

Optionors certifying as of the date of such certificate that except as disclosed in such certificate there is no pending, or to such Optionor's knowledge, overtly threatened, condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Project, and neither the Partnership nor any Optionor has received any written notice from any condemning authority of any of the same.

Control means the possession, directly or indirectly, of the power to cause

the direction of the management and policies of a Person, whether through the ownership of voting securities or equity interests, by contract, by family relationship or otherwise.

CPI Increase means, when used to qualify a fixed dollar amount set forth

herein, such fixed dollar amount as increased by an adjustment. The base for computing the adjustment is the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), New York City, all items (Base year 1982-1984-100) ("Index"), which is in effect as of the date hereof

("Initial Index"). The Index published most immediately preceding the

adjustment date in question ("Extension Index") is to be used in determining the

amount of the adjustment. If the Extension Index has increased over the Initial Index, the fixed dollar amount in question shall be set by multiplying such amount by a fraction, the numerator of which is the Extension Index and the denominator of which is the Initial Index. If the Index is changed so that the base year differs from that in effect as of the date hereof, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised hereafter, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Delivery Date means the date on which documents and certificates are

delivered to Optionee pursuant to Section 5.01.

Documentary Stamp Tax Law means Article 31 of the Tax Law of the State of

New York or any successor replacement Law, and the regulations promulgated thereunder, as amended from time to time.

Event of Default is defined in Section 8.01.

Exercise Date is defined in Section 2.02.

Exercise Notice is defined in Section 2.02.

Existing Partnership Agreement means the Partnership Agreement of the

Partnership dated as of December 21, 1983, originally entered into by and among 599 Lex, Lexcorp and Linlex, as amended on July 19, 1990, converted to a New York limited partnership on _____, 1997 (the "Conversion Date") and amended and restated on the Conversion Date to admit Optionors as the partners of the Partnership in substitution for 599 Lex, Lexcorp and Linlex, a true and correct copy of which has been delivered to Optionee, as the same may be amended and supplemented from time to time in accordance with the terms of this Agreement.

Financial Condition Certificate means a certificate executed by an Optionor

accompanying the Financial Statements and the Closing Financial Statements, certifying that as of the date of such certificate the Financial Statements and Closing Financial Statements, as the

case may be, (a)(i) were prepared in accordance with generally accepted accounting principles customarily used in the real estate industry consistently applied, and (ii) fairly present the Partnership's financial condition as of the date of the Financial Statements or the Closing Financial Statements, as the case may be (except as disclosed in such certificate); and (b) except as disclosed in such certificate, there has been no material adverse change in the financial condition of the Partnership from the date of the last audited Financial Statement of the Partnership delivered to Optionee.

Financial Statements means the financial statements of the Partnership,

prepared in accordance with generally accepted accounting principles customarily used in the real estate industry, including a balance sheet and the related statements of income and of cash flows and all accompanying notes.

Gross Adjustment Amount is defined in Section 7.01(a).

Improvements means the buildings, structures or other improvements located

on the Property, generally consisting of an office and retail building of two (2) stories below grade and fifty (50) stories above grade (including three (3) mechanical floors) containing approximately One Million (1,000,000) rentable square feet.

Insurance Certificate means a certificate executed by each Optionor

certifying that the Insurance Policies Schedule lists all insurance policies affording coverage with respect to the Project as of the date of delivery thereof (or with respect to the certificate delivered pursuant to Section 6.02(a) (vi), that the Updated Insurance Policies Schedule lists all insurance policies affording coverage with respect to the Project as of the Closing Date), and the information contained therein is accurate in all material respects as of the date thereof.

Insurance Policies Schedule is defined in Section 5.01(f).

Intervening Governmental Actions is defined in Section 8.03.

IRS means the Internal Revenue Service or any successor agency.

Laws means, collectively, all federal, state and local laws, rules,

regulations, ordinances, and codes, all opinions of the New York State Court of Appeals and the requirements of any insurance companies applicable to the Project.

Lease(s) means any lease, rental contract, occupancy agreement, license or

other written or oral arrangement (a) with respect to which the Partnership is the lessor or grantor, or has succeeded to the interest of such lessor or grantor, and (b) pursuant to which any Person uses, possesses or occupies or has the right to use, possess or occupy all or any part of the Project.

Lease Certificate means a certificate executed by each of the Optionors

certifying:

(a) that attached to such certificate is a true and complete copy of all Leases and all amendments thereof and all guaranties of the Tenants' obligations thereunder;

(b) that except as otherwise set forth in such certificate, as of the date of such certificate:

(i) each of the Leases is in full force and effect;

(ii) the Partnership has not given any Tenant any written notice of default under any Lease which has not been cured;

(iii) the Partnership has not received from any Tenant any written notice of material default under any Lease which has not been cured;

(iv) no Tenant is more than one (1) month in arrears in the payment of rent under its Lease;

(v) no Tenant has paid rent for more than one (1) month in advance (other than prepayments made in accordance with the terms of such Tenant's Lease);

(vi) the Partnership has not assigned any of the rents payable under the Leases except pursuant to the Loan Documents;

(vii) no material action or proceeding instituted against the Partnership by any Tenant is presently pending in a court;

(viii) there are no take-back Leases, take-over Leases or concession agreements pursuant to which the Partnership is obligated; and

(iv) there are no security deposits.

(c) if such certificate is delivered pursuant to Section 6.02(c), all rents and other charges payable under the Leases which are then due and payable have been paid.

Litigation Certificate means a certificate executed by each of the

Optionors certifying that as of the date of such certificate, except as set forth in such certificate, there are no judgments, litigation or proceedings (zoning or otherwise) pending (and to the knowledge of the Optionors, none is overtly threatened) against the Partnership or the interests of Optionors in the Partnership, the Project or the transaction contemplated by this Agreement (collectively, "Litigation").

Litigation Schedule is defined in Section 5.01(h).

Management Agreement means a management agreement by and between the

Partnership and a manager (which manager may be an Affiliate of Optionors), to be effective as of the Closing Date, and which meets the requirements of Section 5.01(1).

Miscellaneous Certificate of Optionee means a certificate from a Person

authorized to bind Optionee certifying that as of the Closing Date the representations and warranties set forth in Section 3.02 are true and correct in all material respects.

Miscellaneous Certificate of Optionors means a certificate executed by each

of the Optionors certifying that (a) as of the Closing Date the representations and warranties set forth in Section 3.01 are true and correct in all material respects and (b) all representations and warranties of the Partnership and Optionors contained in this Agreement or contained in any other certificate or instrument furnished to Optionee pursuant to Article 5 hereof were true and correct in all material respects when made.

Option is defined in Section 2.01.

Optionee's Knowledge means any state of facts of which the officers,

directors and employees (but only such employees as are directly involved with the operation and management of Optionee's interest in the Project) of Optionee have actual knowledge or notice.

Optionors' Knowledge means any state of facts of which any of the following

have actual knowledge or notice: (a) the Partnership, (b) Optionors, (c) the members, managers, general partners, officers and directors of Optionors, (d) the members, managers, officers or employees of the management company retained by the Partnership to manage the Project who are charged with the responsibility for on-site management of the Project, or (e) the persons employed by the management company to whom such on-site managers report.

Other Agreements Certificate means a certificate executed by each of the

Optionors certifying that as of the date of said certificate, there are no Other Agreements, except as set forth in (a) the Other Agreements Schedule, with respect to the certificate delivered pursuant to Section 5.01(e) or (b) the Updated Other Agreements Schedule, with respect to the certificate delivered pursuant to Section 6.02(a)(v).

Other Agreements is defined in Section 5.01(e).

Other Agreements Schedule is defined in Section 5.01(e).

Permitted Exceptions means those matters set forth in Exhibit B hereto.

Permitted Transferee means (A) a Person (i) in which Edward H. Linde

("EHL") and/or Mortimer B. Zuckerman ("MBZ"), or their respective heirs, -----
devises, or personal representatives (which heirs and devisees are spouses, parents, siblings, nieces, nephews or lineal descendants of EHL or MBZ respectively), have an indirect or direct ownership interest

of at least fifty-one percent (51%) in the aggregate, (ii) which Controls the Partnership, (iii) which Controls (by itself or through an Affiliate) the day-to-day operations and management of the Project, and (iv) which has the right to make all significant economic and management decisions on behalf of the Partnership without the need for the vote, approval or consent of any other Person other than a Permitted Transferee, or (B) the REIT, or (C) a Person (i) in which the REIT has an indirect or direct ownership interest of at least fifty-one percent (51%), (ii) which is Controlled by the REIT, (iii) which Controls (by itself or through an Affiliate) the day to day operations and management of the Project, and (iv) which has the right to make all significant economic and management decisions on behalf of the Partnership without the need for the vote, approval or consent of any other Person other than a Permitted Transferee.

Person means any natural person, corporation, firm, trust, partnership,

association, Governmental Agency or other entity, whether acting in an individual, fiduciary or other capacity.

Pre-Closing Delivery Date means the date which is thirty (30) days prior to

the Closing Date.

Project means the Property, Personal Property and Improvements.

Property means the real property described in Exhibit A hereto, together

with all easements, rights, privileges and appurtenances (including any air or development rights) thereto.

Purchase Price is defined in Section 2.01.

Rental Amounts is defined in Section 7.01(a)(vii).

Restated Partnership means the limited partnership to be formed by

Optionors and Optionee pursuant to the Amended and Restated Partnership Agreement.

Service Contract Certificate means a certificate executed by each of the

Optionors certifying that (a) as of the date of such certificate all Service Contracts in existence were set forth in the Service Contract Schedule or the Updated Service Contract Schedule, as the case may be, and (b) true copies of the Service Contracts have been delivered to Optionee and initialed by an Optionor, and the same have not been modified or amended, except as shown in such documents.

Service Contract Schedule is defined in Section 5.01(b).

Service Contracts is defined in Section 5.01(b).

Tax Election Certificate is defined in Section 5.01(k).

Taxes is defined in Section 7.01(a)(i).

Tenant(s) means any tenant, lessee, licensee or other Person having a right

to use, possess or occupy all or any part of the Project pursuant to a Lease.

Transfer Tax Law means chapter 21 of Title 11 of the New York City

Administrative Code and any successor replacement Law, and the regulations
promulgated thereunder, as amended from time to time.

Triggering Events is defined in Section 8.03.

Updated Brokerage Commission Schedule is defined in Section 6.02(a)(iv).

Updated Insurance Policies Schedule is defined in Section 6.02(a)(vi).

Updated Litigation Schedule is defined in Section 6.02(a) (viii).

Updated Other Agreements Schedule is defined in Section 6.02(a)(v).

Updated Service Contract Schedule is defined in Section 6.02(a)(ii).

ARTICLE 2

GRANT OF OPTION -----

2.01. Option. In consideration of the premises contained herein, the

receipt and sufficiency of which are hereby acknowledged, Optionors hereby grant
and sell to Optionee and Optionee hereby purchases an irrevocable and exclusive
option (the "Option") to acquire on the Closing Date the 33-1/3% Partnership

Interest for an aggregate consideration of Two Hundred Twenty-Five Million
Dollars (\$225,000,000) (the "Purchase Price"), all in accordance with the

provisions of this Agreement. The Purchase Price shall be payable by Optionee
either in cash or in the form of an assignment to Optionors (or their designee)
of the Amended Initial Note which equals the Purchase Price. The election as to
the form of payment of the Purchase Price shall be determined by Optionors and
Optionee in good faith.

2.02. Exercise of Option. Except as provided in Section 8.03, Optionee

shall give written notice to Optionors of its election to exercise the Option on
a date which is no earlier than twenty-four (24) months and no later than twelve
(12) months prior to the Maturity Date (such notice is hereinafter referred to
as the "Exercise Notice," and the date on which Optionee gives the Exercise

Notice is hereinafter referred to as the "Exercise Date"). In the event

Optionee fails timely to exercise the Option, this Agreement shall become null
and void and neither party shall have any rights or obligations hereunder.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES -----

3.01. Representations and Warranties of Optionors. In order to induce

Optionee to execute this Agreement, each Optionor hereby represents and warrants
to Optionee as of the date hereof and, except as may otherwise be disclosed in
the Miscellaneous Certificate of Optionors, shall represent and warrant as of
the Closing Date as follows:

(a) Formation, Qualification and Powers of Optionors. Each Optionor

is duly formed and validly existing under the laws of the state of its formation. The Optionors are the only partners of the Partnership. Each Optionor has all requisite power and authority to conduct its business, to own, lease, mortgage and transfer its properties, and to execute and deliver, and perform all of its obligations pursuant to this Agreement. Except as provided in this Agreement, no Person has any right or option to become a partner or obtain any interest in the Partnership.

(b) Authority and Compliance with Instruments and Government

Regulations. The execution, delivery and performance by each Optionor of this Agreement has been duly authorized by all necessary action and does not and will not:

(i) require any consent or approval not heretofore obtained of any Person;

(ii) violate any provision of the Existing Partnership Agreement or any of Optionor's documents of formation and organization;

(iii) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to the Project;

(iv) to its knowledge, violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award applicable to such Optionor; or

(v) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which such Optionor is a party or by which such Optionor, the Project or any other property of such Optionor is bound or affected;

and to the knowledge of Optionors there does not exist a default under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in subsections (iv) and (v) of this Section 3.01(b) where such default would have a material adverse effect on the ability of such Optionor to perform its obligations under this Agreement or which would otherwise be materially adverse to the interests of Optionee with respect to this Agreement.

(c) No Governmental Approvals Required. No authorization, consent,

approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is required to authorize, or is otherwise required in connection with, the execution, delivery and performance by any Optionor of this Agreement.

(d) Binding Obligations. To its knowledge, and in reliance upon the

advice of its legal counsel, this Agreement is a legal, valid and binding obligation.

(e) Compliance with Laws. To its knowledge, each Optionor is in

compliance in all material respects with all Laws applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, permits and exemptions from, and has accomplished all filings, registrations or qualifications with, any Governmental Agency required thereby or otherwise necessary for the transaction of its business.

(f) Litigation. There are no actions, suits or proceedings pending

or, to any Optionor's knowledge, overtly threatened against or affecting such Optionor which would materially adversely affect such Optionor's ability to perform its obligations hereunder.

(g) Misrepresentations. To its knowledge, no information, exhibit or

report furnished in writing by any Optionor to Optionee in connection with the execution and delivery of this Agreement contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained herein not materially misleading as of the date given.

3.02. Representations and Warranties of Optionee. In order to induce

Optionors and the Partnership to execute this Agreement, Optionee hereby represents and warrants to Optionors and to the Partnership on the date hereof and shall represent and warrant on the Closing Date as follows:

(a) Formation, Qualification and Powers of Optionee. Optionee is a

corporation duly formed and validly existing under the laws of the state of its formation. Optionee has all requisite power and authority to conduct its business, to own, lease, mortgage and transfer its properties, and to execute and deliver, and perform all of its obligations under this Agreement.

(b) Authority and Compliance with Instruments and Government

Regulations. The execution, delivery and performance by Optionee of this

Agreement has been duly authorized by all necessary action and does not and will not:

(i) require any consent or approval not heretofore obtained of any Person, provided, however, that it shall not be a breach of this representation and warranty if Lender is able to and does perform its obligations hereunder despite a failure to obtain any consent or approval;

(ii) violate any provision of the Optionee's documents of formation and organization;

(iii) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other

encumbrance of any nature, upon or with respect to any property now owned or leased or hereafter acquired by Optionee;

(iv) to its knowledge, violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award having applicability to Optionee; or

(v) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Optionee is a party or by which Optionee or any property of Optionee is bound or affected;

and to its knowledge Optionee is not in default in any respect under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in subsections (iv) and (v) of this Section 3.02(b) where such default would have a material adverse effect on the ability of Optionee to perform its obligations under this Agreement or which would otherwise be materially adverse to the interests of Optionors with respect to this Agreement.

(c) No Governmental Approvals Required. No authorization, consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency (each, a "Consent") is or will be required which has not or will not be obtained to authorize, or is otherwise required in connection with the execution, delivery and performance by Optionee of this Agreement, provided, however, that it shall not be a breach of this representation and warranty if Lender is able to and does perform its obligations hereunder despite a failure to obtain any consent or approval.

(d) Compliance with Laws. To its knowledge, Optionee is in compliance in all material respects with all Laws applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, permits and exemptions from, and has accomplished all filings, registrations or qualifications with, any Governmental Agency required thereby or otherwise necessary for the transaction of its business.

(e) Litigation. There are no actions, suits or proceedings pending or, to Optionee's knowledge, overtly threatened against or affecting Optionee which would materially adversely affect Optionee's ability to perform its obligations hereunder.

ARTICLE 4

COVENANTS OF OPTIONORS, THE PARTNERSHIP AND OPTIONEE

4.01. Discharge of Liens. At or prior to the Closing Date, Optionors shall cause to be discharged of record (a) any mortgage or other security interest affecting the Project or any partnership interest in the Partnership, individually or on behalf of the Partnership (other than the Permitted Exceptions or security interests in favor of Optionee or mortgages or other security interests otherwise permitted under the Loan Documents or the Amended and Restated Partnership Agreement (as if the same had been duly executed and exchanged)) and (b) any

other liens affecting the Project or any partnership interest in the Partnership to be acquired by Optionee (other than the Permitted Exceptions).

4.02. Transfer Taxes. If Optionee exercises the Option, Optionors and

Optionee shall each comply timely with the requirements, if any, of the Transfer Tax Law in such manner as to avoid any postponement of the Closing.

4.03. Operating Covenant. From the date hereof through the Closing Date

(or such earlier date on which this Agreement shall terminate), Optionors shall operate the Project in a reasonably prudent manner in accordance with the terms and conditions of the Loan Documents.

4.04. Budgets. Commencing with the fiscal year of the Partnership next

succeeding the date hereof and ending on the Closing Date (or such earlier date on which this Agreement terminates), Optionors shall submit to Optionee at least thirty (30) days prior to the commencement of such fiscal year a pro forma budget for the operation and maintenance of the Project during the next succeeding fiscal year setting forth in reasonable detail the projected revenues and expenses for the Project for such period. Such budgets shall be solely for informational purposes and Optionee shall not have any right of approval with respect to the matters set forth therein.

4.05. Maintenance. From the date hereof through the Closing Date (or such

earlier date on which this Agreement shall terminate), Optionors shall cause the Partnership to maintain the Improvements and Personal Property (and shall make all necessary repairs and replacements thereto) such that, subject to ordinary wear and tear, condemnation and casualty, on the Closing Date the Improvements and Personal Property shall be in substantially the condition which would reasonably be expected of a first-class New York City office and retail building of comparable age and quality.

4.06. Restrictions on Transfers of Partnership Interests. From the date

hereof through the Closing Date, Optionors shall not transfer or assign their partnership interests in the Partnership except to Permitted Transferees in accordance with Section 5.4 of the Amended Initial Mortgage. Any purported transfer or assignment prohibited by this Section 4.06 shall be void ab initio

and shall be of no effect except that the same shall constitute a default under this Agreement.

4.07. No Clogging. The Partnership, Optionors and Optionee have conferred

with their respective counsel regarding the doctrine of "clogging of the equity of redemption" and understand that such doctrine may be applied in certain cases to prevent enforcement of options granted to secured lenders. The Partnership, Optionors and Optionee acknowledge and agree, to the maximum extent permitted by Law, that the rights set forth in this Agreement are not intended to be a clog or a fettering of the Partnership's or Optionors' interest in the Property, or a granting of a collateral advantage or further restraint on the Partnership's or Optionors' equity of redemption, or a contract for the forfeiture of the Property subject to a lien in satisfaction of the obligations under the Loan Documents. The Partnership, Optionors and

Optionee acknowledge and agree that they are not entitled to have the rights set forth in this Agreement terminated or extinguished except as specifically set forth and permitted herein.

4.08. Waiver of Defense. To the maximum extent permitted by Law, the

Partnership, Optionors and Optionee hereby irrevocably waive any and all defenses (equitable or otherwise), counterclaims or causes of action on grounds that the provisions of this Agreement and the Loan Documents "clog" the equity of redemption of the Partnership or Optionors in the Property, fetter the Property or otherwise grant a collateral advantage which otherwise might be available to them as a basis for avoiding performance, or preventing enforcement against them, of any of their obligations hereunder.

ARTICLE 5

DELIVERIES PRIOR TO MATURITY DATE

5.01. Pre-Exercise Deliveries. Optionors shall deliver or cause to be

delivered to Optionee not earlier than nineteen (19) months nor later than eighteen (18) months prior to the Maturity Date (provided, however, that upon the occurrence of an Intervening Governmental Action at any time prior to July 19, 2003, the Delivery Date shall be twenty-four (24) months prior to the Maturity Date) the following:

(a) Financial Statements. The audited Financial Statements of the

Partnership for its two (2) fiscal years immediately preceding the Delivery Date thereof, together with unaudited Financial Statements for the period between the close of the most recent fiscal year and the Delivery Date. If the audited Financial Statements for the immediately preceding fiscal year are not available, Optionors shall deliver unaudited Financial Statements for such immediately preceding fiscal year and, no later than ninety (90) days following the end of the Partnership's fiscal year, shall deliver audited Financial Statements for such immediately preceding fiscal year, together with a Financial Condition Certificate dated as of the Delivery Date.

(b) Service Contracts. (i) A schedule (the "Service Contract

Schedule") of all service, maintenance, supply and management contracts

affecting the Project or entered into by the Partnership providing for payments in excess of Twenty Five Thousand Dollars (\$25,000) (as adjusted from the date hereof by CPI Increases) per annum in existence as of the date of delivery thereof ("Service Contracts"), (ii) true and complete copies of all Service

Contracts as shown on the Service Contract Schedule initialed by an Optionor, and (iii) the Service Contract Certificate dated as of the Delivery Date.

(c) Leases; Condemnation. The Lease Certificate and Condemnation

Certificate, each dated as of the Delivery Date.

(d) Brokerage Commissions. (i) A schedule (the "Brokerage Commission

Schedule") of all brokerage commissions and finder's fees payable by the

Partnership on or after the Closing Date ("Brokerage Commissions") with respect

to the current or any renewal terms or any expansion options under any Lease,
(ii) true and complete copies of all agreements (the "Brokerage Agreements")

governing the payment of all Brokerage

Commissions initialed by an Optionor, and (iii) the Brokerage Commission Certificate dated as of the Delivery Date.

(e) Other Agreements. (i) A schedule (the "Other Agreements

Schedule") of all agreements requiring aggregate payments by the Partnership in excess of Twenty Five Thousand Dollars (\$25,000) (as adjusted from the date hereof by CPI Increases), other than Permitted Exceptions, Leases, Brokerage Agreements and Service Contracts, which bind or obligate the Partnership, which are in existence as of the Delivery Date and which contain obligations to be performed by the Partnership on or after the Closing Date (the "Other

Agreements"), (ii) true and complete copies of the Other Agreements as shown on

the Other Agreements Schedule initialed by an Optionor, and (iii) the Other Agreements Certificate dated as of the Delivery Date.

(f) Insurance. (i) A schedule (the "Insurance Policies Schedule") of

all insurance policies affording coverage with respect to the Project or any portion thereof in existence as of the Delivery Date, and (ii) the Insurance Certificate dated as of the Delivery Date.

(g) Permits. True and complete copies of all temporary or permanent

certificates of occupancy held, and all other permits required by Law or obtained, in connection with the operation and use of the Project.

(h) Litigation. (i) A schedule (the "Litigation Schedule") of

Litigation pending as of the Delivery Date, (ii) a brief description of the claims made in such Litigation, and (iii) the Litigation Certificate dated as of the Delivery Date.

(i) Plans and Specifications. Optionors will make available for

Optionee's inspection copies of the plans and specifications for the Project or any portion thereof which the Partnership, Optionors or its managing agent may have in their possession and which have not previously been delivered to Optionee.

(j) Cash Flow Projection. A projection of cash flow for the Project

for the ten (10) year period commencing on the Delivery Date.

(k) Tax Election Certificate. A certificate (a "Tax Election

Certificate") from an Optionor setting forth any material federal income tax

elections made by the Optionors or the Partnership which would be binding upon Optionee in its capacity as partner in the Restated Partnership.

(l) Management Agreement. Optionors shall deliver to Optionee for

approval a form of Management Agreement proposed to be entered into by the Partnership with a management company which may be an Affiliate of either Optionor. The Management Agreement shall (i) be in a form customarily used in the real estate industry in New York City for projects comparable in age, size and quality to the Project by a prudent institutional owner when entering into a management agreement with its developer/partner for management, and

(ii) provide for a management fee not to exceed the greater of (A) one percent (1%) of the gross revenues of the Project, and (B) an amount demonstrated to Optionee's satisfaction to be the market rate at the time payable to management companies which provide management services only (as opposed to those which provide, in addition thereto, leasing agent services, for example) for buildings located in New York, New York, comparable in size, age and quality to the Project. Optionee shall have the right to object to any provision of the proposed Management Agreement and the parties shall use their reasonable efforts to resolve all disagreements prior to the Closing Date. If, on the Closing Date, objections to the proposed Management Agreement remain unresolved, then the Optionee may elect in writing to terminate this Agreement in which event neither party shall have any further right or obligation hereunder and the Maturity Date shall be extended for a period of one hundred twenty (120) days during which 120-day period the Partnership shall have the right to prepay the Loan without premium or penalty upon twenty (20) Banking Days' prior notice to Optionee.

(m) Additional Deliveries. All additional deliveries that are

customarily provided in connection with transactions of a similar nature as of the Exercise Date, as Optionee or its counsel may reasonably request.

5.02. Budget. At least seventy-five (75) days prior to the Closing Date,

Optionors shall deliver to Optionee for approval the proposed budget described in Section 6.4(a) of the Amended and Restated Partnership Agreement. Optionee shall have the right to object to any item(s) in the budget in accordance with the procedure set forth in Section 6.4(b) of the Amended and Restated Partnership Agreement, except that if the unresolved objection relates to an aggregate amount equal to or in excess of One Million Dollars (\$1,000,000), Optionee shall have the right to terminate this Agreement by written notice to Optionors. Upon such termination by Optionee, neither party shall have any further right or obligation hereunder and the Maturity Date of the Loan shall be extended for a period of one hundred twenty (120) days during which 120-day period the Partnership shall have the right to prepay the Loan without premium or penalty upon twenty (20) Banking Days' prior notice to Optionee. If the unresolved objection relates to an amount less than One Million Dollars (\$1,000,000), the decision of Optionors shall prevail.

ARTICLE 6 CLOSING; CONDITIONS AND DELIVERIES PRECEDENT TO CLOSING

6.01. Closing. If Optionee exercises the Option, the closing (the

"Closing") pursuant to this Agreement shall occur on a date (the "Closing

Date") acceptable to all of the parties hereto, but in no event later than (a)

the Maturity Date, or (b) if, but only if, an Intervening Governmental Action occurs subsequent to the Exercise Date, on a date which is twelve (12) months after the occurrence of such Intervening Governmental Action, subject to adjournment, extension or acceleration as provided herein, provided all of the conditions precedent to Closing have occurred or have been waived by the party entitled to make such waiver. The Closing shall be held at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 commencing at 10 a.m. on the Closing Date or at such other office in New York City as the parties shall agree. Any party shall have the right to adjourn the Closing for up to thirty (30) days for good cause due to circumstances beyond its control. In

no event, however, except for an extension pursuant to clause (b) above, shall the Closing be delayed to a date more than thirty (30) days after the Maturity Date.

6.02. Optionors' Deliveries. Optionee's obligation to consummate the

Closing is expressly conditioned on Optionors delivering or causing to be delivered to Optionee the items and documents described below (any one or more of which may be waived, in whole or in part, by Optionee in writing in Optionee's sole discretion):

(a) on the Pre-Closing Delivery Date, the items described in (i) through (ix) below:

(i) Financial Statements. The audited Financial Statements of

the Partnership for the three (3) fiscal years immediately preceding the Closing Date, together with unaudited Financial Statements for the period between the close of the most recent fiscal year and the Pre-Closing Delivery Date (to the extent the same have not been previously delivered to Optionee), or if the audited Financial Statements for the immediately preceding fiscal year are not available, Optionors shall deliver unaudited Financial Statements for such immediately preceding fiscal year. The Financial Statements to be delivered to Optionee pursuant to this Section 6.02(a)(i) or that would have been so delivered if not previously delivered to Optionee are hereinafter collectively referred to as the "Closing Financial Statements"), together with the Financial

Condition Certificate dated as of the Pre-Closing Delivery Date.

(ii) Service Contracts. (A) A schedule of all Service

Contracts in existence as of the Pre-Closing Delivery Date (the "Updated Service Contract Schedule"), (B) true and complete copies of all Service Contracts as shown on the Updated Service Contract Schedule not previously delivered pursuant to Section 5.01(b), initialed by an Optionor, (C) the Service Contracts Certificate dated as of the Pre-Closing Delivery Date, and (D) a certificate from an Optionor certifying that there are no Service Contracts with Affiliates other than Service Contracts that were approved in writing by Optionee.

(iii) Leases. (A) A Lease Certificate dated as of the

Pre-Closing Delivery Date, and (B) a certificate from an Optionor certifying that there are no Leases with Affiliates other than Leases that were approved in writing by Optionee.

(iv) Brokerage Commissions. (A) A schedule of all Brokerage

Commissions payable on or after the Pre-Closing Delivery Date with respect to Leases in existence on the Pre-Closing Delivery Date (the "Updated Brokerage Brokerage Commission Schedule"), (B) true and complete copies initialed by an Optionor of all Brokerage Agreements in existence as of the Pre-Closing Delivery Date and not previously delivered pursuant to Section 5.01(d), and (C) the Brokerage Commissions Certificate dated as of the Pre-Closing Delivery Date.

(v) Other Agreements. (A) A schedule of all Other Agreements

in existence on the Pre-Closing Delivery Date which bind or obligate the Partnership (the "Updated Other Agreements Schedule"), (B) true and complete copies of the Other

Agreements not previously delivered pursuant to Section 5.01(e), initialed by an Optionor and (C) the Other Agreement Certificate dated as of the Pre-Closing Delivery Date.

(vi) Insurance Policies. (A) A schedule of all insurance policies in existence as of the Pre-Closing Delivery Date (the "Updated Insurance Policies Schedule"), and (B) the Insurance Certificate dated as of the Pre-Closing Delivery Date.

(vii) Permits. True and complete copies of all temporary or permanent certificates of occupancy held, and all other permits required by Law or obtained, in connection with the operation and use of the Project not previously delivered pursuant to Section 5.01(g).

(viii) Litigation. (A) A schedule of all Litigation in existence as of the Pre-Closing Delivery Date (the "Updated Litigation Schedule"), (B) a brief description of all Litigation as shown on the Updated Litigation Schedule, and (C) the Litigation Certificate dated as of the Pre-Closing Delivery Date.

(ix) Other Certificates. A Condemnation Certificate and an update of the Tax Election Certificate, each dated as of the Pre-Closing Delivery Date.

(b) On the Closing Date, the items described in (i) through (xii) below:

(i) Amended and Restated Partnership Agreement. Six (6) counterparts of the Amended and Restated Partnership Agreement executed by the Optionors or, if applicable, such Persons as are Permitted Transferees.

(ii) Assignment of Partnership Interest. An Assignment of Partnership Interest sufficient to transfer the 33-1/3% Partnership Interest to Optionee.

(iii) Repayment of Loan. Payment by wire transfer of immediately available funds to Optionee's account at such location as may be designated by Optionee in writing at least three (3) Banking Days' prior to the Closing Date, an amount equal to any outstanding amounts due and payable under the Loan Documents LESS the amount of the Amended Initial Note if the Amended Initial Note is being assigned to Optionors at Closing. If Optionee fails timely to furnish wiring instructions, the Partnership shall make said payment by certified or bank check payable to Optionee drawn on a bank which is a member of the New York Clearing House or a successor thereto.

(iv) Organizational Matters of Optionors. Certified copies of the organizational documents of each of the Optionors and such resolutions and incumbency certificates as shall be reasonably required by Optionee or its counsel in order to evidence the due authorization and execution of the Assignment(s) of Partnership Interest and the Amended and Restated Partnership Agreement by the Optionors or the Persons executing such documents in accordance with this Agreement.

(v) Opinion of Counsel. An opinion of counsel to each

Optionor opining on such matters as reasonably requested by Optionee or its counsel, with such qualifications, if any, as shall then be customary or appropriate under then applicable Law and practice for like opinions.

(vi) Good Standing Certificate. A Good Standing Certificate

from the Secretary of State of the state of formation with respect to each Optionor which is a corporation, a limited partnership, or a limited liability company.

(vii) Management Agreement. A copy of the Management Agreement

certified as true and correct by an Optionor.

(viii) Release. If the Purchase Price is to be paid by

assigning to Optionors the Amended Initial Note, a release executed by each Optionor in favor of the Partnership releasing the Partnership from all liability under the Amended Initial Note.

(ix) Closing Certificate. The Closing Certificate of

Optionors dated as of the Closing Date.

(x) Title Matters. All documents and affidavits as may

reasonably be required by the title insurance company to enable such company to issue any title insurance policy or endorsement (including, but not limited to, a non-imputation endorsement) requested by Optionee in connection with the Closing.

(xi) Other Certificates. The Certificate of No Other Partners,

Miscellaneous Certificate of Optionors, a Condemnation Certificate and an update of the Tax Election Certificate, each dated as of the Closing Date.

(xii) Additional Deliveries. All other documents and

instruments required to be delivered by the Partnership and Optionors pursuant to the terms of this Agreement, together with any additional deliveries that are customarily provided in connection with transactions of a similar nature as of the Closing Date which Optionee or its counsel may reasonably request.

6.03. Optionee's Conditions Precedent to Closing. Optionee's obligation

to consummate the Closing is expressly conditioned on the satisfaction, at or before Closing or on such earlier date as is specified in Section 8.03 below, of each of the following conditions (any one or more of which may be waived in writing, in whole or in part, by Optionee in Optionee's sole discretion):

(a) Title. Title to the Project shall be vested in the Partnership

free and clear of all mortgages, liens, encumbrances, covenants, and any other matters affecting title, other than the Permitted Exceptions.

(b) Condemnation. There shall have occurred no taking of title to

any portion of the Project by reason of any condemnation, expropriation, eminent domain or similar proceedings of such a nature that the utility or economic value of the Project is affected in any material way, nor shall any such proceedings be pending, or to any Optionor's knowledge, overtly threatened (except in the event of an accelerated Closing pursuant to Section 8.03(a)(ii)). As an example, a taking by a public utility of a location for a utility line, underground vault, or a taking by the municipality or other governmental organization widening a street, changing a grade, or making a minor adjustment in property lines, in each case not affecting rental payable by Tenants or the income potential of the Project, shall not be deemed a taking of a material nature affecting the utility or economic value of the Project.

(c) Casualty. In the event that the Project shall have been damaged

or destroyed by fire or other casualty, such damage or destruction shall have been fully restored to the standard existing prior to such damage or destruction.

(d) Event of Default. No Event of Default shall exist hereunder.

(e) Material Adverse Change. There shall have been no material

adverse change between:

(i) The Brokerage Commission Schedule, Insurance Policies Schedule, Litigation Schedule, Other Agreements Schedule and Service Contract Schedule, delivered on the Delivery Date and the Updated Brokerage Commission Schedule, Updated Insurance Policy Schedule, Updated Litigation Schedule, Updated Other Agreements Schedule and Updated Service Contract Schedule delivered on the Pre-Closing Delivery Date; or

(ii) The Financial Statements and the Closing Financial Statements.

(f) Miscellaneous Certificate. The Miscellaneous Certificate of

Optionors shall indicate no exceptions or qualifications to the representations and warranties set forth in Section 3.02, other than those which (i) reflect changes permitted by the terms hereof or (ii) reflect facts or conditions as to which there has been no material adverse change from the date hereof.

(g) Budget; Management Agreement. The parties shall have agreed upon

the budget described in Section 5.02 and the Management Agreement described in Section 5.01(1).

If the conditions set forth in (e) and (f) are neither satisfied nor waived Optionee may elect, in writing, to terminate this Agreement in which event neither party shall have any further right or obligation hereunder and the Maturity Date shall be extended for a period of one hundred twenty (120) days during which 120-day period the Partnership shall have the right to prepay the Loan without premium or penalty upon twenty (20) Banking Days prior notice to Optionee.

6.04 Optionee's Deliveries. Optionors' obligation to consummate the

Closing is expressly conditioned on Optionee delivering or causing to be delivered to Optionors on the Closing Date the items described in (a) through (g) below (any one or more of which may be waived in writing, in whole or in part, by Optionors in Optionors' sole discretion):

(a) Assignment. If the Purchase Price is paid by assignment of the

Amended Initial Note, an assignment executed by Optionee assigning to Optionors (or their designee) the Amended Initial Note equal to the Purchase Price, together with such original Amended Initial Note endorsed without recourse by Optionee to Optionors or their designee.

(b) Amended and Restated Partnership Agreement. Six (6)

counterparts of the Amended and Restated Partnership Agreement executed by Optionee.

(c) Organizational Matters of Optionee. Certified copies of the

organizational documents of Optionee, and such resolutions and incumbency certificates as shall be reasonably required by Optionors or their counsel in order to evidence the due authorization and execution by Optionee of the Amended and Restated Partnership Agreement and, if applicable, the assignment referred to in clause (a) above.

(d) Miscellaneous Certificate. The Miscellaneous Certificate of

Optionee dated as of the Closing Date.

(e) Opinion of Counsel. An opinion of counsel to Optionee opining on

such matters as may reasonably be requested by Optionors or their counsel, with such qualifications, if any, as shall then be customary or appropriate under then applicable Law and practice for like opinions.

(f) Good Standing Certificate. A Good Standing Certificate from the

Secretary of State of Optionee's state of incorporation.

(g) Additional Deliveries. Any additional deliveries as Optionors or

their counsel may reasonably request that are customarily provided in connection with transactions of a similar nature as of the Closing Date.

6.05 Disposition of Amended Initial Note. Immediately after delivery, if

any, of the Amended Initial Note by Optionee pursuant to Section 6.04(a), Optionors shall either (a) contribute the Amended Initial Note to the Partnership and cancel the indebtedness evidenced thereby, or (b) provide to Optionee such documentation as is reasonably requested by Optionee or its counsel to assure Optionee that the indebtedness evidenced by the Amended Initial Note shall not be enforced as against the Project other than to the extent of any proceeds of any Financing or Refinancing (as such terms are defined in the Amended and Restated Partnership Agreement) obtained in accordance with the terms and conditions of the Amended and Restated Partnership Agreement.

ARTICLE 7 CLOSING ADJUSTMENTS; CLOSING COSTS

7.01. Closing Adjustments.

(a) The "Gross Adjustment Amount" shall mean the sum obtained by adding the amounts described in clauses (i) through (vi) below, and subtracting from such sum the amount obtained by adding the amounts described in clauses (vii) through (xiv) below, and adding or subtracting (as appropriate) the amount determined pursuant to clause (xv) below (each of the following amounts described in clauses (i) through (xv) shall be adjusted on a per diem basis as of 11:59 p.m. of the day next preceding the Closing Date):

(i) Real estate and personal property taxes, franchise taxes, sewer rents and charges and other state, county and municipal taxes, charges and assessments affecting the Project or any portion thereof (collectively, "Taxes"), paid by the Partnership for the period on or after the Closing Date. (If the rate of any such Taxes, or the assessed value of the Project shall not be fixed prior to the Closing, the calculation of the amount determined pursuant to this clause (i) or pursuant to clause (viii) below at the Closing shall be upon the basis of the rate for the preceding fiscal year applied to the latest assessed valuation (or other basis of valuation) and the amount of any further adjustment shall be paid in accordance with this Section 7.01 when the rate or assessed valuation for the current fiscal year is fixed);

(ii) Charges for water, electricity, gas, oil, steam, telephone and all other utilities (other than those paid directly by Tenants), paid by the Partnership for all periods on or after the Closing Date. If the consumption of any of the foregoing is measured by meters, the Partnership shall furnish a current reading of each meter at the Closing. (If there is no such meter or if the bills for any of the foregoing have not been issued prior to the Closing Date, the charges therefor shall be adjusted for purposes of this clause (ii) and clause (ix) at the Closing, on the basis of the charges for the prior period for which bills were issued and the amount of any further adjustment shall be paid in accordance with this Section 7.01 when the bills for the current period are issued);

(iii) Wages, salaries, vacation pay, sick leave, bonuses and other employee benefits, if any, for the Partnership's employees at the Project paid by the Partnership for all periods on or after the Closing Date;

(iv) The premiums on the Partnership's insurance policies paid by the Partnership for all periods on or after the Closing Date, but excluding any such policies which will be canceled on or before the Closing Date;

(v) Charges under Service Contracts paid by the Partnership for all periods on or after the Closing Date;

(vi) The management fee payable to the managing agent pursuant to the Management Agreement paid by the Partnership for all periods on or after the Closing Date;

(vii) Rent (including, without limitation, all base rent and additional rent) and other charges (including, without limitation, charges for electricity, Taxes and operating expense, collectively, "Rental Amounts") paid

by Tenants under Leases for periods on or after the Closing Date;

(viii) Taxes payable (but not yet paid) by the Partnership for all periods prior to the Closing Date;

(ix) Charges for water, electricity, gas, oil, steam, telephone and all other utilities (other than those paid directly by Tenants), payable (but not yet paid) by the Partnership for all periods prior to the Closing Date;

(x) Wages, salaries, vacation pay, sick leave, bonuses, and other employee benefits, if any, for the Partnership's employees at the Project, payable, but not yet paid, by the Partnership for all periods prior to the Closing Date;

(xi) The premiums on the Partnership's insurance policies, payable, but not yet paid, by the Partnership for all periods prior to the Closing Date, but excluding any such policies which will be canceled on or before the Closing Date;

(xii) Charges under Service Contracts payable, but not yet paid, by the Partnership for all periods prior to the Closing Date;

(xiii) The management fee payable to the managing agent pursuant to the Management Agreement payable, but not yet paid, by the Partnership for all periods prior to the Closing Date;

(xiv) All amounts shown on the Updated Brokerage Commission Schedule;

(xv) Any other items of income to, or expenses of, the Partnership which would normally be apportioned or adjusted under standard real estate customs in effect as of the Closing Date in respect to title closings in New York, New York.

(b) If the Gross Adjustment Amount is less than zero, Optionors shall deliver to the Partnership, on the Closing Date, a cashier's or certified bank check in an amount equal to the absolute value of such Gross Adjustment Amount. If the Gross Adjustment Amount is greater than zero, the Partnership shall deliver to Optionors (in proportion to their respective interests in the Partnership), on the Closing Date, a cashier's or certified bank check in an amount equal to such Gross Adjustment Amount.

(c) All arrearages in rent (including, without limitation, all base rent and additional rent) and other charges (including, without limitation, charges for electricity, taxes and operating expense), as of the Closing Date, shall be applied and distributed in accordance with the provisions of Section 5.4 of the Amended and Restated Partnership Agreement.

(d) If any of the items described in Section 7.01(a) cannot be apportioned at the Closing, or are incorrectly apportioned at the Closing, such items shall be apportioned as soon as practical after the date of the Closing.

(e) The provisions of this Section 7.01 shall survive the Closing.

7.02. Closing Costs. All taxes which may be imposed in connection with

the Closing under the Transfer Tax Law and Documentary Stamp Tax Law shall be paid by Optionors or Optionee, as may then be customary or required by applicable Law; provided, however, that if there is a reasonable uncertainty as

to what may then be customary with respect to the payment of any of the aforementioned taxes, such taxes shall be paid by Optionors. Each party hereto shall bear its own closing costs and expenses.

ARTICLE 8 EVENTS OF DEFAULT; REMEDIES UPON DEFAULT

8.01. Events of Default. The occurrence of any one or more of the

following shall constitute an Event of Default hereunder:

(a) any representation or warranty in this Agreement or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with this Agreement proves to have been incorrect in any material respect when made; or

(b) the failure to perform or observe any term, covenant or agreement to be performed or observed contained in this Agreement and such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the defaulting party by any non-defaulting party or, if such failure is of such a nature that it cannot be completely remedied within said thirty (30) day period, if the defaulting party shall not (i) promptly upon the non-defaulting party's giving notice of such failure, advise the non-defaulting party(ies) in writing of the specific measures which the defaulting party intends to implement to remedy such failure, (ii) promptly institute and diligently pursue all such measures necessary to remedy the same, and (iii) effect such remedy within a reasonable period of time after the date of the giving of such notice by the non-defaulting party.

8.02. Remedies upon Default. Upon the occurrence of any Event of Default,

the non-defaulting party(ies) may, at its option, terminate this Agreement by written notice to the other party(ies) and neither party shall have any further right or obligation hereunder. The parties reserve the right to any and all remedies available to them at Law or in equity, including specific performance. If the defaulting party is Optionee and Optionors elect to terminate this Agreement, then the Maturity Date of the Loan shall be extended for a period of twelve (12) months during which twelve (12)-month period the Partnership shall have the right to prepay the Loan without premium or penalty upon twenty (20) Banking Days' prior notice to Optionee.

8.03. Events Accelerating Exercise of the Option and Closing.

(a) Option Acceleration Events. Optionee shall have the right, by

written notice given to Optionors as provided below, and notwithstanding anything to the contrary contained in Section 2.02, to elect to exercise the Option upon occurrence of any of the following events, if any such event occurs at any time prior to the latest date upon which the Option may be exercised in accordance with Section 2.02 (collectively, "Triggering Events"):

(i) Project Sale. The sale of all or substantially all of the

Project; or

(ii) Project Conversion. The payment to the Partnership of

insurance proceeds or condemnation awards as a result of a destruction of all or substantially all of the Project (unless Optionors have elected, pursuant to the terms of the Loan Documents, to use the insurance proceeds for restoration or rebuilding), a taking in eminent domain of all or substantially all of the Project or a title defect which deprives the Partnership of the beneficial use and enjoyment of all or substantially all of the Project; or

(iii) Dissolution. The dissolution of the Partnership and

liquidation of its assets upon the mutual agreement of the Optionors to do so following a determination by the Optionors that it is no longer economically feasible to carry on the business of the Partnership.

To the extent that any Triggering Event constitutes an Event of Default, or requires the prior written consent of Optionee under any of the Loan Documents, this Section 8.03 shall not be deemed to modify the applicable terms of the Loan Documents.

(b) Exercise of Option. Optionors shall deliver to Optionee at least

forty-five (45) days' prior written notice of the projected date of any Triggering Event (and, in any event, shall deliver such notice as soon as reasonably practicable). Optionors shall accompany any such notice with reasonably detailed information regarding such Triggering Event. Optionors shall supply such additional information with respect to such Triggering Event as Optionee or its counsel may reasonably request and as is reasonably available to Optionors. Not later than thirty (30) days after such notice is given to Optionee, Optionee shall, if it desires to exercise the Option under Section 8.03(a), give to the Partnership written notice of its election to exercise the Option hereunder.

In the event that Optionee exercises the Option as provided above, this Agreement shall thereupon be deemed a contract for the acquisition of the 33-1/3% Partnership Interest, subject to the condition that the applicable Triggering Event occurs. The Closing Date pursuant to this Section 8.03 shall be a date which is no later than one (1) day preceding the occurrence of the applicable Triggering Event unless otherwise mutually agreed. If for any reason such Triggering Event shall not occur, any exercise of the Option by Optionee made pursuant to this Section 8.03 shall be deemed revoked and this Agreement shall be reinstated in its entirety.

8.04. Intervening Governmental Action. If Optionee is unable to close or

to act as Optionee under this Agreement on account of an Intervening Governmental Action (as defined

below) this Agreement shall, at the election of Optionee, either (a) terminate and neither party shall have any rights or liabilities hereunder, or (b) be assignable by Optionee in accordance with the terms of Section 9.06. An "Intervening Governmental Action" shall mean a statute, rule, regulation, or official or unofficial change of position, of the Government of Japan or of the United States of any ministry or department thereof (a "Governmental Entity")

which makes it Unlawful (as defined below) for Optionee to consummate the Closing or act as Optionee, but only if (x) such Intervening Governmental Action is not enacted or promulgated at the date hereof, (y) Optionee has made good faith efforts to obtain an approval or exemption from the relevant Governmental Agency to enable it to consummate the Closing or act as Optionee, but has been unable to do so, and (z) Optionee has given Optionors such evidence, if any, as may be available respecting the existence and effective date of such Intervening Governmental Action, of its applicability to Optionee and this Agreement, and of Optionee's compliance with subparagraph (y) hereof. For the purposes of this Section 8.04 only, "Unlawful" shall mean violative of, prohibited, or unauthorized by Law, or contrary to the advice, opinion or policy, whether official or unofficial, of any Governmental Entity.

8.05. Waiver; No Election.

(a) Except as specifically provided herein, the exercise of (or failure to exercise) any one of a party's rights or remedies under this Agreement shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein.

(b) In the event of the occurrence of an Event of Default, the non-defaulting party shall have the sole right to determine which remedies available under this Agreement to pursue, and such party may elect to pursue (or not to pursue) any or all of such remedies (regardless of whether such election is deemed to be inconsistent).

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.01. Casualty. If the Project is damaged or destroyed by fire or other

casualty subsequent to the Exercise Date, Optionors agree to notify Optionee of that fact within ten (10) days following its occurrence, providing such details as are available at that time. If it appears to Optionee on the basis of available evidence and information that the repair or restoration of such damage or destruction will not be completed by the Closing Date, Optionee shall have the right to rescind its Exercise Notice by written notice to Optionors within twenty (20) days following the occurrence of such damage or destruction, in which event:

(a) the Closing Date shall be extended to a date not later than twelve (12) months following the date of such damage or destruction and the Maturity Date shall be extended for a period of twelve (12) months from the date of the occurrence of such damage or destruction, during which twelve-month period the Partnership shall, if Optionee elects to terminate this Agreement pursuant to clause (c) below, have the right to prepay the Loan without premium or penalty upon twenty (20) Banking Days' prior notice to Optionee;

(b) within one hundred twenty (120) days following the occurrence of such damage or destruction, Optionors agree to deliver to Optionee detailed information respecting the nature and scope of the damage or destruction, the plans for and timing of the restoration thereof and all other materials and information necessary to enable Optionee to make an informed decision whether to proceed to Closing;

(c) within one hundred twenty (120) days following receipt by Optionee of the deliveries required by clause (b) above, Optionee agrees to notify Optionors in writing of its decision either (i) to proceed to Closing or (ii) to terminate this Agreement, in which latter event neither Optionors nor Optionee shall have any further rights or obligations hereunder; and

(d) if Optionee elects to proceed to Closing, Optionors agree to deliver to Optionee, as promptly as practicable, all of the items specified in Section 6.02(a) hereof and, subject to compliance with and satisfaction of the requirements of Sections 6.02(b) and 6.03 (but excluding the condition set forth in Section 6.03(c)) hereof, the Closing shall occur not later than thirty (30) days thereafter.

9.02. Casualty or Condemnation. The Partnership, Optionors and Optionee

hereby waive the provisions of all applicable Laws relating to the occurrence of a casualty or condemnation between the date hereof and the Closing, and the parties agree that the provisions set forth in this Agreement shall govern in lieu of such applicable Law.

9.03. Banking Day Extension. In the event any time period or any date

provided in this Agreement ends or falls on a day other than a Banking Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Banking Day, and performance hereunder may be made on such Banking Day with the same force and effect as if made on such other day.

9.04. Confidentiality. The existence and contents of this Agreement and

all other documents attached hereto as exhibits, the matters disclosed by any review undertaken by Optionee in connection with this transaction and all information now or hereafter furnished to Optionee pursuant to this Agreement shall not be disclosed to any third parties without the advance written consent of all parties hereto, except for any disclosure that may be required to be made to any applicable Governmental Agency. No advertisement or other publicity concerning this transaction shall be made or disseminated by any party either before or after the Closing Date hereunder without the review and approval of all parties hereto. All parties recognize the need to disclose aspects of this transaction to their respective accountants, attorneys and other consultants. No party is responsible for the actions of third parties as to the disclosure of confidential information, but each party agrees to inform its accountants, attorneys and other consultants of the confidentiality of this transaction and all such other information and, upon request of any other, agrees to use reasonable efforts to obtain confidentiality agreements from such third parties. Notwithstanding the foregoing, Optionors hereby agree that Optionee may disclose the general terms of this transaction (but not any

information concerning Leases or other financial information regarding the Project, the Partnership, Optionors or any other partner in the Partnership) to third parties in Japan.

9.05. Brokerage. The parties each represent to the others that it has not

dealt with any broker or finder in connection with this Agreement or the transactions contemplated hereby except for Jones Lang Wootton USA ("JLW") and

that no commission, brokerage fee or similar charge is or will be payable in connection with this Agreement or the transactions contemplated hereby, except to JLW, which fee Optionors agree will be paid by Optionors pursuant to separate agreement. The parties shall each indemnify, save and hold harmless the others from any and all claims arising as a result of the inaccuracy of the representation provided in this Section 9.05. The provisions of this Section 9.05 shall survive the Closing or termination of this Agreement.

9.06. Binding Effect; Assignment.. This Agreement shall be binding upon

and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns, except that Optionors may not assign their rights or interests or delegate any of their duties under this Agreement without the prior written consent of Optionee. Optionee shall have the right, in its sole and absolute discretion, to transfer, assign or sell in its entirety any or all of its right and interest in and under this Agreement; provided that Optionee agrees only to transfer, assign or sell any or all of its right and interest in and under this Agreement in connection with a transfer, assignment or sale of Optionee's right and interest under the Loan Documents. As a condition of any transfer by any Optionor of an interest in the Partnership to a Permitted Transferee, such Optionor shall require such Permitted Transferee to execute and deliver to Optionee such documentation as Optionee shall reasonably require confirming such Permitted Transferee's agreement to be bound hereby.

9.07. Execution in Counterparts. This Agreement may be executed in any

number of counterparts and any party hereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement, taken together will be deemed to be but one and the same instrument.

9.08. Amendments; Consents. No amendment, modification, supplement,

termination or waiver of any provision of this Agreement, and no consent to any departure by any party from the terms hereof, may in any event be effective unless in writing signed by the party to be charged, and then only in the specific instance and for the specific purpose given.

9.09. Non-Waiver of Remedies. No waiver of any breach or default

hereunder shall constitute or be construed as a waiver by a party of any subsequent breach or default or of any breach or default of any other provision of this Agreement.

9.10. Survival. Except as specifically provided in this Agreement, the

representations and warranties contained herein and in any certificate or schedule delivered pursuant hereto shall survive the Closing for a period of one (1) year.

9.11. Notices. Any notice, request, demand or other communication

required or permitted hereunder, shall be given by delivering the same in person to the intended addressee by first class registered or certified mail, postage prepaid, return receipt requested; or by air courier, sent to the intended addressee at the address or addresses, set forth below, or to such different address as the addressee shall have designated by written notice sent in accordance herewith:

To Optionors:

BOSTON PROPERTIES LIMITED PARTNERSHIP
c/o Boston Properties, Inc.
8 Arlington Street
Boston, Massachusetts 02116-3495
Attention: President

BOSTON PROPERTIES L.L.C.
c/o Boston Properties, Inc.
8 Arlington Street
Boston, Massachusetts 02116-3495
Attention: President

Copy to:

Bingham, Dana & Gould LLP
150 Federal Street, 23rd Floor
Boston, Massachusetts 02111
Attention: Peter Van, Esq.

To Optionee:

Mitsui Seimei America Corporation
200 Park Avenue
16th Floor
New York, New York 10166
Attention: President

Copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
47th Floor
New York, New York 10166
Attention: Kimmarie Sinatra, Esq.

Copy to:

Jones Lang Wootton USA
101 East 52nd Street
20th Floor
New York, New York 10022
Attention: R. Gary Barth

Such notice shall be deemed to have been given as of the date of receipt in the case of personal delivery or air courier or, in the case of mailing, as of the date of first attempted delivery at the address and in the manner provided herein.

9.12. Governing Law. This Agreement shall be governed by, and construed

and enforced in accordance with, the laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

9.13. Severability of Provisions. Any provision of this Agreement that is

held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable.

9.14. Integration. This Agreement, together with the other Loan

Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. This Agreement was drafted with the joint participation of the Partnership, Optionors and Optionee and shall be construed neither against nor in favor of any such party.

9.15. Captions. The captions and headings hereof are for convenience of

reference only and shall not be construed to define, limit, describe or otherwise affect the scope or intent of this Agreement.

9.16. No Agency, Partnership or Joint Venture. Unless and until the

Amended and Restated Partnership Agreement is executed and exchanged by Optionee and Optionors, the parties shall not be deemed to be partners, joint venturers or any similar type of relationship, nor shall they be deemed to have any fiduciary obligations to each other.

9.17. Time of the Essence. Time is of the essence with respect to the

obligations under this Agreement.

9.18. Construction. As used herein, the masculine shall include the

feminine and neuter, and the singular shall include the plural.

9.19. Estoppel Certificates. Within ten (10) days after request by any

party to this Agreement to the other, such other party shall certify to the requesting party or its designee (a) that this Agreement is unmodified and in full force and effect (or if there have been any modifications that this Agreement is in full force and effect as modified, stating the modifications), (b) whether to the knowledge of the party executing such certificate (i) there exists any default by the requesting party under this Agreement or (ii) there has occurred and is continuing any event which, with the passage of time and/or the giving of notice would constitute such a default, and in the case of either (i) or (ii) specifying the same, and (c) such other matters with respect to this Agreement as shall be reasonably requested by such requesting party.

9.20. Consent to Jurisdiction; Waiver of Trial by Jury. The parties

hereto irrevocably and unconditionally (a) agree that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York or the courts of the United States located in the State of New York; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts. In any action hereunder, each of the Partnership, Optionors and Optionee waives the right to demand a trial by jury.

9.21. Certificates of Optionors The parties hereto agree that any

certificate to be executed by an Optionor and delivered to Optionee or any document to be initialed by an Optionor and delivered to Optionee in accordance, in either case, with the terms hereof, shall be executed or initialed, as the case may be, on behalf of the Optionor by the managing member of such Optionor if such Optionor is a limited liability company. The parties hereto agree that any certificate to be executed by an Optionor and delivered to Optionee or any document to be initialed by an Optionor and delivered to Optionee in accordance, in either case with the terms hereof, shall be executed or initialed, as the case may be, on behalf of the Optionor, by the managing general partner of such Optionor if such Optionor is a partnership. Notwithstanding any provision of this Agreement to the contrary, to the extent that conveyance of the 33 1/3% Partnership Interest requires conveyance by only one Optionor, any provision of this Agreement requiring a certificate to be executed by each of the Optionors shall be deemed to require execution by only the transferring Optionor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

OPTIONORS:

BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership

By: BOSTON PROPERTIES, INC.,
a Delaware corporation, General Partner

By: _____
Name:
Title:

BOSTON PROPERTIES, LLC,
a Delaware limited liability company

By: BOSTON PROPERTIES LIMITED
PARTNERSHIP, a Delaware limited partnership,
Managing Member

By: BOSTON PROPERTIES, INC., a Delaware corporation,
General Partner

By: _____
Name:
Title:

PARTNERSHIP:

LEXREAL ASSOCIATES LIMITED PARTNERSHIP, a
New York limited partnership

By: BOSTON PROPERTIES, LLC, a Delaware
limited liability company, General Partner

By: BOSTON PROPERTIES LIMITED
PARTNERSHIP, a Delaware limited
partnership, Managing Member

By: BOSTON PROPERTIES, INC., a
Delaware corporation, General Partner

By: _____
Name:
Title:

By: BOSTON PROPERTIES LIMITED
PARTNERSHIP, a Delaware limited partnership,
Limited Partner

By: BOSTON PROPERTIES, INC., a Delaware
corporation, General Partner

By: _____
Name:
Title:

OPTIONEE:

MITSUI SEIMEI AMERICA CORPORATION,
a New York corporation

By: _____
Name: Shinjiro Goto
Title: President

LOAN MODIFICATION AND EXTENSION AGREEMENT

by and between

SOUTHWEST MARKET LIMITED PARTNERSHIP
a District of Columbia limited partnership,

MORTIMER B. ZUCKERMAN
a natural person,

and

EDWARD H. LINDE
a natural person,

and

THE SUMITOMO BANK, LIMITED,
a Japanese banking institution acting
through its NEW YORK BRANCH

FOR

ONE INDEPENDENCE SQUARE

Dated as of September 26, 1994

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| Exhibit "B" | Form of Third Amendment to Construction Loan Deed of Trust and Security Agreement |
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| Exhibit "D" | Form of First Modification to Collateral Assignment of Project Documents |
| Exhibit "E-1" | Form of Closing Certificate |
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| Exhibit "F" | Form of First Amendment to Consent and Certificate of Manager |
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LOAN MODIFICATION AND EXTENSION AGREEMENT

THIS LOAN MODIFICATION AND EXTENSION AGREEMENT (this "Agreement") made and entered into as of the 26th day of September, 1994, by and among SOUTHWEST MARKET LIMITED PARTNERSHIP, a District of Columbia limited partnership ("Borrower"); MORTIMER B. ZUCKEAAAAN who is a natural person ("Zuckerman"), and EDWARD H. LINDE, who is a natural person ("Linde") (Zuckerman and Linde being collectively referred to as the "Guarantors"); and THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH ("Lender");

W I T N E S S E T H:

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WHEREAS, Borrower and Lender are the parties to a certain Construction Loan Agreement dated as of August 21, 1990 (the "Original Loan Agreement"), pursuant to which Lender, in periodic advances, advanced to Borrower on the terms and conditions set forth in the Original Loan Agreement the aggregate principal amount of Eighty Million and No/100 Dollars (\$80,000,000.00) (the "Loan"); and

WHEREAS, all advances made by Lender to Borrower pursuant to the Original Loan Agreement are evidenced by that certain Promissory Note dated August 21, 1990, in the principal amount of \$80,000,000, made by Borrower to the order of Lender (the "original Note"); and

WHEREAS, the Original Note is secured by that certain Construction Loan Deed of Trust and Security Agreement dated as of August 18, 1990 and effective as of August 21, 1990, by and among Borrower, Lender and Trustee (as defined therein) as recorded in the Land Records of the District of Columbia on August 21, 1990 as Instrument No. 46387 (the "Initial Deed of Trust"); and

WHEREAS, the Initial Deed of Trust was amended by that certain First Amendment to Construction Loan Deed of Trust and Security Agreement (the "First Amendment to Deed of Trust"), by and among Borrower, Lender and Trustee, dated as of February 25, 1991 and effective as of August 21, 1990, which was recorded in the Land Records of the District of Columbia on March 7, 1991 as Instrument No. 12123; and

WHEREAS, the Initial Deed of Trust, as amended by the First Amendment to Deed of Trust, was further amended by that certain Second Amendment to Construction Loan Deed of Trust and Security Agreement (the "Second Amendment to Deed of Trust"), by and among Borrower, Lender and Trustee, dated as of September 9, 1994 and effective as of September 21, 1994, which was recorded in the Land Records of District of Columbia on September 21, 1994 as Instrument No. 76267 (the Initial Deed of Trust as amended by the First Amendment to Deed

of Trust and as further amended by the Second Amendment to Deed of Trust shall hereinafter be referred to as the "Original Deed of Trust"); and

WHEREAS, Borrower's obligations under the Original Loan Agreement and Original Note are further secured by that certain Collateral Assignment of Leases, Rents, profits and Income and Pledge of Accounts (the "Original Assignment"), dated as of August 18, 1990 and effective as of August 21, 1990, by Borrower to Lender, as amended by that certain First Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts (the "First Amendment to Assignment"), bearing date of February 22, 1991 and effective as of August 21, 1990, by Borrower to Lender (the Original Assignment as amended by the First Amendment to Assignment shall hereinafter be referred to as the "Assignment of Rents") and the Assignment of Project Documents (as defined in the Original Loan Agreement); and

WHEREAS, pursuant to an Interest Guaranty and Indemnity dated as of August 21, 1990, Guarantors jointly and severally guaranteed to Lender, on and subject to the terms and conditions of the Interest Guaranty and Indemnity, the payment of the Obligations (as defined in the Interest Guaranty); and

WHEREAS, pursuant to an Environmental Guaranty dated as of August 21, 1990, Guarantors jointly and severally guaranteed to Lender Borrower's performance of certain

obligations under the Initial Deed of Trust relating to Hazardous Material, as such term is defined in the Initial Deed of Trust; and

WHEREAS, the Loan by its terms will mature on August 21, 1997 (the "Original Maturity Date") and the principal balance and all other Indebtedness owed by Borrower to Lender will become due and payable in full on such date; and

WHEREAS, Borrower and Lender desire to extend the Original Maturity Date and modify certain other terms of the Loan, on and subject to the terms and conditions set forth herein; and

WHEREAS, the extension of the maturity and the modification of certain other terms of the Loan will provide economic benefits to Borrower and Guarantors;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to legally bind themselves, Borrower, Guarantors and Lender hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

As used in this Agreement, the capitalized terms set forth below shall have the meanings given them in this Article I. Capitalized terms used in this Agreement but not defined in this Article I shall have the meanings set forth elsewhere in this Agreement or, if not defined elsewhere in this Agreement, the meanings given such terms in the Original Loan Agreement (as amended by this Agreement).

Effective Date. As used herein, "Effective Date" shall have the meaning

given to such term in Section 6.01 hereinbelow.

Modification Documents. As used herein, the "Modification Documents"

shall mean (a) an Allonge (the "Allonge") in the form attached hereto as Exhibit "A"; (b) a Third Amendment to Construction Loan Deed of Trust and Security Agreement in the form attached hereto as Exhibit "B" (the "Modification to Deed of Trust"); (c) a Second Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts in the form attached hereto as Exhibit "C" (the "Modification to Assignment of Rents"); (d) a First Modification to Collateral Assignment of Project Documents in the form attached hereto as Exhibit "D" (the "Modification to Assignment of Project Documents"); (e) Closing Certificates in

the forms attached hereto as Exhibits "E-1", "E-2", "E-3", "E4", and "E-5"; (f) this Agreement; (g) a First Amendment to Consent and Certificate of Manager in the form attached hereto as Exhibit "F"; (h) an Extension of Side Letter regarding Development Fee in the form attached hereto as Exhibit "G"; (i) a First Amendment to Interest Guaranty and Indemnity in the form attached hereto as Exhibit "J"; and (j) such other documents and instruments amending, modifying, restating, or extending any of the Loan Documents as Lender reasonably may require.

Original Note. As used herein, "Original Note" shall have the meaning

given to such term in the recitals to this Agreement and is the "Note" as defined in the Original Loan Agreement prior to the amendments thereto effected by this Agreement.

Trigger Rate. As used herein, "Trigger Rate" shall mean, for each

calendar year falling in whole or in part within the Loan Term, the per annum rate of interest set forth on Schedule 1 to this Agreement (which has been calculated in accordance with Schedule 2 to this Agreement), as such rate may from time to time be modified in accordance with Section 4.04 of this Agreement.

Trigger Rate Notice. As used herein, "Trigger Rate Notice" shall mean a

telephonic notice (followed by prompt written confirmation thereof) by Lender to Borrower, which

informs Borrower that the Weighted Average Rate (as hereinafter defined) has reached or surpassed the Trigger Rate.

Weighted Average Rate. As used herein, "Weighted Average Rate" shall

mean the weighted average of the rates of interest that are in effect under the Note on the first day of each calendar month (applicable for the previous month) falling within the Loan Term with respect to each of the Portions of Principal that comprise the entire outstanding principal balance of the Loan.

ARTICLE II

EXTENSION AND RELATED MATTERS

Section 2.01. Extension of Maturity Date. On the Effective Date, the

Maturity Date of the Loan shall be extended from the Original Maturity Date to August 21, 2001 as provided in the Allonge.

Section 2.02. Reaffirmation of Liability.

a. Borrower acknowledges and agrees, and shall forever be estopped from controverting the fact that, as of the date hereof, Borrower is indebted to Lender for the following items in the following amounts:

- (i) The principal amount of the Loan of Eighty Million and No/100 Dollars

(\$80,000,000.00) together with any accrued but unpaid interest at the rate or rates of interest in effect in accordance with the terms of the Original Note; and

- (ii) Lender's unpaid Out-of-Pocket Costs, including, without limitation, legal fees incurred in connection with the modification of the terms of the Loan to be effected pursuant to this Agreement, in the aggregate amount of Twenty-Five Thousand One Hundred Fifteen and 08/100 Dollars (\$25,115.08).

b. On the Effective Date, Borrower shall pay to Lender in immediately available funds all of Lender's unpaid Out-of-Pocket Costs incurred as of the Effective Date.

Section 2.03. Modification Fee. On the Effective Date and in

consideration of Lender's extending the Original Maturity Date of the Loan and modifying the terms of the Loan in the other respects set forth herein, Borrower shall pay to Lender in immediately available funds a modification fee in the amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00).

ARTICLE III

AMENDMENT OF ORIGINAL LOAN AGREEMENT

Section 3.01. Amendment of Original Loan Agreement. On the Effective

Date, the Original Loan Agreement shall be deemed amended by Borrower and Lender as follows:

a. Throughout the Original Loan Agreement, the term "Agreement" shall be deemed to refer to the Original Loan Agreement as amended by this Agreement, as such Loan Agreement from time to time may be further amended, modified, supplemented, restated, or extended.

b. In Article I of the Original Loan Agreement, the following definitions are amended as follows:

- (i) The definition of "Assignment of Project Documents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as amended by that certain First Modification to Collateral Assignment of Project Documents dated as of September 26, 1994, as such Assignment of Project Documents may from time to time be further amended, modified, supplemented, restated, or extended.

- (ii) The definition of "Assignment of Rents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as amended by that certain First Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts dated as of February 22, 1991 and effective as of August 21, 1990, as further amended by that certain Second Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts dated as of September 23 , 1994 and effective as of September 26 1994, as such Assignment of Rents may from time to time be further amended, modified, supplemented, restated or extended".

- (iii) The definition of "Environmental Guaranty" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as reaffirmed by that certain Loan Modification and Extension Agreement dated as of September 26, 1994, as such Environmental Guaranty may from time to time be further

reaffirmed, amended, modified, supplemented, restated or extended".

- (iv) The definition of "Interest Guaranty" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as reaffirmed by that certain Loan Modification and Extension Agreement dated as of September 26, 1994, as amended by that certain First Amendment to Interest Guaranty and Indemnity dated as of September 26, 1994 and as such Interest Guaranty may from time to time be further reaffirmed, amended, modified, supplemented, restated or extended".
- (v) The definition of "Loan Documents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as such Loan Documents may from time to time be amended, modified, supplemented, restated, or extended".
- (vi) The definition of "Note" is amended to read in its entirety as follows:

Note. As used herein, "Note" shall mean that certain

Promissory Note dated August 21, 1990, made by Borrower to the order of Lender, in the principal amount of Eighty Million and No/100 U.S. Dollars (U.S. \$80,000,000.00), as amended by that certain Allonge dated September 26, 1994, as such Note may from time to time be further amended, modified, supplemented, restated, or extended.

c. Sections 3.03(e)(i) and 3.03(e) (ii) of the Original Loan Agreement are hereby amended to read in their entirety as follows:

- (i) In exercising the Conversion Option, Borrower must designate a single Interest Period that begins on the Conversion Date and expires on the Maturity Date.
- (ii) In exercising the Conversion Option, Borrower must designate as the Portion of Principal to bear interest at the Fixed Rate the entire principal balance of the Loan outstanding at such time.

d. Section 7.21 of the Original Loan Agreement is hereby amended by adding the following new paragraph (h) at the end thereof:

(h) Notwithstanding anything in this Section 7.21 to the contrary, if the Third Amendment to Deed of Trust is not recorded in the Land Records of the District of Columbia at Borrower's request, Borrower shall not further mortgage, encumber for debt or pledge the Trust Estate, Revenues or any part thereof or any interest therein (including, without limitation, air or development rights) without Lender's express written consent.

Section 3.02. Amendment of Other Loan Documents.

a. On the Effective Date, the Original Note shall be amended by Borrower's execution and delivery to Lender of the Allonge in the form of Exhibit "A" hereto and Lender's affixation of the Allonge to the Original Note and thereafter shall be effective and interpreted in accordance with its terms and conditions as so amended.

b. On the Effective Date, the Original Deed of Trust, the Assignment of Rents, the Assignment of Project Documents and the Interest Guaranty shall be modified by, respectively, the Modification to Deed of Trust, the Modification to Assignment of Rents, the Modification to

Assignment of Project Documents and the First Amendment to Interest Guaranty and Indemnity, by Borrower's, Guarantors' and Lender's execution and delivery of Exhibits "B", "C", "D" and "J" hereto, respectively, and thereafter shall be effective and interpreted in accordance with their respective terms as so modified.

Section 3.03. Reaffirmation of Certain Documents.

Guarantors hereby absolutely, unconditionally and fully reaffirm all of their guarantees, obligations and agreements under the Environmental Guaranty and the Interest Guaranty according to the terms thereof.

Section 3.04. Ratification of Loan Documents. Except as expressly

amended, restated, modified, reaffirmed or extended by this Agreement and the other Modification Documents, the Loan Documents shall remain in full force and effect in accordance with their terms. Borrower and Guarantors, as to the Loan Documents to which each is a party, acknowledge and agree that as of the date hereof there exist no offsets, defenses, counterclaims, or abatements to the obligations of Borrower or Guarantors thereunder and all obligations of Lender thereunder have been fully performed.

Section 3.05 Termination of Completion Guaranty. Lender hereby confirms

and acknowledges that the Completion

Guaranty, dated as of August 21, 1990, made by Guarantors to Lender has been terminated according to the terms thereunder.

ARTICLE IV

LENDER'S FIXED RATE OPTION

Section 4.01. Lender's Fixed Rate Option. Lender shall calculate and

notify Borrower on or after the first Business Day of each calendar month (but not later than the tenth (10th) Business Day of such month) of the Weighted Average Rate as of the first day of such calendar month. If the Weighted Average Rate as of the first day of such month is equal to or greater than the Trigger Rate for the calendar year in which such month occurs, Lender shall have the right, on and subject to the terms and conditions set forth in this Article IV ("Lender's Conversion Option"), to cause the floating interest rate or rates then in effect pursuant to the terms of the Note on the Portions of Principal comprising the entire then-outstanding principal balance of the Loan to be converted from such floating rate or rates to the Fixed Rate for an Interest Period equal to the remainder of the Loan Term. Lender shall have no liability to Borrower by reason of Lender's failure to calculate or give Borrower notice of the Weighted Average Rate and such failure shall not constitute a default by Lender under the terms of this Agreement or any other Loan Document. The sole consequence of Lender's failure to calculate or give Borrower notice of the Weighted Average

Rate and such failure shall not constitute a default by Lender under the terms of this Agreement or any other Loan Document. The sole consequence of Lender's failure to calculate or give Borrower notice of the Weighted Average Rate shall be that Lender shall not have the right to exercise Lender's Conversion Option in a calendar month in which, by the tenth (10th) Business Day of such month, Lender has not calculated and given Borrower notice of the Weighted Average Rate in effect as of the first day of such month.

Section 4.02. Exercise of Lender's Conversion Option.

(a) If (i) Borrower has not theretofore exercised Borrower's Conversion Option and converted the interest rate or rates on the Loan to the Fixed Rate pursuant to Article III of the Original Loan Agreement as amended by this Agreement, (ii) the Weighted Average Rate as of the first day of the calendar month in which Lender elects to exercise Lender's Conversion Option is equal to or greater than the Trigger Rate for the calendar year in which such month occurs, and (iii) Lender has calculated and given Borrower notice of the Weighted Average Rate not later than the tenth (10th) Business Day of such month, Lender may thereafter exercise Lender's Conversion Option on any Business Day during such month by giving Borrower a Trigger Rate Notice.

(b) The representatives of Borrower identified on Schedule 3 to this Agreement (i) are each individually authorized to transmit to Lender Borrower's acceptance or rejection of the Fixed Rate obtainable by Lender and offered to Borrower, as hereinafter provided, and (ii) will be

available to Lender by telephone from 9:00 a.m. New York time until 3:00 p.m. New York time on each Business Day during the applicable Decision Period (as defined in Section 4.02(c) below). Borrower may change the representatives identified on Schedule 3 to this Agreement by delivering a written notice to Lender identifying one or more representatives of Borrower (and the telephone number of each such representative) for purposes of this Article IV. Borrower may not change the representatives identified on Schedule 3 to this Agreement during a Decision Period.

(c) A "Decision Period" shall mean a period commencing at 9:00 a.m. New York time on the Business Day next following the date on which the Trigger Rate Notice is given to Borrower and continuing through and including 3:00 p.m. New York time on the fourth (4th) Business Day following the date on which the Trigger Rate Notice is given to Borrower.

(d) Borrower's right to exercise Borrower's Conversion Option under Article III of the Loan Agreement shall be suspended from the time Lender gives a Trigger Rate Notice until the expiration of the ensuing Decision Period.

Section 4.03. Implementation of Interest Rate Management Arrangement.

(a) Lender shall, not later than 3:00 p.m. on the fourth (4th) Business Day following the date on which the

Trigger Rate Notice is given to Borrower, obtain one or more offers for an Interest Rate Management Arrangement having a term equal to the remaining Loan Term that, subject to Subsection 4.03(d) hereinbelow, will enable Lender to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest. Prior to accepting an offer for an Interest Rate Management Arrangement, Lender shall telephonically quote to Borrower the fixed per annum interest rate together with all Funding Costs that will result from effectuating such an Interest Rate Management Arrangement, which rate Borrower shall either accept or reject within three (3) hours following Lender's telephonic quote to Borrower. The fixed rate offered by Lender (i) if made applicable to the Loan prior to August 21, 1997 shall include Lender's spread of seventy one hundredths of one percent (0.70%) and shall increase on August 21, 1997 by ten one hundredths of one percent (0.10%), thus increasing Lender's aggregate spread to eighty one hundredths of one percent (0.80%) and on August 21, 2000 by an additional twenty one hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to one percent (1.00%); (ii) if made applicable to the Loan on or after August 21, 1997 but prior to August 21, 2000, shall include Lender's spread of eighty one hundredths of one percent (0.80%) and shall increase on August 21, 2000 by twenty one hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to

one percent (1.00%); and (iii) if made applicable to the Loan on or after August 21, 2000, shall include Lender's spread of one percent (1.00%).

(b) If Borrower accepts the fixed rate quoted by Lender, Lender shall use all reasonable efforts to accept and enter into the offered Interest Rate Management Arrangement. If Lender is able to enter into the offered Interest Rate Management Arrangement then, commencing on the second (2nd) Business Day after Lender enters into the offered Interest Rate Management Arrangement (the "Lender Option Conversion Date") (subject to Section 4.03(d) below), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest at the fixed rate quoted by Lender for the remainder of the Loan term, which shall include Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a) hereinabove, which rate shall constitute the Fixed Rate as defined in the Note. If Lender is unable to obtain the fixed rate quote accepted by Borrower pursuant to this Section 4.03(b), Lender shall, until 3:00 p.m. New York time on the

final Business Day of the Decision Period, Lender shall have the right, in its sole and absolute discretion, either (i) to accept and enter into an Interest Rate Management Arrangement satisfactory to Lender in its sole and absolute discretion in order to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest or (ii) not to enter into an Interest Rate Management Arrangement and thereafter, subject to the same terms and conditions hereof, to give another Trigger Rate Notice and, during the ensuing Decision Period, enter into an Interest Rate Management Arrangement in the manner provided herein. If, under clause (i) of the preceding sentence, Lender is able and so elects to enter into an Interest Rate Management Arrangement then, commencing on the Lender Option Conversion Date (subject to Section 4.03(d) hereinbelow), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest for the remainder of the Loan Term at a fixed per annum rate of interest equal to the fixed rate provided for under the Interest Rate Management Arrangement accepted by Lender plus Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a) hereinabove, which rate shall constitute the Fixed Rate as defined in the Note.

(c) If (i) Lender is able to contact Borrower and Borrower fails to accept or reject the fixed rate quoted by

Lender pursuant to Section 4.03(a) hereinabove, or (ii) Borrower rejects the fixed rate quoted by Lender pursuant to Section 4.03(a) hereinabove, or (iii) Borrower fails by 5:00 p.m. New York time on the Business Day immediately preceding the last day of the Decision Period to designate one or more individuals authorized to accept an offered fixed rate, or (iv) Lender is unable to contact Borrower to obtain Borrower's election as to a proposed fixed rate, Lender shall not accept an offered Interest Rate Management Arrangement and shall, until 3:00 p.m. New York time on the final Business Day of the Decision Period, continue to seek an Interest Rate Management Arrangement that will result in a Fixed Rate acceptable to Borrower. If Borrower fails to accept a Fixed Rate offered by Lender by 3:00 p.m. New York time on the final Business Day of the Decision Period, Lender shall have the right, in its sole and absolute discretion, either (A) to accept and enter into an Interest Rate Management Arrangement satisfactory to Lender in its sole and absolute discretion in order to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest or (B) not to enter into an Interest Rate Management Arrangement and thereafter, subject to the same terms and conditions hereof, to give another Trigger Rate Notice and, during the ensuing Decision Period, enter into an Interest Rate Management Arrangement in the manner provided herein. If, under clause (A) of the preceding sentence,

Lender is able and so elects to enter into an Interest Rate Management Arrangement then, commencing on the Lender Option Conversion Date (subject to Section 4.03(d) hereinbelow), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest for the remainder of the Loan Term at a fixed per annum rate of interest equal to the fixed rate provided for under the Interest Rate Management Arrangement accepted by Lender plus Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a), which rate shall constitute the Fixed Rate as defined in the Note.

(d) Notwithstanding anything to the contrary in this Section 4.03, if, on the Lender Option Conversion Date, the applicable interest rate for one or more Portions of Principal will be the Eurodollar Rate pursuant to Section 3 of the Note, Lender shall enter into an Interest Rate Management Arrangement that will become effective (i) for each such Portion of Principal upon the expiration of the Interest Period associated with the Eurodollar Rate applicable to such Portion of Principal and (ii) for all other Portions of Principal on the Lender Option Conversion Date. In such event, the Fixed Rate shall apply to each such Portion of Principal bearing interest at a Eurodollar Rate upon the expiration of the Interest Period associated with such Eurodollar Rate.

(e) Borrower shall reimburse Lender for all Funding Costs and other Out-of-Pocket Costs incurred by Lender in connection with Lender's entering into an Interest Rate Management Arrangement under this Article IV.

Section 4.04. Recalculation of Trigger Rate.

(a) Borrower and Lender acknowledge that the Trigger Rates set forth on Schedule 1 to this Agreement were calculated using (i) the methodology illustrated on Schedule 2 to this Agreement and (ii) the "Pre-Tax Net Operating Income" of the Trust Estate as calculated and set forth by Leggat McCall & Werner Appraisal and Consulting Co., Inc. ("Leggat McCall") in that certain re-examination dated July 11, 1994 (the "Reappraisal") of earlier appraisals prepared by Leggat McCall of the Trust Estate and Phase II.

(b) If Lender, in its reasonable discretion, determines at any time during the Loan Term that the Pre-Tax Net Operating Income of the Trust Estate has for any reason decreased since the date on which Trigger Rates were last calculated by more than five percent (5%), Borrower shall, if Lender so requests and at Borrower's sole cost and expense, but subject to Section 4.04(c) hereinbelow, cause Leggat McCall (or another appraisal firm acceptable to Lender in its reasonable discretion if Leggat McCall is not then in business or is unable or unwilling to perform in a timely manner the work contemplated by this Section 4.04(b)) within thirty (30)

days of Lender's request to determine the then-current Pre-Tax Net Operating Income of the Trust Estate using the same methodology used by Leggat McCall to determine Pre-Tax Net Operating Income for purposes of the Reappraisal, provided that in determining the then-current Pre-Tax Net Operating Income of the Trust Estate, Borrower shall cause Leggat McCall (or such other appraisal firm as provided for above) to use only Revenues received under Qualifying Space Leases. Lender shall then recalculate each annual Trigger Rate using (i) the then-current Pre-Tax Net Operating Income as so redetermined and (ii) the methodology set forth on Schedule 2 to this Agreement. Lender shall give Borrower notice of the Trigger Rates as so recalculated by Lender and, from and after the date on which such notice is given, the Trigger Rates shall for all purposes hereunder be deemed amended to be the Trigger Rates as so recalculated.

(c) If the Pre-Tax Net Operating Income of the Trust Estate has decreased by more than five percent (5%) by reason of Space Tenants that occupy more than five percent (5%) of the rentable space in the Improvements terminating their Space Leases, then Borrower shall not be required to cause the Pre-Tax Net Operating Income of the Trust Estate to be redetermined in accordance with Section 4.04(b) hereinabove until such time as Space Tenants occupy at least ninety-five percent (95%) of the rentable space in the Improvements under Qualifying Space Leases.

(d) Trigger Rates shall remain in effect until recalculated in accordance with this Section 4.04.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each of Zuckerman, Linde, and Borrower makes the representations, warranties and covenants respectively pertaining to himself or itself set forth in Section 5.01 through and including Section 5.19 hereinbelow as of the date hereof and again on and as of the Effective Date, all of which shall survive the execution and delivery of this Agreement.

Section 5.01. Existence. Borrower is and at all relevant times was a

limited partnership duly organized, validly existing and in good standing under the laws of the District of Columbia. Borrower has and at all relevant times had the authority, rights and franchises to own its properties, to carry on its business as now conducted, to perform its obligations under the Loan Documents, this Agreement, and the other Modification Documents, to complete the Project in accordance with the Plans, to own and operate the Project as a first-class commercial office building, and has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business. Borrower conducts no

business, directly or indirectly, except for the ownership and operation of the Project and of Phase II, and the ownership of Lot 872.

Section 5.02. Authorization. Enforceable Obligations. Each of

Guarantors and Borrower has the authority and legal right to execute, deliver and perform this Agreement and the Modification Documents to which he or it is a party and Borrower has taken all necessary partnership action to authorize the execution, delivery and performance of this Agreement and the Modification Documents to which it is a party. No consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with any court, Governmental Authority, or third party which has not been obtained is required for the execution, delivery, and performance by Borrower or Guarantors of this Agreement or the Modification Documents to which he or it is a party. This Agreement has been (and, on the Effective Date, each of the Modification Documents will have been) executed and delivered by each of Borrower and Guarantors if a party thereto and constitutes (and, on the Effective Date, each of this Agreement and the Modification Documents will constitute) the legal, valid and binding obligation of each of Borrower and Guarantors if a party thereto, enforceable against such persons and entities in accordance with its terms.

Section 5.03. Conflicting Agreements. Neither the execution nor

delivery of any of this Agreement or the Modification Documents nor the fulfillment of or compliance with the terms and provisions hereof or thereof or of the Loan Documents, nor the consummation of the transactions contemplated hereby or by any of the other documents referred to herein, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien (other than the lien of the Loan Documents and the Modification Documents) upon any of the properties or assets of either of Borrower or Guarantors pursuant to its partnership agreement, any other contract, any award of any arbitrator or any agreement, (including any agreement with Borrower's partners and also including Project Documents), instrument, order, judgment, decree, statute, law, ordinance, franchise, certificate, permit, rule, regulation or the like to which any of Borrower or Guarantors is subject, or to or by which their or its properties or their or its assets or the Trust Estate are bound or affected.

Section 5.04. Organizational Documents. Borrower has furnished

Lender with true, correct, and complete copies of the following documents:

(a) with respect to Independence Square, Inc., sole Managing General Partner of the sole General Partner of Borrower:

- (i) The certificate of incorporation of such corporation and all amendments thereof, certified by the Secretary of State of the state of such corporation's incorporation, together with a certificate of said Secretary of State to the effect that the corporation is in good standing therein;
- (ii) A certificate from the Secretary of State or comparable official of the jurisdiction in which the Premises are located (if other than such corporation's state of incorporation) to the effect that the corporation is in good standing and qualified to do business therein;
- (iii) Bylaws certified to Lender by the secretary of the corporation; and
- (iv) A certificate of the secretary of the corporation certifying (A) resolutions

of the shareholders and directors of the corporation authorizing the consummation of the transactions contemplated by the Modification Documents to which such corporation is a party or a signatory and the execution, delivery, and performance of each of the Modification Documents to which such corporation is a party or a signatory and (B) the incumbency and signature of each of the officers of the corporation to execute any Modification Documents; and

(b) With respect to Boston Southwest Associates Limited Partnership, sole General Partner of Borrower:

- (i) A true, correct and complete copy of its partnership agreement, together with all amendments thereto, as currently in effect, certified by a Person satisfactory to Lender in its sole discretion.
- (ii) All certificates filed or required to be filed by the partnership in the jurisdiction of its formation and the jurisdiction where the Premises are

located in order for it to do business in those jurisdictions; and

- (iii) Such evidence as may be available from the Secretary of State or comparable official of the jurisdiction of the partnership's formation to the effect that the partnership continues to exist and is in good standing.

Section 5.05. No Material Litigation. No litigation, investigation

or administrative proceeding of or before any court, arbitrator, or Governmental Authority is pending, or has been threatened in writing by potential claimants or their counsel, against any of Borrower or Guarantors or any of their assets or that would, if adversely determined, be likely to have a material adverse effect on (a) Borrower's or either Guarantor's ability to perform its or his obligations under this Agreement, the other Loan Documents, or the Modification Documents; (b) the validity or enforceability of this Agreement, the other Loan Documents, or the Modification Documents; or (c) Lender's security under this Agreement, any other Loan Document, or the Modification Documents. No notice has been received by Borrower of any proceeding to condemn, purchase, or otherwise acquire the Trust Estate or any part thereof or interest therein, and, to the best of Borrower's

knowledge, no such proceeding has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 5.06. Compliance with Applicable Laws. Each of Borrower,

Guarantors, the Project, and the Trust Estate is in compliance with the requirements of all Laws, the failure to comply with which would materially and adversely affect Borrower's or either Guarantor's ability to perform its or his obligations under this Agreement, any of the other Loan Documents, or the Modification Documents, and no written notice of non-compliance with any' of the foregoing has been received by Borrower or either Guarantor from any Governmental Authority. No consent, approval or authorization, or registration, declaration or filing with any Governmental Authority or any other Person is required for the valid execution, delivery and performance by Borrower and Guarantors of this Agreement, the other Loan Documents, or the Modification Documents, or the carrying out of the transactions contemplated of hereby or thereby.

Section 5.07. Information Delivered. All facts, studies, reports,

loan applications, financial statements, operating cost histories, and all other documents and data, financial or otherwise, respecting Borrower and Guarantors, or contracts, permits, licenses, or other matters affecting any part of the Trust Estate or the operation thereof which

have been furnished to Lender or Lender's counsel by Borrower or Borrower's counsel or Guarantors or Guarantors' counsel were, to the best of Borrower's and Guarantors' knowledge, true, correct, and complete in all material respects when made or delivered to Lender, or, if copies thereof have been so furnished, such copies are, to the best of Borrower's and each Guarantor's knowledge, true, correct and complete in all material respects, and neither Borrower nor any and Guarantor has failed to disclose any data or documents necessary to make the foregoing true, accurate, complete in all material respects and not materially misleading.

Section 5.08. True Statement. Neither this Agreement, any other Loan

Document, the Modification Documents nor any other document delivered to Lender in connection with the Loan contains, or will contain when made, any untrue statement of a material fact by Borrower or Guarantors and by this reference all representations and warranties made in any of the Loan Documents and the Modification Documents are hereby made a part of this Agreement to the same extent as if fully set forth herein.

Section 5.09. No Event of Default. There exists no Event of Default

under any of the Loan Documents nor any fact or circumstance which, with the passage of time, giving of notice or action by third parties could become an

Event of Default under any of the Loan Documents or the Modification Documents.

Section 5.10. Space Leases. Set forth on Exhibit "H" hereto is a true,

correct, and complete list of all Space Leases now in effect with respect to the Trust Estate. Except for such Space Leases and the Permitted Exceptions, there are no leases, licenses, tenancy agreements, contracts, or understandings, oral or written, pursuant to which any person or entity has or claims any right to use or occupy any portion of the Trust Estate. Except as set forth on such Exhibit "H", there are no amendments, modifications, supplements, or understandings, oral or written, which affect any of the Space Leases. All other information set forth on Exhibit "H" with respect to the Space Leases is true and correct in all material respects. No notice of default has been given by any party to any Space Lease which default remains uncured, there are no material defaults under the provisions of any of the Space Leases, and all conditions to the effectiveness and continuing effectiveness of each Space Lease required to be satisfied as of the date hereof have been satisfied. The OCC has neither exercised nor stated to Borrower orally or in writing an intention to exercise the OCC's right to terminate the OCC Lease.

Section 5.11. Financial Statements of Borrower. Borrower has furnished

to Lender the financial statements of

Borrower for its fiscal year ended December 31, 1993, consisting of balance sheets and statements of income and retained earnings and changes in financial position for the years then ended, certified by the chief financial officer of Borrower's general partner as being true, complete, and correct; the foregoing financial statements are true and correct and contain no material misstatement or omission, and fairly present financial position, assets, and liabilities of Borrower as of the respective dates thereof and the results of its operations for the respective periods then ended; since the respective dates of the foregoing financial statements, there has been no material adverse change in the assets, liabilities, financial position, or results of operations of Borrower; and Borrower has not incurred any obligation or liability which would materially and adversely affect its business operations or its interest in the Trust Estate.

Section 5.12. Financial Statements of Guarantors. Borrower has furnished

or caused to be furnished to Lender the financial statements of each Guarantor for the fiscal year ending December 31, 1993, certified by the respective Guarantor (a) as being true, complete, and correct; (b) containing no material misstatement or omission, and fairly presenting the financial position, assets, and liabilities of Guarantor as of the date thereof; (c) since the date of the foregoing financial statements, there has been no material adverse change in the assets, liabilities, or

financial position of Guarantor; and (d) Guarantor not having incurred any obligation or liability which would materially and adversely affect his financial position.

Section 5.13. Taxes and Other Assessments. Each of Borrower and

Guarantors has filed all federal, state, and local tax returns and other reports required by all laws to have been filed prior to the date hereof; has paid or caused to be paid all taxes, assessments, and other governmental charges that are due and payable prior to the date hereof; and has made adequate provision for the payment of such taxes, assessments, or other charges accruing but not yet payable. Neither Borrower nor any of Guarantors has knowledge of any deficiency or additional assessment in a materially important amount in connection with any taxes, assessments, or charges not provided for on its respective books.

Section 5.14. No Liens. To the best of Borrower's knowledge, there are

no liens or other impositions against the Trust Estate or any part thereof except as may be included among the Permitted Exceptions. To the best of Borrower's knowledge, there do not exist any unpaid conditional sales contracts, chattel mortgages, security agreements, or financing statements in respect of the Trust Estate, or any part thereof, except such as may be included among the Permitted Exceptions. Without limiting the foregoing, the Trust Estate is, to the best of Borrower's knowledge, free

from due and unpaid water charges, sewer rents, taxes, assessments, and other similar liens and/or impositions, mechanics' and materialmen's liens (choate, or inchoate), and any other Liens (other than liens arising with respect to nondelinquent property taxes) whether or not disclosed in the Title Policies.

Section 5.15. Trust Estate. There has occurred no material damage to

any part of the Trust Estate. No part of the Trust Estate has been taken in condemnation or other like proceedings. Borrower has received no notice of any (i) proceedings in eminent domain or any similar proceeding or transaction with respect to any part of the Trust Estate; or (ii) material change in the zoning of the Land or the use thereof as permitted by law and, to the best of Borrower's knowledge, no such proceeding or change has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 5.16. No Bankruptcy. As of the date hereof, there is no (a)

filing by or against Borrower or any of Guarantors of a voluntary or involuntary case or petition in bankruptcy, insolvency, or reorganization under the Federal Bankruptcy Code as now or hereafter constituted or under any other laws of similar nature, which bankruptcy, insolvency, or reorganization in the case of an involuntary filing has not been dismissed; (b) appointment of a receiver or trustee for

Borrower, any of the foregoing persons or entities, or the Trust Estate, or any part thereof; (c) making by Borrower or any of the foregoing persons or entities of an assignment for the benefit of creditors; or (d) any similar act or occurrence.

Section 5.17. Absence of Transfer. Since the date of the original

funding of the Loan, there has not been any Transfer and there is not now in existence any contract providing for or contemplating a Transfer.

Section 5.18. Certificates. Borrower has delivered to Lender all such

permits, licenses, variances, approvals, consents, and other certificates or documents with respect to the Trust Estate (collectively, the "Certificates") as have been issued as of the date hereof by all relevant governmental authorities of competent jurisdiction which to the best of Borrower's knowledge are necessary to evidence the legal right and ability of Borrower to operate the Trust Estate as it currently is operated. Borrower will deliver to Lender copies of all other necessary Certificates as they are subsequently obtained.

Section 5.19. Representations and Warranties in Loan Documents. On

the Effective Date, Borrower shall be deemed to represent and warrant to Lender that all representations and warranties made by Borrower which are set forth in the Original Loan Agreement, the Original Deed of

Trust and in the other Loan Documents are true, correct, and complete in all material respects as of and as if made on the Effective Date, subject only to the following qualifications:

a. The representations and warranties that are remade pursuant to this Section 5.19 shall take into account the amendments to the Loan Documents effected on the Effective Date by this Agreement and the Modification Documents.

b. The representations and warranties made in Sections 6.01, 6.05, 6.12, and 6.17 of the Original Loan Agreement shall not be deemed to be remade as of the Effective Date; instead the representations and warranties set forth in Sections 5.01 and 5.05 of this Agreement are substituted therefor and are represented and warranted by Borrower as true and correct on the Effective Date.

Section 5.20. Event of Default. It shall constitute an Event of

Default under the Loan Agreement (as in effect after giving application to the changes set forth in this Agreement) and other Loan Documents if any representation or warranty set forth in, made, or remade pursuant to this Article V shall prove to have been untrue, incorrect, incomplete, or misleading in any material respect when made or remade.

ARTICLE VI

EFFECTIVE DATE

Section 6.01. Effective Date. The "Effective Date", as used in this

Agreement, shall be that date on which all of the conditions precedent set forth in this Section 6.01 have been satisfied or, in Lender's absolute discretion, waived by Lender. Upon the satisfaction of all of the conditions precedent set forth in this Section 6.01 or the waiver thereof by Lender, in Lender's absolute discretion, Borrower and Lender shall execute the certificate attached hereto as Exhibit "I" confirming the Effective Date.

a. Lender shall have received a payment from Borrower of (i) the modification fee due upon the Effective Date in the amount of Two Hundred and Forty Thousand and No/100 Dollars (\$240,000.00) and (ii) Lender's Out-of-Pocket Costs.

b. There shall exist no Event of Default under any of the Loan Documents nor any fact or circumstance which, with the passage of time, giving of notice or action by third parties could become an Event of Default under any of the Loan Documents and Lender shall have received a certificate executed and delivered by Borrower and Guarantors, in form and substance satisfactory to Lender, confirming such fact.

c. All representations and warranties set forth in this Agreement, the Modification Documents and the other Loan Documents, as amended and remade in accordance with the terms of this Agreement, shall be true, correct, and complete in all material respects as if remade on and as of the Effective Date and Lender shall have received a certificate executed and delivered by Borrower and Guarantors, in form and substance satisfactory to Lender, confirming such fact.

d. All covenants to be performed by Borrower and Guarantors on or before the Effective Date shall have been performed and Lender shall have received a certificate executed and delivered by Borrower and Guarantors in form and substance satisfactory to Lender, confirming such fact.

e. The Modification Documents shall have been duly executed and delivered by all parties thereto and shall be binding and enforceable upon the parties thereto in accordance with their terms. Those of the Modification Documents to be recorded or filed shall have been successfully recorded or filed, as appropriate; provided, however, that failure to record the Third Amendment to Deed of Trust shall not be deemed to prevent the occurrence of the Effective Date.

f. Lender shall have received and approved such endorsement or endorsements to the Title Policies (and all outstanding reinsurance agreements) as Lender may deem necessary or appropriate to insure that as of the Effective

Date, the Original Deed of Trust as amended by the Modification to Deed of Trust will be a valid first lien securing the full amount of the Loan, on a good and indefeasible title to the Trust Estate, vested in Borrower, free and clear of all encumbrances (including without limitation choate and inchoate mechanics' and materialmen's liens, whether or not filed) except the Permitted Exceptions (and that all reinsurance agreements remain in effect with respect to the Title Policies as so endorsed).

g. Lender shall have received such opinions from counsel to Borrower and Guarantors, in form and substance reasonably satisfactory to Lender, as Lender may in its discretion require in respect of the Modification Documents, this Agreement, the other Loan Documents, and any other documents, including, without limitation, that the consummation of the transactions contemplated by the Modification Documents and this Agreement, will not violate any law, statute, rule regulation or order of any court or Governmental Authority applicable to any of Borrower or Guarantors or to which any of the property of any of such Persons may be subject.

h. There shall have been delivered to Lender with respect to each general Partner of Borrower and each general Partner of a general Partner of Borrower those

organizational documents required to be delivered pursuant to Section 5.04 hereof.

i. Lender shall have received evidence satisfactory to Lender that there are no conditional sales contracts, chattel mortgages, leases of personalty, financing statements, or title retention agreements which affect the Premises.

j. Lender shall have received and approved all financial information reasonably requested by Lender concerning Borrower and Guarantors.

k. All instruments and agreements in connection with the transactions contemplated by this Agreement and the Modification Documents shall be satisfactory in form and substance to Lender in its sole but reasonable discretion.

Section 6.02. Termination. If the Effective Date has not occurred by

then, in its absolute discretion, Lender may terminate this Agreement, in which case (i) this Agreement shall, except where otherwise expressly provided, be null, void, and of no further force or effect and (ii) all original Loan Documents shall remain in effect in accordance with their terms.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Entire Agreement; Exhibits and Schedules. This

Agreement, taken together with all of the other Loan Documents (as modified by this Agreement), the Modification Documents and other documents delivered by Borrower and Guarantors embodies the entire agreement with respect to the subject matter hereof, and supersedes or incorporates all prior negotiations or agreements written and oral. The Exhibits and Schedules attached to this Agreement are incorporated herein by this reference and made a material part hereof unless otherwise stated herein.

Section 7.02. Counterparts. This Agreement may be executed in any

number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

Section 7.03. Governing Law. This Agreement shall be governed by,

and construed in accordance with, the laws of the District of Columbia.

Section 7.04. Severability. If any of the terms and provisions

specified herein is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such term

or provision to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the terms and provisions herein shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable term or provision was not contained therein.

Section 7.05. Successors and Assigns. All covenants and agreements

herein shall bind the respective successors and assigns of the parties hereto (but this provision is not intended nor shall it be construed to permit Borrower or any of Guarantors to transfer or assign its or their rights and obligations hereunder or under the Loan Documents except as permitted by the provisions of the Loan Documents), whether so expressed or not, and all such covenants shall inure to the benefit of such respective nominees, successors and assigns, whether so expressed or not.

Section 7.06. Time of the Essence. Time is of the essence with

regard to the performance of the terms and provisions of this Agreement.

Section 7.07. Headings. The titles and headings of Articles and

Sections of this Agreement are intended for convenience only, and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 7.08. Notices. Any notice, request, demand, instruction or

other communication given in connection with this Agreement shall be in writing and shall be given in the manner provided in the Loan Agreement at the addresses set forth in the Loan Agreement.

Section 7.09. Survival. The terms, covenants, representations, and

warranties in this Agreement shall survive the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Loan Modification and Extension Agreement as of the day and year first written above.

SOUTHWEST MARKET LIMITED PARTNERSHIP, a
District of Columbia limited partnership

By: Boston Southwest Associates Limited
partnership, a Massachusetts limited
partnership, General Partner

ATTEST:

By: Independence Square, Inc., a
Delaware corporation, its Managing
General Partner

/s/ Grace E. Tarrigi

By: /s/ Edward W. Linde

Name:

Name: Edward W. Linde
Title: Vice President

/s/ Deb G. Moses

Deb G. Moses

WITNESS:

/s/ Deb G. Moses

Name: Deb G. Moses

/s/ M. Zuckerman

MORTIMER B. ZUCKERMAN (signing solely to
evidence those obligations and agreements of
Guarantor set forth herein)

WITNESS:

/s/ Grace E. Tarrigi

Name:

/s/ Edward H. Linde

EDWARD H. LINDE (signing solely to evidence
those obligations and agreements of
Guarantor set forth herein)

ATTEST:

THE SUMITOMO BANK, LIMITED,
a Japanese banking institution,
acting through its NEW YORK BRANCH

/s/ Patricia Tusa

Name: Patricia Tusa

By: /s/ Robert A. Rabbino, Jr.

Robert A. Rabbino, Jr.
Joint General Manager

LOAN MODIFICATION AND EXTENSION AGREEMENT

by and among

SOUTHWEST MARKET LIMITED PARTNERSHIP
a District of Columbia limited partnership,

MORTIMER B. ZUCKERMAN
a Natural Person,

and

EDWARD H. LINDE
a Natural Person,

and

THE SUMITOMO BANK, LIMITED,
a Japanese banking institution acting
through its NEW YORK BRANCH

FOR

TWO INDEPENDENCE SQUARE

Dated as of September 26, 1994

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EXHIBITS

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| Exhibit "B" | Form of Second Amendment to Construction Loan Deed of Trust and Security Agreement |
| Exhibit "C" | Form of First Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts |
| Exhibit "D" | Form of First Modification to Collateral Assignment of Project Documents |
| Exhibit "E-1" | Form of Closing Certificate |
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| Exhibit "F" | Form of Extension of Side Letter regarding Development Fee |
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LOAN MODIFICATION AND EXTENSION AGREEMENT

THIS LOAN MODIFICATION AND EXTENSION AGREEMENT (this "Agreement") made and entered into as of the ____ day of September, 1994, by and among SOUTHWEST MARKET LIMITED PARTNERSHIP, a District of Columbia limited partnership ("Borrower"); MORTIMER B. ZUCKERMAN, who is a natural person ("Zuckerman"), and EDWARD H. LINDE, who is a natural person ("Linde") (Zuckerman and Linde being collectively referred to as the "Guarantors"); and THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH ("Lender");

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

WHEREAS, Borrower and Lender are the parties to a certain Construction Loan Agreement dated as of February 22, 1991 (the "Original Loan Agreement"), pursuant to which Lender, in periodic advances, advanced to Borrower on the terms and conditions set forth in the Original Loan Agreement the aggregate principal amount of One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00) (the "Loan"); and

WHEREAS, all advances made by Lender to Borrower pursuant to the Original Loan Agreement are evidenced by that certain Promissory Note dated February 27, 1991, in the principal amount of \$125,000,000, made by Borrower to the order of Lender (the "Original Note"); and

WHEREAS, the Original Note is secured by that certain Construction Loan Deed of Trust and Security Agreement dated as of February 22, 1991 and effective as of February 27, 1991, by and among Borrower, Lender and Trustee (as defined therein), as recorded in the Land Records of the District of Columbia on February 27, 1991 as Instrument No. 10516 (the "Initial Deed of Trust"); and

WHEREAS, the Initial Deed of Trust was amended by that certain First Amendment to Construction Loan Deed of Trust and Security Agreement (the "First Amendment to Deed of Trust"), by and among Borrower, Lender and Trustee, dated as of September 9, 1994 and effective as of September 21, 1994, which was recorded in the Land Records of the District of Columbia on September 9, 1994 as Instrument No. 76268 (the Initial Deed of Trust as amended by the First Amendment to Deed of Trust and shall hereinafter be referred to as the "Original Deed of Trust"); and

WHEREAS, Borrower's obligations under the original Loan Agreement and Original Note are further secured by the Assignment of Rents and the Assignment of Project Documents, as such terms are defined in the Original Loan Agreement; and

WHEREAS, pursuant to an Interest Guaranty and Indemnity dated as of February 22, 1991 (the "Interest Guaranty"), Guarantors jointly and severally guaranteed to Lender, on and subject to the terms and conditions of the Interest Guaranty, the payment of the Obligations (as defined in the Interest Guaranty); and

WHEREAS, pursuant to an Environmental Guaranty dated as of February 22, 1991, Guarantors jointly and severally guaranteed to Lender Borrower's performance of certain obligations under the Initial Deed of Trust relating to Hazardous Material, as such term is defined in the Initial Deed of Trust; and

WHEREAS, the Loan by its terms will mature on February 27, 1998 (the "Original Maturity Date") and the principal balance and all other Indebtedness owed by Borrower to Lender will become due and payable in full on such date; and

WHEREAS, Borrower and Lender desire to extend the Original Maturity Date and modify certain other terms of the Loan, on and subject to the terms and conditions set forth herein; and

WHEREAS, the extension of the maturity and the modification of certain other terms of the Loan will provide economic benefits to Borrower and Guarantors;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to legally bind themselves, Borrower, Guarantors and Lender hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

As used in this Agreement, the capitalized terms set forth below shall have the meanings given them in this Article I. Capitalized terms used in this Agreement but not defined in this Article I shall have the meanings set forth elsewhere in this Agreement or, if not defined elsewhere in this Agreement, the meanings given such terms in the Original Loan Agreement (as amended by this Agreement).

Effective Date. As used herein, "Effective Date" shall have the meaning -----
given to such term in Section 6.01 hereinbelow.

Modification Documents. As used herein, the "Modification Documents" shall -----
mean (a) an Allonge (the "Allonge") in the form attached hereto as Exhibit "A"; (b) a Second Amendment to Construction Loan Deed of Trust and Security Agreement in the form attached hereto as Exhibit "B" (the "Modification to Deed of Trust"); (c) a First Amendment to Collateral

Assignment of Leases, Rents, Profits and Income and Pledge of Accounts in the form attached hereto as Exhibit "C" (the "Modification to Assignment of Rents"); (d) a First Modification to Collateral Assignment of Project Documents in the form attached hereto as Exhibit I'D" (the "Modification to Assignment of Project Documents"); (e) Closing Certificates in the forms attached hereto as Exhibits "E-1", "E-2", "E-3", "E-4", and "E-5"; (f) this Agreement; (g) an Extension of Side Letter regarding Development Fee in the form attached hereto as Exhibit "F"; (h) a First Amendment to Interest Guaranty and Indemnity in the form attached hereto as Exhibit "I"; and (i) such other documents and instruments amending, modifying, restating, or extending any of the Loan Documents as Lender reasonably may require.

Original Note. As used herein, "Original Note" shall have the meaning

given to such term in the recitals to this Agreement and is the "Note" as defined in the original Loan Agreement prior to the amendments thereto effected by this Agreement.

Trigger Rate. As used herein, "Trigger Rate" shall mean, for each calendar

year falling in whole or in part within the Loan Term, the per annum rate of interest set forth on Schedule 1 to this Agreement (which has been calculated in accordance with Schedule 2 to this Agreement), as such rate may from time to time be modified in accordance with Section 4.04 of this Agreement.

Trigger Rate Notice. As used herein, "Trigger Rate Notice" shall mean a

telephonic notice (followed by prompt written confirmation thereof) by Lender to Borrower, which informs Borrower that the Weighted Average Rate (as hereinafter defined) has reached or surpassed the Trigger Rate.

Weighted Average Rate. As used herein, "Weighted Average Rate" shall mean

the weighted average of the rates of interest that are in effect under the Note on the first day of each

calendar month (applicable for the previous month) falling within the Loan Term with respect to each of the Portions of Principal that comprise the entire outstanding principal balance of the Loan.

ARTICLE II

EXTENSION AND RELATED MATTERS

Section 2.01 Extension of Maturity Date. On the Effective Date, the

Maturity Date of the Loan shall be extended from the Original Maturity Date to February 27, 2003 as provided in the Allonge.

Section 2.02 Reaffirmation of Liability.

(a) Borrower acknowledges and agrees, and shall forever be estopped from controverting the fact that, as of the date hereof, Borrower is indebted to Lender for the following items in the following amounts:

(i) The principal amount of the Loan of One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00) together with any accrued but unpaid interest at the rate or rates of interest in effect in accordance with the terms of the original Note; and

(ii) Lender's unpaid Out-of-Pocket Costs, including, without limitation, legal fees incurred in connection with the modification of the terms of the Loan to be effected pursuant to this Agreement, in the aggregate amount of Thirty-Nine Thousand Two Hundred Forty-Nine and 55/100 Dollars (\$39,249.55).

(b) On the Effective Date, Borrower shall pay to Lender in immediately available funds all of Lender's unpaid out-of-pocket Costs incurred as of the Effective Date.

Section 2.03 Modification Fee. On the Effective Date and in

consideration of Lender's extending the original Maturity Date of the Loan and modifying the terms of the Loan in the other respects set forth herein, Borrower shall pay to Lender in immediately available funds a modification fee in the amount of Three Hundred Seventy Five Thousand and No/100 Dollars (\$375,000.00).

ARTICLE III

AMENDMENT OF ORIGINAL LOAN AGREEMENT

Section 3.01 Amendment of Original Loan Agreement. On the Effective

Date, the Original Loan Agreement shall be deemed amended by Borrower and Lender as follows:

(a) Throughout the Original Loan Agreement, the term "Agreement" shall be deemed to refer to the Original Loan Agreement as amended by this Agreement, as such Loan Agreement from time to time may be further amended, modified, supplemented, restated, or extended.

(b) In Article I of the Original Loan Agreement, the following definitions are amended as follows:

(i) The definition of "Assignment of Project Documents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as amended by that certain First Modification to Collateral Assignment of Project Documents dated as of September __, 1994, as such Assignment of Project Documents may from time to time be further amended, modified, supplemented, restated, or extended".

(ii) The definition of "Assignment of Rents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as further amended by that certain First Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts dated as of September __, 1994 and effective as of September __, 1994, as such Assignment of Rents may from time to time be further amended, modified, supplemented, restated or extended".

(iii) The definition of "Environmental Guaranty" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as reaffirmed by that certain Loan Modification and Extension Agreement dated as of September __, 1994, as such Environmental Guaranty may from time to time be further reaffirmed, amended, modified, supplemented, restated or extended".

(iv) The definition of "Interest Guaranty" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as reaffirmed by that certain Loan Modification and Extension Agreement dated as of September __, 1994, as amended by that certain First Amendment to Interest Guaranty and Indemnity dated as of September __, 1994, and as such Interest Guaranty may from time to time be further reaffirmed, amended, modified, supplemented, restated or extended".

(v) The definition of "Loan Documents" is amended by adding at the end thereof, immediately preceding the period, the following language: ", as such Loan Documents may from time to time be amended, modified, supplemented, restated, or extended".

(vi) The definition of "Note" is amended to read in its entirety as follows:

Note. As used herein, "Note" shall mean that certain Promissory

Note dated February 27, 1991, made by Borrower to the order of Lender, in the principal amount of One Hundred Twenty-Five Million and No/100 U.S. Dollars (U.S. \$125,000,000.00), as amended by that certain Allonge dated September __, 1994, as such Note may from time to time be further amended, modified, supplemented, restated, or extended.

(c) Sections 3.03(e)(i) and 3.03(e)(ii) of the Original Loan Agreement are hereby amended to read in their entirety as follows:

(i) In exercising the Conversion Option, Borrower must designate a single Interest Period that begins on the Conversion Date and expires on the Maturity Date.

(ii) In exercising the Conversion Option, Borrower must designate as the Portion of Principal to bear interest at the Fixed Rate the entire principal balance of the Loan outstanding at such time.

(d) Section 7.21 of the Original Loan Agreement is hereby amended by adding the following new paragraph (h) at the end thereof:

(h) Notwithstanding anything in this Section 7.21 to the contrary, if the Second Amendment to Deed of Trust is not recorded in the Land Records of District of Columbia at Borrower's request, Borrower shall not further mortgage, encumber for debt or pledge the Trust Estate, Revenues or any part thereof or any

interest therein (including without limitation, air or development rights) without Lender's express written consent.

Section 3.02 Amendment of other Loan Documents.

(a) On the Effective Date, the original Note shall be amended by Borrower's execution and delivery to Lender of the Allonge in the form of Exhibit "A" hereto and Lender's affixation of the Allonge to the Original Note and thereafter shall be effective and interpreted in accordance with its terms and conditions as so amended.

(b) On the Effective Date, the Original Deed of Trust, the Assignment of Rents, the Assignment of Project Documents and the Interest Guaranty shall be modified by, respectively, the Modification to Deed of Trust, the Modification to Assignment of Rents, the Modification to Assignment of Project Documents and the First Amendment to Interest Guaranty, by Borrower's, Guarantors' and Lender's execution and delivery of Exhibits "B", "C", "D" and "I" hereto, respectively, and thereafter shall be effective and interpreted in accordance with their respective terms as so modified.

Section 3.03 Reaffirmation of Certain Documents. Guarantors hereby

absolutely, unconditionally and fully reaffirm all of their guarantees, obligations and agreements under the Environmental Guaranty and the Interest Guaranty and Indemnity according to the terms thereof.

Section 3.04 Ratification of Loan Documents. Except as expressly

amended, restated, modified, reaffirmed or extended by this Agreement and the other Modification Documents, the Loan Documents shall remain in full force and effect in accordance with their terms. Borrower and Guarantors, as to the Loan Documents to which each is a party, acknowledge and agree that as of the date hereof there exist no offsets, defenses, counterclaims, or abatements to the

obligations of Borrower or Guarantors thereunder and all obligations of Lender thereunder have been fully performed.

Section 3.05 Termination of Completion Guaranty. Lender hereby confirms

and acknowledges that the Completion Guaranty, dated as of February 22, 1991, made by Guarantors to Lender has been terminated according to the terms thereunder.

Section 3.06 Termination of Bid Protest Guaranty. Lender hereby confirms

and acknowledges that the Bid Protest Guaranty, dated as of February 22, 1991, made by Guarantors to Lender has been terminated according to the terms thereunder.

ARTICLE IV

LENDER'S FIXED RATE OPTION

Section 4.01 Lender's Fixed Rate Option. Lender shall calculate and

notify Borrower on or after the first Business Day of each calendar month (but not later than the tenth (10th) Business Day of such month) of the Weighted Average Rate as of the first day of such calendar month. If the Weighted Average Rate as of the first day of such month is equal to or greater than the Trigger Rate for the calendar year in which such month occurs, Lender shall have the right, on and subject to the terms and conditions set forth in this Article IV ("Lender's conversion Option"), to cause the floating interest rate or rates then in effect pursuant to the terms of the Note on the Portions of Principal comprising the entire then-outstanding principal balance of the Loan to be converted from such floating rate or rates to the Fixed Rate for an Interest Period equal to the remainder of the Loan Term. Lender shall have no liability to Borrower by reason of Lender's failure to calculate or give Borrower notice of the Weighted Average Rate and such failure shall not constitute a default by Lender under the terms of this Agreement or any other

Loan Document. The sole consequence of Lender's failure to calculate or give Borrower notice of the Weighted Average Rate shall be that Lender shall not have the right to exercise Lender's Conversion option in a calendar month in which, by the tenth (10th) Business Day of such month, Lender has not calculated and given Borrower notice of the Weighted Average Rate in effect as of the first day of such month.

Section 4.02 Exercise of Lender's Conversion Option.

(a) If (i) Borrower has not theretofore exercised Borrower's Conversion Option and converted the interest rate or rates on the Loan to the Fixed Rate pursuant to Article III of the Original Loan Agreement as amended by this Agreement, (ii) the Weighted Average Rate as of the first day of the calendar month in which Lender elects to exercise Lender's Conversion Option is equal to or greater than the Trigger Rate for the calendar year in which such month occurs, and (iii) Lender has calculated and given Borrower notice of the Weighted Average Rate not later than the tenth (10th) Business Day of such month, Lender may thereafter exercise Lender's Conversion Option on any Business Day during such month by giving Borrower a Trigger Rate Notice.

(b) The representatives of Borrower identified on Schedule 3 to this Agreement (i) are each individually authorized to transmit to Lender Borrower's acceptance or rejection of the Fixed Rate obtainable by Lender and offered to Borrower, as hereinafter provided, and (ii) will be available to Lender by telephone from 9:00 a.m. New York time until 3:00 p.m. New York time on each Business Day during the applicable Decision Period (as defined in Section 4.02(c) below). Borrower may change the representatives identified on Schedule 3 to this Agreement by delivering a written notice to Lender identifying one or more

representatives of Borrower (and the telephone number of each such representative) for purposes of this Article IV. Borrower may not change the representatives identified on Schedule 3 to this Agreement during a Decision Period.

(c) A "Decision Period" shall mean a period commencing at 9:00 a.m. New York time on the Business Day next following the date on which the Trigger Rate Notice is given to Borrower and continuing through and including 3:00 p.m. New York time on the fourth (4th) Business Day following the date on which the Trigger Rate Notice is given to Borrower.

(d) Borrower's right to exercise Borrower's Conversion Option under Article III of the Loan Agreement shall be suspended from the time Lender gives a Trigger Rate Notice until the expiration of the ensuing Decision Period.

Section 4.03 Implementation of Interest Rate Management Arrangement.

(a) Lender shall, not later than 3:00 p.m. on the fourth (4th) Business Day following the date on which the Trigger Rate Notice is given to Borrower, obtain one or more offers for an Interest Rate Management Arrangement having a term equal to the remaining Loan Term that, subject to Subsection 4.03(d) hereinbelow, will enable Lender to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest. Prior to accepting an offer for an Interest Rate Management Arrangement, Lender shall telephonically quote to Borrower the fixed per annum interest rate together with all Funding Costs that will result from effectuating such an Interest Rate Management Arrangement, which rate Borrower shall either accept or reject within three (3) hours following Lender's telephonic quote to Borrower. The fixed rate offered by Lender (i) if made applicable to the Loan prior to February 27, 1998 shall include Lender's spread of seventy one-hundredths of one percent

(0.70%) and shall increase on February 27, 1998 by ten one-hundredths of one percent (0.10%), thus increasing Lender's aggregate spread to eighty one-hundredths of one percent (0.80%) and on February 27, 2001 by an additional twenty one-hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to one percent (1.00%); (ii) if made applicable to the Loan on or after February 27, 1998 but prior to February 27, 2001, shall include Lender's spread of eighty one-hundredths of one percent (0.80%) and shall increase on February 27, 2001 by twenty one-hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to one percent (1.00%); and (iii) if made applicable to the Loan on or after February 27, 2001, shall include Lender's spread of one percent (1.00%).

(b) If Borrower accepts the fixed rate quoted by Lender, Lender shall use all reasonable efforts to accept and enter into the offered Interest Rate Management Arrangement. If Lender is able to enter into the offered Interest Rate Management Arrangement then, commencing on the second (2nd) Business Day after Lender enters into the offered Interest Rate Management Arrangement (the "Lender Option Conversion Date") (subject to Section 4.03(d) below), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest at the fixed rate quoted by Lender for the remainder of the Loan term, which shall include Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a) hereinabove, which rate shall constitute the Fixed Rate as defined in the Note. If Lender is unable to obtain the fixed rate quote accepted by Borrower pursuant to this Section 4.03(b), Lender shall, until 3:00 p.m. New York time on the final Business Day of the Decision Period, continue to seek an Interest Rate Management Arrangement that will result in a Fixed Rate acceptable to Borrower and

obtainable by Lender. If Lender is unable to obtain a Fixed Rate offered by Lender and acceptable to Borrower by 3:00 p.m. New York time on the final Business Day of the Decision Period, Lender shall have the right, in its sole and absolute discretion, either (i) to accept and enter into an Interest Rate Management Arrangement satisfactory to Lender in its sole and absolute discretion in order to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest or (ii) not to enter into an Interest Rate Management Arrangement and thereafter, subject to the same terms and conditions hereof, to give another Trigger Rate Notice and, during the ensuing Decision Period, enter into an Interest Rate Management Arrangement in the manner provided herein. If, under clause (i) of the preceding sentence, Lender is able and so elects to enter into an Interest Rate Management Arrangement then, commencing on the Lender option Conversion Date (subject to Section 4.03(d) hereinbelow), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest for the remainder of the Loan Term at a fixed per annum rate of interest equal to the fixed rate provided for under the Interest Rate Management Arrangement accepted by Lender plus Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a) hereinabove, which rate shall constitute the Fixed Rate as defined in the Note.

(c) If (i) Lender is able to contact Borrower and Borrower fails to accept or reject the fixed rate quoted by Lender pursuant to Section 4.03(a) hereinabove, or (ii) Borrower rejects the fixed rate quoted by Lender pursuant to Section 4.03(a) hereinabove, or (iii) Borrower fails by 5:00 p.m. New York time on the Business Day immediately preceding the last day of the Decision Period to designate one or more individuals authorized to accept an offered fixed rate,

or (iv) Lender is unable to contact Borrower to obtain Borrower's election as to a proposed fixed rate, Lender shall not accept an offered Interest Rate Management Arrangement and shall, until 3:00 p.m. New York time on the final Business Day of the Decision Period, continue to seek an Interest Rate Management Arrangement that will result in a Fixed Rate acceptable to Borrower. If Borrower fails to accept a Fixed Rate offered by Lender by 3:00 p.m. New York time on the final Business Day of the Decision Period, Lender shall have the right, in its sole and absolute discretion, either (A) to accept and enter into an Interest Rate Management Arrangement satisfactory to Lender in its sole and absolute discretion in order to convert the interest rate or rates on the entire principal balance of the Loan outstanding at that time to a fixed rate of interest or (B) not to enter into an Interest Rate Management Arrangement and thereafter, subject to the same terms and conditions hereof, to give another Trigger Rate Notice and, during the ensuing Decision Period, enter into an Interest Rate Management Arrangement in the manner provided herein. If, under clause (A) of the preceding sentence, Lender is able and so elects to enter into an Interest Rate Management Arrangement then, commencing on the Lender Option Conversion Date (subject to Section 4.03(d) hereinbelow), the interest rate on the entire principal balance of the Loan outstanding at that time shall, without further notice to or action by Borrower or Lender, bear interest for the remainder of the Loan Term at a fixed per annum rate of interest equal to the fixed rate provided for under the Interest Rate Management Arrangement accepted by Lender plus Lender's spread as set forth in Section 4.03(a) hereinabove and shall increase as set forth in Section 4.03(a), which rate shall constitute the Fixed Rate as defined in the Note.

(d) Notwithstanding anything to the contrary in this Section 4.03, if, on the Lender option Conversion Date, the applicable interest rate for one or more Portions of Principal

will be the Eurodollar Rate pursuant to Section 3 of the Note, Lender shall enter into an Interest Rate Management Arrangement that will become effective (i) for each such Portion of Principal upon the expiration of the Interest Period associated with the Eurodollar Rate applicable to such Portion of Principal and (ii) for all other Portions of Principal on the Lender Option Conversion Date. In such event, the Fixed Rate shall apply to each such Portion of Principal bearing interest at a Eurodollar Rate upon the expiration of the Interest Period associated with such Eurodollar Rate.

(e) Borrower shall reimburse Lender for all Funding Costs and other Out-of-Pocket Costs incurred by Lender in connection with Lender's entering into an Interest Rate Management Arrangement under this Article IV.

Section 4.04 Recalculation of Trigger Rate.

(a) Borrower and Lender acknowledge that the Trigger Rates set forth on Schedule 1 to this Agreement were calculated using (i) the methodology illustrated on Schedule 2 to this Agreement and (ii) the "Pre-Tax Net Operating Income" of the Trust Estate as calculated and set forth by Leggat McCall & Werner Appraisal and Consulting Co., Inc. ("Leggat McCall") in that certain re-examination dated July 11, 1994 (the "Reappraisal") of earlier appraisals prepared by Leggat McCall of the Trust Estate and Phase I.

(b) If Lender, in its reasonable discretion, determines at any time during the Loan Term that the Pre-Tax Net Operating Income of the Trust Estate has for any reason decreased since the date on which Trigger Rates were last calculated by more than five percent (5t), Borrower shall, if Lender so requests and at Borrower's sole cost and expense, but subject to Section 4.04(c) hereinbelow, cause Leggat McCall (or another appraisal firm acceptable to

Lender in its reasonable discretion if Leggat McCall is not then in business or is unable or unwilling to perform in a timely manner the work contemplated by this Section 4.04(b)) within thirty (30) days of Lender's request to determine the then-current Pre-Tax Net Operating Income of the Trust Estate using the same methodology used by Leggat McCall to determine Pre-Tax Net Operating Income for purposes of the Reappraisal, provided that in determining the then-current Pre-Tax Net Operating Income of the Trust Estate, Borrower shall cause Leggat McCall (or such other appraisal firm as provided for above) to use only Revenues received under Qualifying Space Leases. Lender shall then recalculate each annual Trigger Rate using (i) the then-current Pre-Tax Net Operating Income as so redetermined and (ii) the methodology set forth on Schedule 2 to this Agreement. Lender shall give Borrower notice of the Trigger Rates as so recalculated by Lender and, from and after the date on which such notice is given, the Trigger Rates shall for all purposes hereunder be deemed amended to be the Trigger Rates as so recalculated.

(c) If the Pre-Tax Net Operating Income of the Trust Estate has decreased by more than five percent (5%) by reason of Space Tenants that occupy more than five percent (5%) of the rentable space in the Improvements terminating their Space Leases, then Borrower shall not be required to cause the Pre-Tax Net Operating Income of the Trust Estate to be redetermined in accordance with Section 4.04(b) hereinabove until such time as Space Tenants occupy at least ninety-five percent (95%) of the rentable space in the Improvements under Qualifying Space Leases.

(d) Trigger Rates shall remain in effect until recalculated in accordance with this Section 4.04.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each of Zuckerman, Linde, and Borrower makes the representations, warranties and covenants respectively pertaining to himself or itself set forth in Section 5.01 through and including Section 5.19 hereinbelow as of the date hereof and again on and as of the Effective Date, all of which shall survive the execution and delivery of this Agreement.

Section 5.01 Existence. Borrower is and at all relevant times was a

limited partnership duly organized, validly existing and in good standing under the laws of the District of Columbia. Borrower has and at all relevant times had the authority, rights and franchises to own its properties, to carry on its business as now conducted, to perform its obligations under the Loan Documents, this Agreement, and the other Modification Documents, to complete the Project in accordance with the Plans, to own and operate the Project as a first-class commercial office building, and has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business. Borrower conducts no business, directly or indirectly, except for the ownership and operation of the Project and of Phase I, and the ownership of Lot 872.

Section 5.02 Authorization, Enforceable Obligations. Each of

Guarantors and Borrower has the authority and legal right to execute, deliver and perform this Agreement and the Modification Documents to which he or it is a party and Borrower has taken all necessary partnership action to authorize the execution, delivery and performance of this Agreement and the Modification Documents to which it is a party. No consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with any

court, Governmental Authority, or third party which has not been obtained is required for the execution, delivery, and performance by Borrower or Guarantors of this Agreement or the Modification Documents to which he or it is a party. This Agreement has been (and, on the Effective Date, each of the Modification Documents will have been) executed and delivered by each of Borrower and Guarantors if a party thereto and constitutes (and, on the Effective Date, each of this Agreement and the Modification Documents will constitute) the legal, valid and binding obligation of each of Borrower and Guarantors if a party thereto, enforceable against such persons and entities in accordance with its terms.

Section 5.03 Conflicting Agreements. Neither the execution nor

delivery of any of this Agreement or the Modification Documents nor the fulfillment of or compliance with the terms and provisions hereof or thereof or of the Loan Documents, nor the consummation of the transactions contemplated

hereby or by any of the other documents referred to herein, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien (other than the lien of the Loan Documents and the Modification Documents) upon any of the properties or assets of either of Borrower or Guarantors pursuant to its partnership agreement, any other contract, any award of any arbitrator or any agreement, (including any agreement with Borrower's partners and also including Project Documents), instrument, order, judgment, decree, statute, law, ordinance, franchise, certificate, permit, rule, regulation or the like to which any of Borrower or Guarantors is subject, or to or by which their or its properties or their or its assets or the Trust Estate are bound or affected.

Section 5.04 Organizational Documents. Borrower has furnished Lender

with true, correct, and complete copies of the following documents:

(a) with respect to Independence Square, Inc., sole Managing General Partner of the sole General Partner of Borrower:

(i) The certificate of incorporation of such corporation and all amendments thereof, certified by the Secretary of State of the state of such corporation's incorporation, together with a certificate of said Secretary of State to the effect that the corporation is in good standing therein;

(ii) A certificate from the Secretary of State or comparable official of the jurisdiction in which the Premises are located (if other than such corporation's state of incorporation) to the effect that the corporation is in good standing and qualified to do business therein;

(iii) Bylaws certified to Lender by the secretary of the corporation; and

(iv) A certificate of the secretary of the corporation certifying (A) resolutions of the shareholders and directors of the corporation authorizing the consummation of the transactions contemplated by the Modification Documents to which such corporation is a party or a signatory and the execution, delivery, and performance of each of the Modification Documents to which such corporation is a party or a signatory and (B) the incumbency and signature of each of the officers of the corporation to execute any Modification Documents; and

(b) With respect to Boston Southwest Associates Limited Partnership, sole General Partner of Borrower:

(i) A true, correct and complete copy of its partnership agreement, together with all amendments thereto, as currently in effect, certified by a Person satisfactory to Lender in its sole discretion.

(ii) All certificates filed or required to be filed by the partnership in the jurisdiction of its formation and the jurisdiction where the Premises are located in order for it to do business in those jurisdictions; and

(iii) Such evidence as may be available from the Secretary of State or comparable official of the jurisdiction of the partnership's formation to the effect that the partnership continues to exist and is in good standing.

Section 5.05 No Material Litigation. No litigation, investigation or

administrative proceeding of or before any court, arbitrator, or Governmental Authority is pending, or has been threatened in writing by potential claimants or their counsel, against any of Borrower or Guarantors or any of their assets or that would, if adversely determined, be likely to have a material adverse effect on (a) Borrower's or either Guarantor's ability to perform its or his obligations under this Agreement, the other Loan Documents, or the Modification Documents; (b) the validity or enforceability of this Agreement, the other Loan Documents, or the Modification Documents; or (c) Lender's security under this Agreement, any other Loan Document, or the Modification Documents. No notice has been received by Borrower of any proceeding to condemn, purchase, or otherwise acquire the Trust Estate or any part thereof or interest therein, and, to the best of Borrower's knowledge, no such proceeding has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 5.06 Compliance with Applicable Laws. Each of Borrower,

Guarantors, the Project, and the Trust Estate is in compliance with the requirements of all Laws, the failure to comply with which would materially and adversely affect Borrower's or either Guarantor's ability to perform its or his obligations under this Agreement, any of the other Loan Documents, or the Modification Documents, and no written notice of non-compliance with any of the foregoing has been received by Borrower or either Guarantor from any Governmental Authority. No consent, approval or authorization, or registration, declaration or filing with any Governmental Authority or any other Person is required for the valid execution, delivery and performance by Borrower and Guarantors of this Agreement, the other Loan Documents, or the Modification Documents, or the carrying out of the transactions contemplated of hereby or thereby.

Section 5.07 Information Delivered. All facts, studies, reports,

loan applications, financial statements, operating cost histories, and all other documents and data, financial or otherwise, respecting Borrower and Guarantors, or contracts, permits, licenses, or other matters affecting any part of the Trust Estate or the operation thereof which have been furnished to Lender or Lender's counsel by Borrower or Borrower's counsel or Guarantors or Guarantors' counsel were, to the best of Borrower's and Guarantors' knowledge, true, correct, and complete in all material respects when made or delivered to Lender, or, if copies thereof have been so furnished, such copies are, to the best of Borrower's and each Guarantor's knowledge, true, correct and complete in all material respects, and neither Borrower nor any and Guarantor has failed to disclose any data or documents necessary to make the foregoing true, accurate, complete in all material respects and not materially misleading.

Section 5.08 True Statement. Neither this Agreement, any other Loan

Document, the Modification Documents nor any other document delivered to Lender in connection with the Loan contains, or will contain when made, any untrue statement of a material fact by Borrower or Guarantors and by this reference all representations and warranties made in any of the Loan Documents and the Modification Documents are hereby made a part of this Agreement to the same extent as if fully set forth herein.

Section 5.09 No Event of Default. There exists no Event of Default

under any of the Loan Documents nor any fact or circumstance which, with the passage of time, giving of notice or action by third parties could become an Event of Default under any of the Loan Documents or the Modification Documents.

Section 5.10 Space Leases. Set forth on Exhibit "H" hereto is a

true, correct, and complete list of all Space Leases now in effect with respect to the Trust Estate. Except for such Space Leases and the Permitted Exceptions, there are no leases, licenses, tenancy agreements, contracts, or understandings, oral or written, pursuant to which any person or entity has or claims any right to use or occupy any portion of the Trust Estate. Except as set forth on such Exhibit "H", there are no amendments, modifications, supplements, or understandings, oral or written, which affect any of the Space Leases. All other information set forth on Exhibit "H" with respect to the Space Leases is true and correct in all material respects. Other than as set forth on Schedule 4, no notice of default has been given by any party to any Space Lease which default remains uncured, there are no material defaults under the provisions of any of the Space Leases, and all conditions to the effectiveness and continuing effectiveness of each Space Lease required to be satisfied as of the date hereof have been satisfied.

Section 5.11 Financial Statements of Borrower. Borrower has

furnished to Lender the financial statements of Borrower for its fiscal year ended December 31, 1993, consisting of balance sheets and statements of income and retained earnings and changes in financial position for the years then ended, certified by the chief financial officer of Borrower's general partner as being true, complete, and correct; the foregoing financial statements are true and correct and contain no material misstatement or omission, and fairly present financial position, assets, and liabilities of Borrower as of the respective dates thereof and the results of its operations for the respective periods then ended; since the respective dates of the foregoing financial statements, there has been no material adverse change in the assets, liabilities, financial position, or results of operations of Borrower; and Borrower has not incurred any obligation or liability which would materially and adversely affect its business operations or its interest in the Trust Estate.

Section 5.12 Financial Statements of Guarantors. Borrower has

furnished or caused to be furnished to Lender the financial statements of each Guarantor for the fiscal year ending December 31, 1993, certified by the respective Guarantor (a) as being true, complete, and correct; (b) containing no material misstatement or omission, and fairly presenting the financial position, assets, and liabilities of Guarantor as of the date thereof; (c) since the date of the foregoing financial statements, there has been no material adverse change in the assets, liabilities, or financial position of Guarantor; and (d) Guarantor not having incurred any obligation or liability which would materially and adversely affect his financial position.

Section 5.13 Taxes and Other Assessments. Each of Borrower and

Guarantors has filed all federal, state, and local tax returns and other reports required by all laws to have been filed prior to the date hereof; has paid or caused to be paid all taxes, assessments, and other

governmental charges that are due and payable prior to the date hereof; and has made adequate provision for the payment of such taxes, assessments, or other charges accruing but not yet payable. Neither Borrower nor any of Guarantors has knowledge of any deficiency or additional assessment in a materially important amount in connection with any taxes, assessments, or charges not provided for on its respective books.

Section 5.14 No Liens. To the best of Borrower's knowledge, there

are no liens or other impositions against the Trust Estate or any part thereof except as may be included among the Permitted Exceptions. To the best of Borrower's knowledge, there do not exist any unpaid conditional sales contracts, chattel mortgages, security agreements, or financing statements in respect of the Trust Estate, or any part thereof, except such as may be included among the Permitted Exceptions. Without limiting the foregoing, the Trust Estate is, to the best of Borrower's knowledge, free from due and unpaid water charges, sewer rents, taxes, assessments, and other similar liens and/or impositions, mechanics' and materialmen's liens (choate, or inchoate), and any other Liens (other than liens arising with respect to non-delinquent property taxes) whether or not disclosed in the Title Policies.

Section 5.15 Trust Estate. There has occurred no material damage to

any part of the Trust Estate. No part of the Trust Estate has been taken in condemnation or other like proceedings. Borrower has received no notice of any (i) proceedings in eminent domain or any similar proceeding or transaction with respect to any part of the Trust Estate; or (ii) material change in the zoning of the Land or the use thereof as permitted by law and, to the best of Borrower's knowledge, no such proceeding or change has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 5.16 No Bankruptcy. As of the date hereof, there is no (a)

filing by or against Borrower or any of Guarantors of a voluntary or involuntary case or petition in bankruptcy, insolvency, or reorganization under the Federal Bankruptcy Code as now or hereafter constituted or under any other laws of similar nature, which bankruptcy, insolvency, or reorganization in the case of an involuntary filing has not been dismissed; (b) appointment of a receiver or trustee for Borrower, any of the foregoing persons or entities, or the Trust Estate, or any part thereof; (c) making by Borrower or any of the foregoing persons or entities of an assignment for the benefit of creditors; or (d) any similar act or occurrence.

Section 5.17 Absence of Transfer. Since the date of the original

funding of the Loan, there has not been any Transfer and there is not now in existence any contract providing for or contemplating a Transfer.

Section 5.18 Certificates. Borrower has delivered to Lender all such

permits, licenses, variances, approvals, consents, and other certificates or documents with respect to the Trust Estate (collectively, the "Certificates") as have been issued as of the date hereof by all relevant governmental authorities of competent jurisdiction which to the best of Borrower's knowledge are necessary to evidence the legal right and ability of Borrower to operate the Trust Estate as it currently is operated. Borrower will deliver to Lender copies of all other necessary Certificates as they are subsequently obtained.

Section 5.19 Representations and warranties Loan Documents. On the

Effective Date, Borrower shall be deemed to represent and warrant to Lender that all representations and warranties made by Borrower which are set forth in the Original Loan Agreement, the Original

Deed of Trust and in the other Loan Documents are true, correct, and complete in all material respects as of and as if made on the Effective Date, subject only to the following qualifications:

(a) The representations and warranties that are remade pursuant to this Section 5.19 shall take into account the amendments to the Loan Documents effected on the Effective Date by this Agreement and the Modification Documents.

(b) The representations and warranties made in Sections 6.01, 6.05, 6.13, and 6.18 of the Original Loan Agreement shall not be deemed to be remade as of the Effective Date; instead the representations and warranties set forth in Sections 5.01 and 5.05 of this Agreement are substituted -therefor and are represented and warranted by Borrower as true and correct on the Effective Date.

Section 5.20 Event of Default. It shall constitute an Event of

Default under the Loan Agreement (as in effect after giving application to the changes set forth in this Agreement) and other Loan Documents if any representation or warranty set forth in, made, or remade pursuant to this Article V shall prove to have been untrue, incorrect, incomplete, or misleading in any material respect when made or remade.

ARTICLE VI

EFFECTIVE DATE

Section 6.01 Effective Date. The "Effective Date", as used in this

Agreement, shall be that date on which all of the conditions precedent set forth in this Section 6.01 have been satisfied or, in Lender's absolute discretion, waived by Lender. Upon the satisfaction of all of the conditions precedent set forth in this Section 6.01 or the waiver thereof by Lender, in

Lender's absolute discretion, Borrower and Lender shall execute the certificate attached hereto as Exhibit "I" confirming the Effective Date.

(a) Lender shall have received a payment from Borrower of (i) the modification fee due upon the Effective Date in the amount of Three Hundred and Seventy-Five Thousand and No/100 Dollars (\$375,000.00) and (ii) Lender's Out-of-Pocket Costs.

(b) There shall exist no Event of Default under any of the Loan Documents nor any fact or circumstance which, with the passage of time, giving of notice or action by third parties could become an Event of Default under any of the Loan Documents and Lender shall have received a certificate executed and delivered by Borrower and Guarantors, in form and substance satisfactory to Lender, confirming such fact.

(c) All representations and warranties set forth in this Agreement, the Modification Documents and the other Loan Documents, as amended and remade in accordance with the terms of this Agreement, shall be true, correct, and complete in all material respects as if remade on and as of the Effective Date and Lender shall have received a certificate executed and delivered by Borrower and Guarantors, in form and substance satisfactory to Lender, confirming such fact.

(d) All covenants to be performed by Borrower and Guarantors on or before the Effective Date shall have been performed and Lender shall have received a certificate executed and delivered by Borrower and Guarantors in form and substance satisfactory to Lender, confirming such fact.

(e) The Modification Documents shall have been duly executed and delivered by all parties thereto and shall be binding and enforceable upon the parties thereto in accordance

with their terms. Those of the Modification Documents to be recorded or filed shall have been successfully recorded or filed, as appropriate; provided, however, that failure to record the Second Amendment to Deed of Trust shall not be deemed to prevent the occurrence of the Effective Date.

(f) Lender shall have received and approved such endorsement or endorsements to the Title Policies (and all outstanding reinsurance agreements) as Lender may deem necessary or appropriate to insure that as of the Effective Date, the Original Deed of Trust as amended by the Modification to Deed of Trust will be a valid first lien securing the full amount of the Loan, on a good and indefeasible title to the Trust Estate, vested in Borrower, free and clear of all encumbrances (including without limitation choate and inchoate mechanics' and materialmen's liens, whether or not filed) except the Permitted Exceptions (and that all reinsurance agreements remain in effect with respect to the Title Policies as so endorsed).

(g) Lender shall have received such opinions from counsel to Borrower and Guarantors, in form and substance reasonably satisfactory to Lender, as Lender may in its discretion require in respect of the Modification Documents, this Agreement, the other Loan Documents, and any other documents, including, without limitation, that the consummation of the transactions contemplated by the Modification Documents and this Agreement, will not violate any law, statute, rule, regulation or order of any court or Governmental Authority applicable to any of Borrower or Guarantors or to which any of the property of any of such Persons may be subject.

(h) There shall have been delivered to Lender with respect to each general Partner of Borrower and each general Partner of a general Partner of Borrower those organizational documents required to be delivered pursuant to Section 5.04 hereof.

(i) Lender shall have received evidence satisfactory to Lender that there are no conditional sales contracts, chattel mortgages, leases of personalty, financing statements, or title retention agreements which affect the Premises.

(j) Lender shall have received and approved all financial information reasonably requested by Lender concerning Borrower and Guarantors.

(k) All instruments and agreements in connection with the transactions contemplated by this Agreement and the Modification Documents shall be satisfactory in form and substance to Lender in its sole but reasonable discretion.

Section 6.02 Termination. If the Effective Date has not occurred by

October 31, 1994, or if, prior to such date an Event of Default shall occur, then, in its absolute discretion, Lender may terminate this Agreement, in which case (i) this Agreement shall, except where otherwise expressly provided, be null, void, and of no further force or effect and (ii) all original Loan Documents shall remain in effect in accordance with their terms.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Entire Agreement; Exhibits and Schedules. This

Agreement, taken together with all of the other Loan Documents (as modified by this Agreement), the Modification Documents and other documents delivered by Borrower and Guarantors embodies the entire agreement with respect to the subject matter hereof, and supersedes or incorporates all prior

negotiations or agreements written and oral. The Exhibits and Schedules attached to this Agreement are incorporated herein by this reference and made a material part hereof unless otherwise stated herein.

Section 7.02 Counterparts. This Agreement may be executed in any

number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

Section 7.03 Governing Law. This Agreement shall be governed by, and

construed in accordance with, the laws of the District of Columbia.

Section 7.04 Severability. If any of the terms and provisions

specified herein is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such term or provision to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the terms and provisions herein shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable term or provision was not contained therein.

Section 7.05 Successors and Assigns. All covenants and agreements

herein shall bind the respective successors and assigns of the parties hereto (but this provision is not intended nor shall it be construed to permit Borrower or any of Guarantors to transfer or assign its or their rights and obligations hereunder or under the Loan Documents except as permitted by the provisions of the Loan Documents), whether so expressed or not, and all such covenants shall

inure to the benefit of such respective nominees, successors and assigns, whether so expressed or not.

Section 7.06 Time of the Essence. Time is of the essence with regard to the performance of the terms and provisions of this Agreement.

Section 7.07 Headings. The titles and headings of Articles and Sections of this Agreement are intended for convenience only, and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 7.08 Notices. Any notice, request, demand, instruction or other communication given in connection with this Agreement shall be in writing and shall be given in the manner provided in the Loan Agreement at the addresses set forth in the Loan Agreement.

Section 7.09 Survival. The terms, covenants, representations, and warranties in this Agreement shall survive the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Loan Modification and Extension Agreement as of the day and year first written above.

SOUTHWEST MARKET LIMITED
PARTNERSHIP, a District of Columbia
limited partnership

By: Boston Southwest Associates Limited
Partnership, a Massachusetts limited
partnership, General Partner

ATTEST:

By: Independence Square, Inc., a
Delaware corporation, its
Managing General Partner

Name:

By: -----
Name:
Title:

WITNESS:

Name: MORTIMER B. ZUCKERMAN (signing solely to evidence those obligations and agreements of Guarantor set forth herein)

WITNESS:

Name: EDWARD H. LINDE (signing solely to evidence those obligations and agreements of Guarantor set forth herein)

ATTEST: THE SUMITOMO BANK, LIMITED, a Japanese banking institution, acting through its NEW YORK BRANCH

By: Robert A. Rabbino, Jr.
Joint General Manager

EXHIBIT "A"

ALLONGE

THIS ALLONGE ("Allonge") made as of the ____ day of September, 1994 by and between THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH ("Lender") and SOUTHWEST MARKET LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the District of Columbia ("Borrower");

WITNESSETH:

WHEREAS, Borrower and Lender are the parties to that certain Construction Loan Agreement dated as of February 22, 1991, pursuant to which Lender advanced to Borrower the aggregate principal amount of One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000); and

WHEREAS, the advances made by Lender to Borrower under the Construction Loan Agreement identified above and Borrower's obligation to repay same with interest are evidenced by that certain Promissory Note made by Borrower as of February 27, 1991 to the order of Lender in the original principal amount of up to One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00) (the "Note"); and

WHEREAS, Borrower's obligations under the Construction Loan Agreement and Promissory Note identified above and under the other "Loan Documents" as defined in the Construction Loan Agreement are secured by, among other things, that certain Construction Loan Deed of Trust and Security Agreement made by Borrower as of February 22, 1991 and effective as of February 27, 1991 to Gerald R. Perras and Stuart S. Levin for the benefit of Lender; and

WHEREAS, Borrower, Mortimer B. Zuckerman, Edward H. Linde, and Lender have entered into that certain Loan Modification and Extension Agreement dated as of September __, 1994 (the "Extension Agreement"), pursuant to which Borrower and Lender have agreed, among other things, to execute and deliver this Allonge in order to modify certain terms of the Note in the manner set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with the terms of the Extension Agreement, Borrower and Lender hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall

have the meanings given to such terms in the Construction Loan Agreement identified above, as amended, modified, and supplemented by the Extension Agreement, and as hereafter amended, modified, supplemented or restated (the Construction Loan Agreement, together with all amendments,

modifications, supplements and restatements thereto and thereof being hereinafter referred to as the "Loan Agreement").

2. Incorporation of Allonge. This Allonge shall be appended to and ----- incorporated into and shall be a part of the Note.

3. Amendment of Note. The Note shall be and hereby is amended as follows: -----

a. Deed of Trust. In Section 1 of the Note, the definition of Deed ----- of Trust is hereby amended to read in its entirety as follows:

"Deed of Trust" shall mean that certain Construction Loan Deed of -----

Trust and Security Agreement with an effective date of February 27, 1991 between Borrower and Lender, as amended by that certain First Amendment to Construction Loan Deed of Trust and Security Agreement dated as of September 9, 1994 and effective as of September 21, 1994, by and among Lender, Borrower and others, securing this Note and encumbering certain property located in the District of Columbia, as more particularly described therein, as such Deed of Trust may from time to time be amended, modified, supplemented or restated.

b. Eurodollar Rate. In Section 1 of the Note, the definition of ----- Eurodollar Rate is hereby amended to read in its entirety as follows:

"Eurodollar Rate" shall mean (a) for the period commencing on and -----

including September __, 1994 and continuing through but not including February 27, 1998, LIBOR plus seventy one-hundredths of one percent (0.70%), (b) for the period commencing on and including February 27, 1998 and continuing through but not including February 27, 2001, LIBOR plus eighty one-hundredths of one percent (0.80%), and (c) for the period commencing on and including February 27, 2001 and continuing through but not including February 27, 2003, LIBOR plus one percent (1.00%).

c. Fixed Rate. In Section 1 of the Note, the definition of Fixed ----- Rate is hereby amended to read in its entirety as follows:

"Fixed Rate" shall mean the fixed per annum rate of interest made -----

applicable to the Loan pursuant to Article III of the Loan Agreement or Article IV of the Extension Agreement, which rate (a) if made applicable to the Loan prior to February 27, 1998 shall include Lender's spread of seventy one-hundredths of one percent (0.70%) and shall increase on February 27, 1998 by ten one-hundredths of one percent (0.01%), thus increasing Lender's aggregate spread to eighty one-hundredths of one percent (0.80%) and on February 27, 2001 by an additional twenty one-hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to one percent (1.0%); (b) if made applicable to the Loan on or after February 27, 1998 but prior to February 27, 2001, shall include Lender's spread of eighty one-hundredths of one percent (0.80%) and shall

increase on February 27, 2001 by twenty one-hundredths of one percent (0.20%), thus increasing Lender's aggregate spread to one percent (1.00%); and (c) if made applicable to the Loan on or after February 27, 2001, shall include Lender's spread of one percent (1.00%).

d. Funding Costs. In Section 1 of the Note, the definition of

Funding Costs is hereby amended by adding after each instance in such definition of the term "Loan Agreement" the following language:

or the Loan Extension and Modification Agreement dated September __, 1994 by and between Lender and Borrower

e. Loan Agreement. In Section 1 of the Note, the definition of

Loan Agreement is hereby amended to read in its entirety as follows:

"Loan Agreement" shall mean that certain Construction Loan

Agreement, dated as of February 22, 1991, between Borrower and Lender, as amended by that certain Loan Modification and Extension Agreement, dated as of September __, 1994, by and among Borrower, Mortimer B. Zuckerman, Edward H. Linde, and Lender, as such Loan Agreement may from time to time be further amended, modified, supplemented or restated.

f. Maturity Date. In Section 1 of the Note, the definition of

Maturity Date is hereby amended to read in its entirety as follows:

"Maturity Date" shall mean February 27, 2003 or, if such date

is not a Business Day, the first Business Day immediately following February 27, 2003.

g. Prime Rate. In Section 1 of the Note, the first sentence of

the definition of Prime Rate is hereby amended to read in its entirety as follows :

"Prime Rate" shall mean the floating commercial loan interest

rate of Citibank, N.A., publicly announced from time to time as its "Prime Rate"; except that during the last two (2) weeks of every calendar quarter ("Two-Week Period") the Prime Rate shall mean the sum of (a) LIBOR for an Interest Period equal to and coincident with such Two-Week Period plus (b)(i) during the period commencing on and including September __, 1994 and continuing through but not including February 27, 1998, seventy one-hundredths of one percent (0.70%), (ii) during the period commencing on and including February 27, 1998 and continuing through but not including February 27, 2001, eighty one-hundredths of one percent (0.80%), and (c) during the period commencing on and including February 27, 2001 and continuing through but not including February 27, 2003, one percent (1.00%).

h. Modification of Section 3(b).

(i) The fourth sentence of Section 3(b) of the Note is hereby amended to read in its entirety as follows:

The Fixed Rate may not be designated for any Portion of Principal that does not consist of the entire outstanding principal balance of the Loan or for an Interest Period that ends on any day other than the Maturity Date.

(ii) The following language is hereby added at the end of Section 3(b) of the Note:

Notwithstanding anything contained in this Section 3(b) to the contrary, for that Portion of Principal equal to the amount of the quarterly principal payment next due in accordance with Section 6(a) of this Note, Borrower shall not be entitled to elect an Interest Period for the Eurodollar Rate, if applicable, which would extend beyond the applicable principal payment date.

i. Modification to Section 3(d). Section 3(d) of the Note is

hereby amended by deleting "(i)" in the first line thereof and deleting the second and third sentences thereof.

j. Amortization. At the end of Section 6(a) of the Note, the

following language is hereby added:

Anything in the preceding sentence to the contrary notwithstanding, Borrower shall, regardless of the interest rate or rates then in effect under this Note, on each December __, March __, June __, and September 26, prior to the Maturity Date (or the next preceding Business Day, if any of such dates is not a Business Day), pay to Lender for application to the outstanding principal balance of this Note (a) Two Hundred Eighty-One Thousand and Two Hundred Fifty Dollars (\$281,250) commencing with December __, 1994 and continuing through and including December __, 1997, and (b) Three Hundred Seventy-Five Thousand Dollars (\$375,000) commencing on March __, 1998 and continuing through and including December __, 2002. Each such prepayment shall be deemed to be a voluntary prepayment for all purposes under this Section 6 and the other provisions of this Note and the other Loan Documents.

k. Modification of Section 6(b). Clause (A) of Section 6(b) is

hereby amended to read in its entirety as follows:

(A) the Fixed Rate less (1) during the period from and including September __, 1994 to but not including February 27, 1998, seventy one-hundredths percent (0.70%); (2) during the period from and including February 27, 1998 to but not including February 27, 2001, eighty one-hundredths percent (0.80%); and (3) during the period from and including February 27, 2001 to but not including the Maturity Date, one percent (1.00%) over

1. Late Charge. The words "or any quarterly payment of principal

to be made under Section 6(a) hereinabove" are hereby added in the first sentence of Section 25 after the words "provided for herein" and before the words "shall not be paid when due".

4. Reaffirmation of Note. Except as expressly amended by this

Allonge, the Note remains in full force and effect in accordance with its terms. Borrower acknowledges and agrees that as of the date hereof there exist no offsets, defenses, counterclaims or abatements to the obligations of Borrower under the Note.

5. Counterparts. This Allonge may be executed in counterparts, each

of which shall be deemed an original, but all of which taken together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Allonge to be duly executed, delivered and affixed to that certain Promissory Note made by Borrower as of February 27, 1991 to the order of Lender in the original principal amount of up to One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00), all as of the day and year first above written.

ATTEST: THE SUMITOMO BANK, LIMITED,
NEW YORK BRANCH, Lender

By: _____
Robert A. Rabbino, Jr.
Joint General Manager

Title:

SOUTHWEST MARKET LIMITED
PARTNERSHIP, a District of Columbia
limited partnership, Borrower

By: Boston Southwest Associates
Limited Partnership, a
Massachusetts limited partnership,
General Partner

ATTEST: By: Independence Square, Inc., a
Delaware corporation, its
managing General Partner

By: _____

Title: Name:
Title:

EXHIBIT "B"

AFTER RECORDING RETURN TO:
Commercial Settlements, Inc.
1413 K Street, N.W.
Washington, D.C. 20005
Attn: Leonard W. Harrington, Jr.

FOR DELIVERY TO:
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
Attn: Michael A. Barrett, Esq.

SECOND AMENDMENT TO CONSTRUCTION LOAN DEED OF
TRUST
AND SECURITY AGREEMENT

THIS SECOND AMENDMENT TO CONSTRUCTION LOAN DEED OF TRUST AND SECURITY AGREEMENT (this "Second Amendment to Deed of Trust") is made as of the ____ day of September, 1994, and effective as of the ____ day of _____, 1994, by and among SOUTHWEST MARKET LIMITED PARTNERSHIP, a District of Columbia limited partnership ("Trustor"), THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH ("Beneficiary"), and GERALD R. PERRAS and STUART S. LEVIN, Trustees, either of whom may act (collectively, "Trustee");

W I T N E S S E T H:

WHEREAS, Beneficiary and Trustor are the parties to that certain Construction Loan Agreement dated as of February 22, 1991, by and between Trustor and Beneficiary (the "Original Loan Agreement"); and

WHEREAS, Trustor is justly indebted to Beneficiary in the principal sum of ONE HUNDRED TWENTY-FIVE MILLION AND NO/100 UNITED STATES DOLLARS (U.S. \$125,000,000), such amount having been advanced by Beneficiary to Trustor pursuant to the Original Loan Agreement and being evidenced by that certain Promissory Note (the "Original Note"), dated February 27, 1991, in the principal amount of One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000); and

WHEREAS, the Original Note is secured by that certain Construction Loan Deed of Trust and Security Agreement (the "Initial Deed of Trust"), by and among Trustor, Beneficiary and Trustee, dated as of February 22, 1991 and effective as of February 27, 1991, which was recorded in the Land Records of the District of Columbia on February 27, 1991 as Instrument No. 10516; and

WHEREAS, the Initial Deed of Trust was amended by that certain First Amendment to Construction Loan Deed of Trust and Security Agreement (the "First Amendment to Deed of Trust"), by and among Trustor, Beneficiary and Trustee, dated as of September 9, 1994 and effective as of September 21, 1994, which was recorded in the Land Records of the District of Columbia on September 21, 1994 as Instrument No. 76268 (the Initial Deed of Trust as amended by the First Amendment to Deed of Trust shall hereinafter be referred to as the "Original Deed of Trust"); and

WHEREAS, Beneficiary and Trustor have agreed to amend the Original Loan Agreement, the Original Note and the Original Deed of Trust pursuant to that certain Loan Modification and Extension Agreement, dated as of September __, 1994 (the "Modification Agreement"), by and among Trustor, Beneficiary, and Mortimer B. Zuckerman and Edward H. Linde (collectively "Guarantors"); and

WHEREAS, Beneficiary and Trustor desire with this document to amend and modify the Original Deed of Trust in accordance with the Modification Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings given them in the original Deed of Trust;

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Trustor hereby covenants and agrees with Beneficiary as follows:

Section 1. General Definitions. The following terms defined in the

Original Deed of Trust are hereby redefined as follows:

(a) Assignment of Project Documents. Throughout the Original Deed

of Trust, the term "Assignment of Project Documents" shall be deemed to refer to that certain Collateral Assignment of Project Documents, dated as of February 27, 1991, by and between Trustor as assignor and Beneficiary as assignee, as amended by that certain First Modification to Collateral Assignment of Project Documents, of even date herewith, as such Assignment of Project Documents from time to time may be further amended, modified, supplemented, restated or extended.

(b) Assignment of Rents. Throughout the Original Deed of Trust, the

term "Assignment of Rents" shall be deemed to refer to that certain Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts, dated as of February 22, 1991 and effective as of February 27, 1991, by and between Trustor as assignor and Beneficiary as assignee, recorded in the Land Records of the District of Columbia on February 27, 1991 as Instrument No. 10517, as amended by that certain First Amendment to Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts, bearing date of September __, 1994 and effective as of September __, 1994, as such Assignment of Rents from time to time may be further amended, modified, supplemented, restated or extended.

(c) Environmental Guaranty. Throughout the Original Deed of Trust,

the term "Environmental Guaranty" shall be deemed to mean the Environmental Guaranty from Guarantors to Beneficiary, dated February 22, 1991, as reaffirmed by the Modification Agreement, as such Environmental Guaranty may from time to time be further reaffirmed, amended, modified, supplemented, restated or extended.

(d) Interest Guaranty. Throughout the Original Deed of Trust, the

term "Interest Guaranty" shall be deemed to mean the Interest Guaranty and Indemnity from Guarantors to Beneficiary, dated February 22, 1991, as amended by that certain First Amendment to Interest Guaranty and Indemnity dated as of September __, 1994, by and between Beneficiary and Guarantors, as reaffirmed by the Modification Agreement, as such Interest Guaranty may from time to time be further reaffirmed, amended, modified, supplemental, restated or extended.

(e) Loan Agreement. Throughout the original Deed of Trust, the term

"Loan Agreement" shall be deemed to refer to the Original Loan Agreement, as amended by the Modification Agreement, as such Loan Agreement from time to time may be further amended, modified, supplemented, restated or extended.

(f) Note. Throughout the Original Deed of Trust, the term "Note"

shall be deemed to refer to the Original Note, as amended by that certain Allonge dated September __, 1994, as such Note may from time to time be further amended, modified, supplemented, restated or extended.

(g) Out-of-Pocket Cost. The definition of "Out-of-Pocket Costs" is

amended as follows:

(i) The following is added in the fourth (4th) line thereof, immediately following the words "third parties": "and to affiliated third parties (so long as such costs, fees and expenses to affiliated third parties do not exceed such costs, fees or expenses as would be incurred in a transaction with an unaffiliated third party)".

(ii) The following is added in the fifth (5th) line thereof, immediately following the word "limitation,": "Funding Costs, ".

Section 2. Representations and Warranties. Trustor hereby represents and

warrants that all of the representations and warranties set forth in the original Deed of Trust other than those set forth in Section 1.21 and 1.23 (which Trustor shall not be deemed to have remade) are true, correct and complete as of and as if made again on the date hereof.

Section 3. Reaffirmation of Original Indebtedness. This Second Amendment

to Deed of Trust shall not constitute a refinancing of the Indebtedness nor shall anything contained herein or

in any other agreement or instrument between Trustor and Beneficiary constitute, or be deemed to constitute, any limitation on the validity or enforceability or priority of the Original Note as amended and restated by an Allonge of even date herewith, the Original Deed of Trust as amended hereby or any other instrument or agreement securing payment of, evidencing or otherwise pertaining to the Indebtedness nor shall this Second Amendment to Deed of Trust be deemed to create any interest different from that created by the Original Deed of Trust, which interest continues unimpaired and in full force and effect in accordance with the terms of the Original Deed of Trust as amended and modified by this Second Amendment to Deed of Trust.

Section 4. No Defenses. Trustor represents and warrants to

Beneficiary that, as of the date hereof, there exist no defenses, claims, counterclaims, setoffs, offsets or rights of recoupment to, against or with respect to any portion of the Indebtedness.

Section 5. Ratification. Except as expressly modified by this Second

Amendment to Deed of Trust, all of the terms and conditions of the original Deed of Trust shall remain in full force and effect in accordance with their terms.

Section 6. Counterparts. This Second Amendment to Deed of Trust may

be executed in counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Construction Loan Deed of Trust and Security Agreement as of the day and year first above written.

TRUSTOR:

SOUTHWEST MARKET LIMITED PARTNERSHIP, a
District of Columbia limited partnership

By: Boston Southwest Associates Limited
Partnership, a Massachusetts limited
partnership, General Partner

ATTEST:

By: Independence Square, Inc., a
Delaware corporation, its
managing General Partner

By:

By:

Name:

Name:

Title:

BENEFICIARY:

ATTEST:

THE SUMITOMO BANK, LIMITED, a Japanese
banking institution acting through its
NEW YORK BRANCH

By:

By:

Name:

Robert A. Rabbino, Jr.
Joint General Manager

WITNESS:

TRUSTEE:

Name:

Gerald R. Perras or Stuart S. Levin,
trustee, either of whom may act

CONSTRUCTION LOAN AGREEMENT

by and between

THE SUMITOMO BANK, LIMITED, NEW YORK BRANCH

and

SOUTHWEST MARKET LIMITED PARTNERSHIP

Dated as of August 21, 1990

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EXHIBITS

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- Exhibit D - Form of Deed of Trust
- Exhibit E - Form of Environmental Guaranty
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- Exhibit G - Form of Note
- Exhibit H - Form of Request for Disbursement
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- Exhibit J-2 - Form of Architect's Certificate
- Exhibit K - Form of Contractor's Consent and Certificate
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- Exhibit M - Form of OCC Estoppel
- Exhibit N - Form of OCC Subordination, Etc. Agreement

SCHEDULES

- Schedule 4.12 - Project Budget
- Schedule 4.13 - Construction Schedule
- Schedule 6.10 - Project Documents
- Schedule 6.11 - Plans

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT made as of the 21st day of August, 1990 by and between SOUTHWEST MARKET LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the District of Columbia, having an office at c/o Boston Properties, 500 E Street, S.W., Washington, D.C., 20024 ("Borrower"), and THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH, having an office at One World Trade Center, Suite 9651, New York, New York 10048 ("Lender");

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

WHEREAS, pursuant to that certain commitment letter dated June 13, 1990 from Lender to Borrower (the "Commitment") and on the terms and conditions hereinafter set forth, Lender is willing to lend to Borrower the aggregate sum of EIGHTY MILLION DOLLARS (\$80,000,000), to be evidenced by a promissory note and secured by, among other things, a lien upon certain real property located in the District of Columbia;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the capitalized

terms set forth in this Article I shall have the meanings given them in this Article I. Capitalized terms used in this Agreement but not defined in this Article I shall have the meanings set forth elsewhere in this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in the Note or, if not defined therein, in the Deed of Trust (as those terms are hereinafter defined).

Affiliate. As used herein, "Affiliate" shall mean each of: (a) any

general Partner, (b) any Guarantor, and (c) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Borrower, any general Partner or any Guarantor. For purposes of this and all other definitions, the

term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities or equity interests, by contract, mutual understanding, family relationship or otherwise.

Agent. As used herein, "Agent" shall mean Commercial Settlements, Inc., a District of Columbia corporation, an authorized agent of the Title Companies.

Agreement. As used herein, "Agreement" shall mean this Construction Loan Agreement, including all schedules and exhibits hereto, as the same may be amended or otherwise modified from time to time.

Annual Operating Budget. As used herein, "Annual Operating Budget" shall have the meaning given such term in Section 7.15(g) hereof.

Appraisal. As used herein, "Appraisal" shall mean an appraisal of the fair market value of the Project performed by the Appraiser in accordance with the rules and guidelines of the American Institute of Real Estate Appraisers.

Appraised Value of the Trust Estate. As used herein, "Appraised Value of the Trust Estate" shall mean the fair market value of Borrower's estate in the Trust Estate as set forth (a) as of the date hereof in the Appraisal performed and prepared by the Appraiser dated May 9, 1990, and delivered to Lender in connection with the making of the Loan or (b) thereafter, from time to time, in a current Appraisal prepared by the Appraiser.

Appraiser. As used herein, "Appraiser" shall mean Leggatt McCall & Werner Appraisal and Consulting Company, Inc., or another appraiser designated by Borrower and approved by Lender, such approval not to be unreasonably withheld or delayed.

Architect. As used herein, "Architect" shall mean each of the following: (a) with respect to all of the Project other than the Tenant Improvements, Kohn Pedersen Fox Associates P.C.; (b) with respect to the OCC Tenant Improvements only, Studios Architecture; and (c) with respect to the Spec Tenant Improvements to be constructed pursuant to a Space Lease, the Person designated by Borrower or the Space Tenant to perform the design services for such Spec Tenant Improvements. Architect also shall mean, with respect to the successor or successors to each Architect in (a), (b) and (c) above, each such other Person as may hereafter be designated by Borrower or a Space Tenant and reasonably approved by Lender in accordance with the terms hereof to act in the place of any of

the foregoing Persons as architect for such Person's respective portion of the Project; provided, however, that Lender shall have such approval right only to the extent that Borrower has the right to designate and/or approve such successor Architect in accordance with the terms of such Person's contract with Borrower or a Space Tenant.

Architect Contract. As used herein, "Architect Contract" shall mean

each of the following: (a) with respect to Kohn Pedersen Fox Associates P.C., that certain agreement with Borrower dated December 18, 1989; (b) with respect to Studios Architecture, that certain agreement currently under negotiation with Borrower providing for interior design services for the OCC Tenant Improvements, (c) with respect to a Person designated by Borrower or a Space Tenant to perform the design services for Space Tenant Improvements, the contract between Borrower and such Person for such services; and (d) the contract between Borrower and any subsequent Architect similarly providing for architectural services for the Project.

Assignment of Project Documents. As used herein, "Assignment of

Project Documents" shall mean the Collateral Assignment of Project Documents in the form of Exhibit A hereto.

Assignment of Rents. As used herein, "Assignment of Rents" shall mean

the Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts in the form of Exhibit B hereto.

Business Day. As used herein, a "Business Day" shall mean a day on

which (a) commercial banks in New York City are open for business, (b) commercial banks in London, England are open for business, and (c) dealings in U.S. Dollar deposits are carried on in the London Interbank Eurodollar Market (as defined in the Note).

Change Order. As used herein, "Change Order" shall mean a change in

the Plans, or in the Construction Contract.

Completion Date. As used herein, "Completion Date" shall mean

October 31, 1991, subject to extension for Force Majeure as provided in this Agreement.

Completion Guaranty. As used herein, "Completion Guaranty" shall mean

the joint and several guaranty in the form of Exhibit C hereto made by Guarantors in favor of Lender, guaranteeing Lien-free completion of the entire Project.

Completion of Construction. As used herein, "Completion of

Construction" shall mean that (a) the core, shell and other portions of the Project (other than Tenant Improvements) have been constructed in a good and workmanlike manner substantially in accordance with the Plans and with all

Laws and all requirements of the National Fire Protection Association (or its successor); (b) all required inspections by Governmental Authorities have been completed and either a permanent certificate of occupancy or a temporary certificate of occupancy subject to no conditions that cannot be satisfied within the Project Budget and Project Schedule has been obtained covering all of the core, shell and other "base building" portions of the Project such that (without limiting the foregoing), upon construction of the Tenant Improvements, the entire Project may lawfully be occupied for its intended purpose; (c) all conditions to the final Disbursement of Hard Costs as set forth in Section 5.08 have been satisfied (except to the extent same relate to completion of the OCC Tenant Improvements in space other than the "Initial Premises" (as defined in the OCC Lease)) or, in Lender's sole discretion, waived; (d) all Tenant Improvements required to be constructed by Borrower under the OCC Lease for the Initial Premises shall have been constructed in a good and workmanlike manner substantially in accordance with the plans and specifications therefor and with all Laws and all requirements of the National Fire Protection Association (or its successor); (e) Borrower shall have obtained either a permanent certificate of occupancy or a temporary certificate of occupancy subject to no conditions that cannot be satisfied within the Project Budget and Project Schedule covering the Initial Premises; and (f) the OCC shall have commenced paying Base Rent without protest and as required by the terms of the OCC Lease.

Consultants. As used herein, "Consultants" shall mean all independent

third-party consultants, including the Inspecting Engineer, that Lender reasonably deems necessary and selects to provide the following services to Lender: (a) review the Plans; (b) review Project Cost breakdowns and the Construction Schedule; (c) conduct compliance inspections with respect to the progress of construction of the Project and approve each element of a Request for Disbursement; and (d) perform such other services as may, from time to time, reasonably be required by Lender in connection with the performance of any undertaking of Lender contemplated hereunder or to protect or assess the value of lender's security or to assist in enforcing Lender's rights under any of the Loan Documents.

Construction Contract. As used herein, "Construction Contract" shall

mean (a) that certain Agreement Between Owner and Contractor dated as of September 27, 1989 made by and between Borrower and McDevitt & Street Company, a Florida corporation, providing for the construction of the Project or (b) the lump-sum contract between Borrower and any subsequent Contractor similarly providing for construction of the Project.

Construction Schedule. As used herein, "Construction Schedule" shall

mean the schedule of dates upon which completion of certain portions of the Project is anticipated to

occur, which schedule is or shall, pursuant to Section 4.13, hereafter be attached hereto as Schedule 4.13.

Contract and Contractor. As used herein, "Contract" shall mean a

contract, other than the Construction Contract or Architect Contract, to which Borrower or Boston Properties, as Borrower's agent on behalf of Borrower, is a party for the supply of materials, labor, services or a combination thereof in connection with the Project. As used herein, "Contractor" shall mean the Person who, as a party to a Contract, is to supply materials, labor, services or a combination thereof.

Conversion Date. As used herein, "Conversion Date" shall have the

meaning ascribed to such term in Subsection 3.03(b) hereof.

Debt Service Coverage Ratio. As used herein, "Debt Service Coverage

Ratio" shall mean the ratio obtained by dividing (a) Net Cash Flow for the pertinent period by
(b) Project Debt Service for the pertinent period.

Deed of Trust. As used herein, "Deed of Trust" shall mean the

Construction Loan Deed of Trust and Security Agreement in the form of Exhibit D hereto, as the same may be modified, consolidated or restated from time to time.

Designated Representative. As used herein, "Designated Representative"

shall mean an individual authorized, from time to time, in writing by Borrower, with the approval of Lender, to deliver Requests for Disbursements, certificates, and other documents and material to Lender pursuant to this Agreement and the other Loan Documents.

Disbursement. As used herein, "Disbursement" shall mean each of the

disbursements of the proceeds of the Loan made pursuant to this Agreement.

Environmental Guaranty. As used herein, "Environmental Guaranty" shall

mean the joint and several guaranty in the form of Exhibit E hereto made by Guarantors in favor of Lender guaranteeing Borrower's performance of certain obligations under the Deed of Trust relating to Hazardous Material.

Event of Default. As used herein, "Event of Default" shall have the

meaning ascribed to such term in Section 8.01 hereof.

Exercise Period. As used herein, "Exercise Period" shall have the

meaning ascribed to such term in Subsection 3.02(c) hereof.

Expenses. As used herein, "Expenses" shall mean the actual costs

incurred by Borrower with respect to or allocable to a given period in connection with the operation or ownership of the Trust Estate; provided, however, that in the case of capital expenditures, Expenses shall mean the total amount of such expenditures allocated over the useful life of the property for which the expenditure was made, and in the case of prepaid expenditures, the total amount of such prepaid expenditures allocated over the period for which the expenditure was prepaid. Expenses shall not include (a) payments of interest and other charges required to be made in respect of the Note, the Deed of Trust or any other Loan Document, and (b) payments of principal, interest and other charges required to be made by Borrower in respect of any other indebtedness secured by all or any part of the Trust Estate or the Revenues, and (c) distributions to Partners. Expenses shall include, without limitation: (i) real property taxes; (ii) utility charges; (iii) premiums on insurance policies; (iv) maintenance and cleaning expenses; (v) legal, accounting brokerage, and other professional fees attributable to the operation of the Trust Estate; and (vi) all other expenses, fees, charges and costs incurred in connection with the ownership or operation of the Trust Estate that are usually and customarily incurred by owners of first-class commercial office buildings of a size and usage comparable to the Trust Estate in the District of Columbia area, provided, however, that no Item included in the Project Budget as an item to be financed by the Loan shall be deemed part of "Expenses."

Force Majeure. As used herein, "Force Majeure" shall mean the

occurrence of any of the following events which results in the delay of some performance mandated by this Agreement: the enactment of any law or issuance of any governmental order, rule or regulation establishing rationing or priorities in the use of materials or restricting the use of labor; labor strikes, lockouts, acts of God, enemy action, civil commotion or fire; or other similar unavoidable casualty or events. Force Majeure shall include Unavoidable Government Delay as hereinafter defined.

Funding Costs. As used herein, "Funding Costs" shall have the meaning

ascribed to such term in the Note.

General Contractor. As used herein, "General Contractor" shall mean

each of the following: (a) with respect to all of the Project other than the Spec Tenant Improvements, McDevitt & Street Company, a Florida corporation, or such other party as may hereafter be designated by Borrower and reasonably approved by Lender in accordance with the terms hereof to act as the general contractor for the Project; and (b) with respect to the Spec Tenant Improvements, such Person as may be designated by Borrower or by any Space Tenant and reasonably approved by Lender in accordance with the terms hereof to act

as the general contractor for the Spec Tenant Improvements; provided, however, that Lender shall have the right to approve the General Contractor for the Spec Tenant Improvements only to the extent that Borrower has the right to designate and/or approve such successor General Contractor in accordance with the terms of such Person's contract with Borrower or a Space Tenant.

Governmental Authority. As used herein, "Governmental Authority" shall

have the meaning ascribed to such term in the Deed of Trust.

Guarantees. As used herein, "Guarantees" shall mean the Completion

Guaranty, the Interest Guaranty, and the Environmental Guaranty.

Guarantors and Guarantor. As used herein "Guarantors" shall mean

Mortimer B. Zuckerman and Edward H. Linde, and "Guarantor" shall mean one of the Guarantors.

Hard Costs. As used herein, "Hard Costs" shall mean those Project

Costs set forth on the Project Budget under the headings "Land and Land Carry" and "Building Construction", including without limitation costs of labor, materials, equipment, and fixtures.

Hazardous Material. As used herein, "Hazardous Material" shall have

the meaning ascribed to such term in the Deed of Trust.

Improvements. As used herein, "Improvements" shall mean the meaning

ascribed to such term in the Deed of Trust.

Indebtedness. As used herein, "Indebtedness" shall have the meaning

ascribed to such term in the Deed of Trust.

Initial Disbursement. As used herein, "Initial Disbursement" shall

mean the first disbursement of proceeds of the Loan made hereunder.

Inspecting Engineer. As used herein, "Inspecting Engineer" shall mean

EMJ Construction Consultants or such other party as shall hereafter be appointed by Lender to act as the Inspecting Engineer.

Institutional Lender. As used herein, "Institutional Lender" shall

mean (a) a savings and loan association, a savings bank, a commercial bank or trust company, an insurance company, an educational, religious or charitable institution, an endowment fund, a federal, state, municipal or private, foreign or domestic employees' welfare pension or retirement fund or system, an investment banking firm, a real estate investment trust or other financial institution provided that

any such entity (i) is subject to or submits to service of process within the State of New York and the District of Columbia, (ii) has total assets of at least One Billion Dollars (\$1,000,000,000), (iii) either (A) reports to or is subject to the supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Department of Labor, the Federal Reserve Board, the Office of Thrift Supervision or any similar state or federal regulatory agency or official, or any successor to any of the foregoing agencies, entities or officials, or (B) is subject to public financial reporting requirements or oversight jurisdiction of the Securities and Exchange Commission; (iv) is financially sound in Lender's sole discretion; and (v) is acting in its own interest and capacity or as a fiduciary or trustee for any of the foregoing; (b) an Affiliate of Borrower; or (c) any other Person approved by Lender.

Interest Guaranty. As used herein, "Interest Guaranty" shall mean the

joint and several guaranty and indemnity in the form of Exhibit F hereto made by Guarantors in favor of Lender, guaranteeing the payment of interest on the Note and indemnifying Lender against certain liabilities.

Interest Rate Management Arrangement. As used herein, "Interest Rate

Management Arrangement" shall mean an interest rate swap agreement, an agreement providing for an interest rate ceiling (commonly known as a "cap") or an interest rate floor and ceiling (commonly known as a "collar"), or any other contractual protection against interest rate increases that is generally accepted in the financial industry and is in such form and on such terms as are customary in the ordinary conduct of Lender's business or are otherwise acceptable to Lender in its reasonable discretion.

Involuntary Rate. As used herein, "Involuntary Rate" shall have the

meaning ascribed to such term in the Note.

Item. As used herein, "Item" shall mean any identified line item set

forth in either the Project Budget or the Annual Operating Budget, as applicable.

Land. As used herein, "Land" shall have the meaning ascribed to such

term in the Deed of Trust.

Laws. As used herein, "Laws" shall mean all laws, rules, regulations,

codes, and ordinances of Governmental Authorities, and all rulings, orders, decisions and interpretations issued by Governmental Authorities in respect thereof.

Lien. As used herein, "Lien" shall mean any charge, lien (including

mechanics, materialmen and other liens), mortgage, deed of trust, pledge, security interest or other encumbrance of any nature whatsoever upon, of, or in property

or other assets of a Person, whether absolute or conditional, voluntary or involuntary, whether created by agreement, assignment, statute, judicial proceedings or otherwise.

Loan. As used herein, "Loan" shall mean the aggregate of all principal amounts advanced to Borrower pursuant to the terms hereof or pursuant to the other Loan Documents and all interest required by the terms hereof, by the terms of the Note or by the terms of the other Loan Documents to be paid by Borrower to Lender.

Loan Documents. As used herein, "Loan Documents" shall mean and include this Agreement, the Note, the Deed of Trust, the Interest Guaranty, the Completion Guaranty, the Environmental Guaranty, the Assignment of Rents, the Assignment of Project Documents, all UCC-1 Financing Statements given by Borrower to Lender, and any and all other documents given from time to time as security for, or in evidence of, or to provide the terms of or otherwise in connection with the Loan.

Loan Participant. As used herein, "Loan Participant" shall have the meaning ascribed to such term in the Note.

Loan Term. As used herein, "Loan Term" shall have the meaning ascribed to such term in the Note.

Loan to Value Ratio. As used herein, "Loan to Value Ratio" shall mean the ratio (expressed as a percentage) obtained at any particular time by dividing (a) the sum of (i) the then-outstanding principal balance of the Note and (ii) the then-outstanding principal balance of any other indebtedness secured by all or any part of the Trust Estate or the Revenues, by (b) the Appraised Value of the Trust Estate at the time.

Lot 872. As used herein, "Lot 872" shall mean that portion of Square 538, Lot 49, Assessment and Tax Lot 872, subject to a long-term leasehold interest of John Mandis, Inc., and improved as of the date hereof by a restaurant commonly know as the Market Inn.

Major Change Order. As used herein, "Major Change Order" shall have the meaning ascribed to such term in Section 7.05(e) hereof.

Major Lease. As used herein, "Major Lease" shall have the meaning ascribed to such term in the Deed of Trust.

Maturity Date. As used herein, "Maturity Date" shall have the meaning ascribed to such term in the Note.

Net Cash Flow. As used herein, "Net Cash Flow" shall mean an amount equal to Revenues for a particular period minus Expenses for such period.

Note. As used herein, "Note" shall mean the Promissory Note in the

principal amount of Eighty Million Dollars (\$80,000,000) or such lesser amount
as may be advanced by Lender to Borrower under this Agreement, and otherwise in
the form of Exhibit G hereto.

OCC. As used herein, "OCC" shall mean the Office of the Comptroller of

the Currency, an agency of the United States Government.

OCC Lease. As used herein, "OCC Lease" shall mean that certain Lease

Agreement dated as of August 21, 1989 by and between Borrower and the OCC, as
amended by (a) a letter agreement dated July 18, 1989 and executed by the OCC on
August 2, 1989 and by Boston Properties on behalf of Borrower on August 23,
1989, (b) a letter agreement dated August 28, 1989 to the OCC and executed by
Boston Properties on behalf of Borrower, (c) a letter agreement dated December
18, 1989 and executed by the OCC and Boston Properties on behalf of Borrower,
(d) a letter agreement dated June 29, 1990 by and between Borrower and the OCC,
and (e) a letter agreement dated June 29, 1990 by and between Borrower and the
OCC, as the same may hereafter be further amended, modified or supplemented in
accordance with the terms of the Loan Documents.

OCC Tenant Improvements. As used herein, "OCC Tenant Improvements"

shall have the meaning ascribed to such term in Section 2.12(b) hereof.

Out-of-Pocket Costs. As used herein, "Out-of-Pocket Costs" shall have

the meaning ascribed to such term in the Deed of Trust.

Partner. As used herein, "Partner" shall mean those Persons identified

as limited or general partners in the limited partnership agreement of Borrower
in effect on the date hereof, and any other Person hereafter holding legal
and/or beneficial title to an equity interest in Borrower.

Permitted Exceptions. As used herein, "Permitted Exceptions" shall

have the meaning ascribed to such term in the Deed of Trust.

Permitted Transferee. As used herein, "Permitted Transferee" shall

mean a Person (a) in which Mortimer B. Zuckerman and Edward H. Linde in the
aggregate or either alone shall have an indirect or direct ownership interest of
at least twenty-five percent (25%) in the aggregate, (b) which shall be
controlled by Mortimer B. Zuckerman and Edward H. Linde or by either alone, and
(c) which (i) shall control Borrower or a Person that is the successor to
Borrower and the day-to-day operations and management of the Trust Estate and
(ii) shall have the right to make all significant economic and management

decisions on behalf of Borrower (or such successor) without the need for the vote, approval or consent of any other Person other than a Permitted Transferee.

Person. As used herein, "Person" shall mean any natural person or

entity, including without limitation, any trustee, corporation, partnership, joint stock company, trust, association, unincorporated organization, bank, business association or firm, or Governmental Agency.

Personal Property. As used herein, "Personal Property" shall mean all

of Borrower's right, title and interest, whether now existing or hereafter acquired, in and to all furniture, furnishings, fixtures, machinery, equipment, inventory and other personal property of every kind, tangible or intangible, now or hereafter located at, upon or about the Premises and used or to be used in connection with or related or arising with respect to the Trust Estate and/or the Project, excluding that personal property owned by any Space Tenant and located at, upon or about the Premises that does not become the property of Borrower under the terms of the applicable Space Lease.

Phase II. As used herein, "Phase II" shall mean the additional

building to be built by Borrower on the remaining undeveloped portion of Square 538, Lot 49, Assessment and Tax Lot 874, substantially in accordance with the loan proposal heretofore submitted to Lender, to be known as Two Independence, Square.

Plans. As used herein, "Plans" shall mean all preliminary and, as they

are developed in accordance with the provisions hereof, final drawings, plans, specifications and other documents (including but not limited to architectural, structural, mechanical, electrical, and safety), prepared by Borrower, Architect, General Contractor, any Contractor or Subcontractor, or any other architect and/or engineer reasonably acceptable to Lender, which Plans shall be subject to Lender's prior written approval to the extent required by this Agreement, and which shall describe and show the construction and labor, materials, equipment and fixtures necessary for the completion of the Project.

Portion of Principal. As used herein, "Portion of Principal" shall

have the meaning ascribed to such term in the Note.

Premises. As used herein, "Premises" shall have the meaning ascribed

to such term in the Deed of Trust.

Project. As used herein, "Project" shall mean (a) the development of

the Premises in accordance with the Plans, including, without limitation, the construction of the

Improvements and all Tenant Improvements and the performance of all other work required by the Plans or applicable Laws, whether on or off the Land, including without limitation (i) constructing parking, curbs, gutters, sidewalks, and public areas and amenities, (ii) providing landscaping, (iii) repairing, constructing or modifying streets, alleys and other passage-ways or connections with or support for the foregoing, (iv) repairing or constructing utilities, and (v) otherwise repairing or modifying existing improvements on or near the Land; and (b) the ownership and operation of the Premises developed as aforesaid.

Project Budget. As used herein, "Project Budget" shall mean the budget

now or, pursuant to Section 4.12, hereafter attached hereto as Schedule 4.12, prepared by Borrower, as the same may be modified from time to time in accordance with the terms hereof, setting forth a projection of all Project Costs.

Project Costs. As used herein, "Project Costs" shall mean (a) the

costs identified on the Project Budget to be funded with the proceeds of the Loan; (b) all amounts payable to or for the benefit of the OCC under the terms of the OCC Lease, including amounts payable as liquidated damages, tenant improvement allowances, contributions for signs, logos and/or other mediums naming the Improvements, contributions for improving the vicinity of the Premises, and payments for failure to complete a health facility; and (c) all other costs necessary to construct or otherwise payable in connection with the construction of the entire Project.

Project Development Agreement. As used herein, "Project Development

Agreement" shall mean the Development Agreement, dated as of September 1, 1989, between Borrower and Boston Properties, a Massachusetts business trust.

Project Documents. As used herein, "Project Documents" shall mean,

collectively, all agreements, documents, instruments and materials of whatever nature now or hereafter existing which relate to the Project or the Trust Estate, including but not limited to: (a) the Plans and all other plans, specifications, and drawings and all soil, environmental and engineering test reports relating to the Project, (b) all approvals, consents, licenses and permits issued by any Governmental Authority in connection with the Project, (c) the Construction Contract, the Architect Contract, all Contracts and Subcontracts, and all other agreements relating to the Project between Borrower and any consultant, architect, engineer, Contractor, Subcontractor, project manager or supervisor, laborer or supplier of materials, (d) all development, management and brokerage agreements, and (e) all payment or performance bonds, warranties, and guaranties with respect to any portion of the Project. Project Documents shall not include Space Leases.

Project Debt Service. As used herein, "Project Debt Service" shall

mean the sum of (a) all payments of interest and other charges which must be made by Borrower during a particular period in respect of the Loan, plus (b) all payments of principal, interest, and other charges which must be made by the Borrower during such period in connection with all other indebtedness of the Borrower secured by the Project or revenues therefrom.

Qualifying Space Lease. As used herein, a "Qualifying Space Lease"

shall mean a bona fide lease agreement pursuant to which all or a portion of the Premises is or is intended to be occupied; provided, however, that (a) such lease is then in full force and effect; (b) such lease, if entered into after the date hereof, has been created substantially in accordance with all requirements applicable to leases as set forth in the Deed of Trust, Assignment of Rents, and other Loan Documents; and (c) either (i) the tenant under such lease is paying all the rent and other charges due thereunder or (ii) as to a tenant not yet paying rent, such tenant is obligated to pay all of such rent, costs, and other charges thereunder, subject only to satisfaction of conditions precedent to such obligation set forth in such lease and evidenced by an estoppel certificate in form and substance reasonably satisfactory to Lender. Lender hereby acknowledges and agrees that, subject to its remaining in full force and effect, the OCC Lease shall be deemed to be a Qualifying Space Lease.

Request for Disbursement. As used herein, "Request for Disbursement"

shall mean a written request for a Disbursement signed by the Designated Representative on behalf of Borrower in substantially the form of Exhibit H hereto.

Revenues. As used herein, "Revenues" shall mean all cash revenues

actually received by Borrower under Qualifying Space Leases and all binding and effective written licenses, concessions and other agreements providing for the use of space in the Premises entered into in accordance with the terms of the Loan Documents and assigned to Lender pursuant to one or more of the Loan Documents with respect to or allocable to a particular period; provided, however, that (a) Revenues shall not include payments made by a Space Tenant to Borrower for (i) a security deposit or (ii) Tenant Improvements to the extent such payments are transmitted to a contractor installing such Tenant Improvements or are retained by Borrower as reimbursement for the cost of installing such Tenant Improvements; and (b) with respect to percentage rent or other payments based on the revenues or income of a Space Tenant or other Person which Borrower proposes to include in the determination of Revenues, Revenues shall mean the monthly average of percentage rent or such other payments received by Borrower for the previous twelve (12) months and to the extent Borrower has not received percentage rent or such other

payments under such Qualifying Space Leases or other agreements for the previous twelve-month period, the percentage rent or such other payments for such Qualifying Space Leases or other agreements shall not be included in the calculation of Revenues.

Soft Costs. As used herein, "Soft Costs" shall mean all Project Costs

set forth on the Project Budget under the headings "Architect and Engineer", "Financing", "Marketing", "Carrying Costs", "Legal", and "Overhead", including without limitation fees for the Architect and the Lender's attorneys and Consultants, interest on the Loan, real estate taxes, transfer and recordation taxes, survey costs, and title insurance premiums.

Space Lease. As used herein, "Space Lease" shall have the meaning

ascribed to such term in the Deed of Trust.

Space Tenant. As used herein, "Space Tenant" shall have the meaning

ascribed to such term in the Deed of Trust.

Spec Tenant Improvements. As used herein, "Spec Tenant Improvements"

shall have the meaning ascribed to such term in Section 2.12(c) hereof.

Stored Materials. As used herein, "Stored Materials" shall mean

materials purchased by Borrower and stored at the Premises or at an off-site location reasonably acceptable to Lender for use in the Project, but not yet installed or incorporated into the Project.

Subcontract and Subcontractor. As used herein, "Subcontract" shall

mean a contract to which Borrower is not a party for the supply of materials, labor, services or a combination thereof in connection with the Project. As used herein, "Subcontractor" shall mean the Person who, as a party to a Subcontract, is to supply materials, labor, services or a combination thereof.

Subordinate Financing. As used herein, "Subordinate Financing" shall

have the meaning ascribed to such term in Section 7.21 hereof.

Subordinate Lender. As used herein, "Subordinate Lender" shall have

the meaning ascribed to such term in Section 7.21 hereof.

Survey. As used herein, "Survey" shall have the meaning ascribed to

such term in Section 4.03.

Tenant Improvement Costs. As used herein, "Tenant Improvement Costs"

shall mean those Hard Costs and Soft Costs attributable to construction of the Tenant Improvements as set forth on the Project Budget under the headings "Tenant Work (OCC)" and "Tenant Work (Spec)".

Tenant Improvements. As used herein, "Tenant Improvements" shall mean,

with respect to each and every portion of space in the Improvements, all
improvements, alterations, and tenant finish work required to be constructed by
Borrower pursuant to a Space Lease.

Timing Notice. As used herein, "Timing Notice" shall have the meaning

ascribed to such term in Section 3.02(b) hereof.

Title Companies. As used herein, "Title Companies" shall mean Chicago

Title Insurance Company and Ticor Title Insurance Company, as coinsurers under
an agreement acceptable to Lender.

Title Policies. As used herein, "Title Policies" shall have the

meaning ascribed to such term in Section 4.02 hereof.

Transfer. As used herein, "Transfer" shall mean any or all of the

following events, whether effected voluntarily, involuntarily, by operation of
law or otherwise: (i) the assignment, sale or other transfer of the Trust
Estate or any part thereof or any interest therein (including, without
limitation, any air or development rights), (ii) the lease or sublease of all or
substantially all of the space in the Improvements, in a single or successive
transactions to any single lessee or related lessees, and (iii) the transfer of
any interest in Borrower or any interest in a Person, which has a direct or
indirect ownership interest in Borrower, other than the assignment or collateral
assignment by a limited partner of such limited partner's interest in Borrower,
provided the general partners of Borrower have consented to such assignment and
that the interests so assigned do not exceed, in the aggregate, forty-nine
percent (49%) of the partnership interests in Borrower.

Trust Estate. As used herein, "Trust Estate" shall have the meaning

ascribed to such term in the Deed of Trust.

Unavoidable Government Delay. As used herein, "Unavoidable Government

Delay" shall mean the actual delay of some performance mandated by this
Agreement (other than a monetary obligation) due to any act or failure to act of
the OCC or any person or firm exclusively employed or retained by, or under the
exclusive direction of the OCC or Studios Architecture which, pursuant to
Paragraph 9(b) of Exhibit B to the OCC Lease, would require the OCC Tenant
Improvements to be deemed to be substantially complete prior to actual
substantial completion thereof and as to which Borrower, to the extent required,
has preserved its rights under Paragraph 8 of Exhibit B to the OCC Lease.

Undisbursed Construction Funds. As used herein, "Undisbursed

Construction Funds" shall mean, as of any time of determination, the undisbursed principal portion of the Loan.

Section 1.02. Accounting Terms. All accounting terms not specifically

defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles customarily used in the real estate industry, applied on a consistent basis.

ARTICLE II

TERMS OF THE LOAN AND DISBURSEMENT OF PROCEEDS

Section 2.01. Agreement to Lend. Subject to and on the terms and

conditions of this Agreement and the other Loan Documents, Lender shall lend to Borrower and Borrower shall borrow from Lender the principal amount of EIGHTY MILLION DOLLARS (\$80,000,000), such amount being the aggregate maximum principal amount that Lender shall under any circumstances be required to advance to Borrower.

Section 2.02. Repayment. On (a) the Maturity Date, or (b) such

earlier date upon which the Loan becomes due and payable pursuant to the terms of the Loan Documents, Borrower shall fully repay the Loan to Lender.

Section 2.03. Loan Documents. This Agreement, the Note, the Deed of

Trust, and the other Loan Documents provide the terms of, evidence, and secure the Loan.

Section 2.04. Payment of Principal and Interest. The Loan shall bear

interest at the rate or rates of interest calculated in accordance with the terms of the Note and shall be payable at the place and in the time and manner provided and more particularly set forth in the Note.

Section 2.05. Disbursements - General.

(a) Unless Lender otherwise agrees in writing:

(i) The principal amount of each Disbursement, including any portion thereof advanced for the payment of interest, shall not be less than the lesser of One Hundred Thousand Dollars (\$100,000.00) or an amount equal to the Undisbursed Construction Funds;

(ii) Not more than one Disbursement shall be made in any calendar month; and

(iii) Disbursements shall be made in accordance with and on the terms and conditions of this Article II and the other provisions of this Agreement.

(b) Borrower acknowledges and agrees that Lender may make Disbursements to Guarantors for Project Costs pursuant to, and in accordance with, the terms of the Completion Guaranty.

Section 2.06. Project Budget. The proceeds of the Loan shall be

disbursed to pay Project Costs in accordance with the Project Budget and this Agreement. The amount set forth in the Project Budget opposite each Item of Project Cost shall be the maximum amount of Loan funds which Lender shall disburse in payment of such Item, subject to any increase in the amount of such Item in accordance with the terms of this Section 2.06 and Section 2.10. Borrower, upon prior written notice to Lender, may reduce the amount remaining to be disbursed with respect to any Item to reflect actual or anticipated savings in Project Costs with respect thereto and allocate such savings to increase the amount remaining to be disbursed with respect to any other Item, provided, however, that the application of funds from such savings (i) among Items of Hard Costs, (ii) between an Item of Hard Costs and an Item of Soft Costs, or (iii) between the major Project Budget categories of Architecture and Engineer, Marketing, Legal, Overhead and Operating Costs shall not exceed ten percent (10%) of the cost Item, or with respect to clause (iii) above the major Project Budget category, to which such funds are applied without Lender's prior consent, which consent will not be unreasonably withheld or delayed and which will be deemed given if Borrower does not receive written objection from Lender within ten (10) Business Days after Borrower's notice to Lender. Borrower shall retain a numbered, sequential record of all such reallocations.

Section 2.07. Timing of Disbursements. No later than the tenth (10th)

Business Day of each calendar month (except in the case of the Initial Disbursement), and at such other times as Lender may agree, Borrower shall submit to Lender a Request for Disbursement accompanied by the information, documents and materials required pursuant to the provisions of this Agreement. Lender will not review and approve any Request for Disbursement not submitted by the date set forth in the preceding sentence until the next succeeding month and no Loan funds will be disbursed other than pursuant to a Request for Disbursement that has been reviewed and approved by Lender. Each Request for Disbursement by Borrower shall constitute a representation and warranty by Borrower that, (i) at such time, each of the conditions precedent to Disbursements specified in Articles IV and V of this Agreement is satisfied, and (ii) all of the representations and warranties contained in Articles IV and V are true and correct in all material respects on the date of such Request for Disbursement. Lender shall make each Disbursement within the time period set forth in Section 2.09(i).

Section 2.08. Lender's Right to Condition Disbursements. In addition

to the conditions set forth in Articles IV and V of this Agreement, Lender shall have the right to condition any Disbursement upon Lender's use or receipt and approval of the following:

(a) Bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents reasonably necessary to enable Lender to confirm to its reasonable satisfaction the total amount expended, incurred or due for any requested or paid Item;

(b) Use of a voucher or joint check system acceptable to Lender for payments of Disbursements directly to any Contractor or Subcontractor if (i) there shall have occurred an Event of Default, or (ii) Borrower shall be in default on any obligation to pay such Contractor or Subcontractor and Lender reasonably believes the default will have a material adverse effect on the Project or Lender's security, or (iii) there shall have occurred a material adverse change in the financial condition of Borrower, any General Partner of Borrower or any Guarantor; or

(c) Any other documents, requirements, evidence or information that Lender may reasonably request under any provision of the Loan Documents.

Section 2.09. Disbursements for Project Costs. The amounts set forth

on the Project Budget shall be disbursed as follows:

(a) Each Request for Disbursement for each Item of Hard Costs and Soft Costs shall show the total amount incurred for work performed or material or equipment furnished for the periods since the last Request for Disbursement and from the inception of the Project and the percentage of materials provided and/or work completed for each such Item from the inception of the Project to the date of the Request for Disbursement. The Request for Disbursement shall be in sufficient detail to show that the amount of the Disbursement requested is within the limits for each Item of Project Costs as shown in the Project Budget.

(b) Each Disbursement shall be in the amount requested by Borrower in the Request for Disbursement, which amount shall not exceed, (i) with respect to Hard Costs, the Hard Costs incurred by Borrower as of the date of a Request for Disbursement, plus, subject to Section 5.06 hereinbelow, the

cost of Stored Materials not as yet installed or incorporated in the Project, less "retained amounts" provided for under the terms of the Construction

Contract and/or relevant Contracts or Subcontracts and (ii) with respect to Soft Costs, those Soft Costs incurred by Borrower as of the date of the Request for a

Disbursement. Retainage shall be disbursed upon satisfaction of the conditions for the final disbursement of Hard Costs set forth in Section 5.08. However, retainage due a Contractor or Subcontractor (including the General Contractor to the extent that it is acting in the capacity of a Subcontractor) may be released upon completion of such Contractor's or Subcontractor's work, in accordance with the terms of the Construction Contract or applicable Contract or Subcontract, provided that (i) the labor and/or materials to be provided have been substantially completed or supplied pursuant to the Construction Contract or such applicable Contract or Subcontract and the Plans applicable to the Construction Contract or such Contract or Subcontract, (ii) the Contractor or Subcontractor has executed and delivered a final Lien waiver and affidavit of payment in the form of Exhibit I hereto, modified to state that all work and materials to be performed and supplied by such Contractor or Subcontractor have been performed and supplied and upon payment only of such retainage, all amounts owing to such Contractor or Subcontractor will be paid in full, and otherwise satisfactory to Lender and in compliance with the lien law of the District of Columbia, (iii) all requirements of all Governmental Authorities have been satisfied with respect to the Contractor's or Subcontractor's work, and (iv) Inspecting Engineer has confirmed in writing that such Contractor or Subcontractor has complied with clause (i) and (iii). Tenant Improvement Costs shall be disbursed subject to the additional conditions and limitations set forth in Section 2.12 hereof.

(c) There shall be deducted from each Disbursement and it shall not include: (i) any amounts previously disbursed hereunder, (ii) any costs covered by the Request for Disbursement not approved, certified or verified as required by this Agreement, (iii) any Soft Costs covered by the Initial Request for Disbursement and, thereafter, a previous Request for Disbursement for which proof of payment has been requested but not received by Lender, (iv) any Hard Costs for which Lien waivers have not been received by Lender for the Initial Request for Disbursement to the extent required by Section 4.27(c) hereinbelow and, thereafter, all Requests for Disbursement submitted prior to the then-pending Request for Disbursement; and/or (v) any real estate taxes, mechanics Liens, security interests, claims or other charges against the Premises or Project and any interest, fees or other costs which Borrower may have failed to pay in accordance with this Agreement or the other Loan Documents.

(d) Except as may otherwise be expressly provided for herein with respect to Stored Materials, for purposes of this Section 2.09, Project Costs shall be deemed to have been "incurred" by Borrower at the following times: (i) Hard Costs -when the labor has been performed or the materials have been supplied and incorporated into the Project,

payment therefor has been requested by the General Contractor or a Contractor and the Subcontractor, if any, therefor, and the General Contractor or Contractor and the Subcontractor, if any, therefor is entitled to payment pursuant to the Construction Contract and the applicable Contract or Subcontract; and (ii) Soft Costs -when such costs are due and payable (or have been paid by Borrower) and the services relating thereto have been rendered or the value thereof has been received by Borrower.

(e) All Hard Costs shall be certified by General Contractor (or the Contractor providing the labor or materials related to such Hard Costs) and Borrower in the manner provided in this Section 2.09 and in Section 5.03 and shall be verified by the Inspecting Engineer as having been incurred. Verification of the monthly progress and Hard Costs which have been incurred by Borrower from time to time and the estimated total Hard Costs from time to time may be made by Lender and/or Inspecting Engineer in its or their reasonable judgment.

(f) If (i) Borrower shall have requested an acceleration of payments under this Agreement or (ii) there shall have occurred an Event of Default or (iii) Borrower shall be in default on any obligation to pay money in any way related to the Project and Lender has reason to believe this default will have an adverse effect on the Project or Lender's security or (iv) Lender shall be entitled under any other Loan Document to advance funds or make payments in respect of the Project, and if Lender considers that its best interests and the best interests of the Project lie in accelerating the amounts to be advanced pursuant to this Article II, it shall be entitled to do so in amounts not more than was required under the applicable underlying contract and no person dealing with Borrower or General Contractor or any other Person shall have standing to demand any different performance from Lender.

(g) Subject to the provisions of Section 2.12 governing Tenant Improvement Costs, all other Hard Costs not advanced during the course of construction of the Project shall be advanced upon the satisfaction of the conditions for the receipt of the final disbursement for Hard Costs set forth in Section 5.08 hereof. Subject to the provisions of Section 2.12 governing Tenant Improvement Costs, all other Soft Costs not advanced prior to Completion of Construction shall be advanced until exhausted, not more frequently than once a month, for Soft Costs as incurred after Completion of Construction.

(h) If Lender is entitled and deems it appropriate to make Disbursements directly to the third parties entitled to payment as provided in Sections 2.08(b) and 2.09(f) hereof, all sums so advanced by direct payment shall satisfy pro tanto the obligations of Lender under this Agreement and

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Lender shall have no obligation to see to the disposition by any such Person of any direct payments made to such Person.

(i) Each Disbursement shall be payable within five (5) Business Days after satisfaction of all conditions to the requested Disbursement.

Section 2.10. Disbursement of Contingency Funds. Any amount set forth

in the Project Budget for "Contingency" or "Change Orders" ("Contingency") may be used to pay any Project Costs not specifically included in the Project Budget, including excess costs on specific Items or costs associated with permitted Change Orders relating to specific Items. Contingency amounts may be disbursed upon the written request of Borrower to Lender and upon compliance with the conditions precedent applicable to the Item or Items for which contingency funds are requested. Use of Contingency funds (other than for application to Change Orders not subject to Lender's prior approval pursuant to Section 7.05 hereof) shall be subject to the prior reasonable approval of Lender. Prior to Completion of Construction, no Contingency funds may be used to pay interest on the Loan.

Section 2.11. Disbursements of Interest. The amount set forth under

the Item "Interest" shall be periodically disbursed directly to Lender in order to pay interest. Pursuant to Section 2.15 hereinbelow, Lender is authorized to credit to Borrower's demand deposit account with Lender and to make Disbursements automatically from such demand deposit account to pay interest without request from or prior notice to Borrower. The amount of such Disbursements shall be added to the principal amount of the Loan, and Lender will provide Borrower with a monthly statement showing the total amount of such Disbursements. Depletion of the amounts set forth for the Item "Interest" shall not release Borrower from any of Borrower's obligations under the Loan Documents, including but not limited to its obligation to pay interest on the Loan.

Section 2.12. Disbursement of Tenant Improvement Costs.

(a) Tenant Improvement Costs shall be disbursed in the manner and on the terms and conditions provided in this Agreement for the disbursement of all other Project Costs, modified only as set forth in this Section 2.12.

(b) Lender's disbursement of Tenant Improvement Costs for Tenant Improvements required to be constructed under the OCC Lease (the "OCC Tenant Improvements") shall, in addition to the other terms and conditions of this Agreement, be subject to the following terms and conditions:

- (i) Lender shall not be required to make any Disbursement with respect to the OCC Tenant Improvements unless and until (A) Borrower has provided Lender with a detailed

breakdown of the Project Costs included in the Project Budget under the heading "Tenant Improvements (OCC)" in form and substance reasonably satisfactory to Lender and (B) Borrower and Studios Architecture have executed a valid and binding contract, reasonably acceptable to Lender, for the planning and design of the Tenant Improvements, which contract requires Studios Architecture to execute a certificate and consent substantially in the form of Exhibit J-1 hereto and containing the information in Exhibit J-2 hereto, to the extent applicable to the services to be provided by Studios Architecture.

- (ii) Each Request for Disbursement that includes any Tenant Improvement Costs for the OCC Tenant Improvements ("OCC Tenant Improvement Costs") shall be accompanied by a copy of (A) the monthly invoice to be submitted to the OCC under Paragraph 3(b) of Exhibit B to the OCC Lease in respect of such OCC Tenant Improvement Costs, together with copies of all related materials and information to be submitted with such invoice, and (B) evidence of payment by the OCC of all prior monthly invoices, to the extent payment has been made.
- (iii) In addition to all other limitations set forth in this Agreement, no Disbursement for OCC Tenant Improvement Costs shall be greater than the Borrowers pro rata portion of the Improvements Allowance (as defined in the OCC Lease) which in accordance with the OCC Lease is then due and owing as set forth in the then current monthly invoice for Tenant Work Costs (as defined in the OCC Lease).
- (iv) In the event that the OCC hereafter elects to prepay any of its share of OCC Tenant Improvement Costs, such prepaid amounts shall be deposited into the Receipts Account (as defined in the Assignment of Rents) and disbursed to pay the OCC's share of OCC Tenant Improvement Costs in accordance with the terms of the Assignment of Rents.

(c) Lenders disbursement of Tenant Improvement Costs for Tenant Improvements constructed in space in the Project other than that demised by the OCC Lease (the "Spec Tenant Improvements") shall, in addition to the other terms and conditions of this Agreement, be subject to the following terms and conditions:

- (i) Borrower shall be entitled to request and Lender shall be obligated to make Disbursements in respect of Tenant Improvement Costs for Spec Tenant Improvements ("Spec Tenant Improvement Costs") constructed before January 1, 1993, or constructed thereafter pursuant to Space Leases entered into prior to January 1, 1993.
- (ii) In addition to all other limitations set forth in this Agreement the following limitations shall apply to Disbursements for Spec Tenant Improvement Costs:
 - (A) The aggregate of Disbursements for particular Spec Tenant Improvements shall not exceed the lesser of (1) if such Spec Tenant Improvements are being constructed pursuant to a Space Lease, the actual aggregate allowance provided by Borrower for such Spec Tenant Improvements under such Space Lease and (2) whether or not such Spec Tenant Improvements are being constructed pursuant to a Space Lease, the product of Twenty-Six Dollars (\$26.00) multiplied by the rentable square feet of space for which the Spec Tenant Improvements are being constructed; provided, however, to the extent that there are "savings" (as defined in the next sentence) with respect to the cost of constructing particular Spec Tenant Improvements, the amount of such savings (on a per square foot basis) may be applied by Borrower to increase the per square foot maximum amount of the Loan available for Spec Tenant Improvement Costs under clause (2). "Savings" as used in the preceding sentence shall mean (Y) the amount by which the cost of constructing Spec Tenant Improvements for space not demised by a Space Lease is less than Twenty-Six Dollars (\$26.00) per square foot and (Z) the amount by which the portion of the cost of constructing Spec Tenant Improvements covered by a Space Lease that is to be borne by Borrower is less than Twenty-Six Dollars (\$26.00) per square foot.

- (B) No Disbursement shall exceed the "Borrower's Share" (as hereinafter defined) multiplied by the then incurred but unpaid Spec Tenant Improvement Costs. The "Borrower's Share" shall be a fraction, the numerator of which shall be the aggregate maximum of all Disbursements available for particular Spec Tenant Improvements Costs, determined pursuant to Section 2.12(c)(ii)(A) above, and the denominator of which shall be the total of such Spec Tenant Improvement Costs, as reasonably estimated by Lender in consultation with Borrower.
- (iii) Prior to the first Disbursement for Spec Tenant Improvement Costs for particular Spec Tenant Improvements, Lender shall have received and approved (such approval not to be withheld or delayed unreasonably) the following:
 - (A) With respect to Spec Tenant Improvements to be designed by an architect, engineer, designer or space planner other than the Architect and/or to be constructed by a contractor other than the General Contractor, copies of the agreements with such Persons providing for the performance of all work required to complete such Spec Tenant Improvements;
 - (B) Copies of the Plans for such Spec Tenant Improvements; and
 - (C) A budget and construction schedule for the completion of such Spec Tenant Improvements.

If Borrower or an Affiliate is not required to design or construct the Spec Tenant Improvements for which a Disbursement is being requested, then the items identified in this Section 2.12(c)(iii) shall be provided by Borrower only to the extent required to be or, if not so required, actually made available to Borrower by the tenant under the pertinent Space Lease.

- (v) Prior to the final Disbursement for Tenant Improvement Costs for particular Spec Tenant Improvements, Lender shall have received and

approved certificates, letters, waivers, affidavits and endorsements to the effect set forth in Section 5.08, but limited to such Spec Tenant Improvements.

Section 2.13. Modifications to Project Budget. From time to time,

Borrower or Lender may determine that increases or decreases are necessary to the amounts set forth in the Project Budget because of actual or anticipated changes in Project Costs. If, after due consultation and consideration of the views of Borrower and supporting documentation, Borrower and Lender do not agree to what increases or decreases need to be made to the Project Budget amounts set forth in the Project Budget, the determination of Lender shall control, unless Borrower delivers an acceptable letter of credit or other security to the Lender for the disputed amount, to the extent that the disputed amount increases the overall Project Budget.

Section 2.14. Balancing. Disbursements to pay Project Costs shall

only be made at such times as the Loan is "in balance." The Loan shall be deemed to be "in balance" only at such times as Lender shall determine, after consultation with Borrower, that the sum of (a) the portion of the Loan not yet disbursed for each Item of Project Costs (including Retainage on funds previously advanced on account of such Item), plus (b) any excess amounts from savings on any other Items to be applied to the Item in question plus (c) the portion of such Item to be paid by the OCC or another Space Tenant under the OCC Lease or another Space Lease, is equal to or greater than the full cost of such Item. If the Loan is not in balance, Lender shall have no obligation to make, and Borrower shall not be entitled to receive, Disbursements pursuant hereto (excluding Disbursements for interest drawn by and paid to Lender) with respect to that portion of the Loan for each Item which is out of balance. When the Loan is again in balance, Lender shall resume funding the portion of the Loan for the Item in question in accordance with the terms of this Loan Agreement. With respect to those Items covered by the Construction Contract or other fixed price Contracts, if an Item or Items under the Construction Contract or such other Contract is or are out of balance by an aggregate amount of Five Hundred Thousand Dollars (\$500,000) or more, Lender shall have the right to require that the Contractor or Subcontractor performing the work for the Item or Items which is or are out of balance provide a payment and performance bond to guarantee the completion of the work for the Item or Items, to the extent the Contractor or Subcontractor has not already provided such bond.

2.15. Automatic Debit and Credit; Wire Transfers. Subject to Section

2.08(b), Disbursements of the Loan proceeds shall be made in immediately available funds by Lender crediting the Disbursement Account established by Borrower with Lender pursuant to the Assignment of Rents. Upon Borrower's request, Lender will wire such Loan proceeds from the

Disbursement Account to such account(s) as Borrower shall designate in the related Request for Disbursement. Borrower hereby authorizes Lender to automatically debit the Disbursement Account for all interest, fees and other charges payable to Lender pursuant to the Note, this Agreement and/or any of the Loan Documents; provided, however, that the failure of Lender to so debit the Disbursement Account shall not relieve Borrower of any of its obligations under the Note, this Agreement and/or any of the Loan Documents.

ARTICLE III

BORROWER'S FIXED RATE OPTION

Section 3.01. Borrower's Fixed Rate Option. At any time after

Completion of Construction has occurred, Borrower shall have the right, on and subject to the terms and conditions hereinafter set forth (the "Conversion Option"), to cause the interest rate on a Portion of Principal to be converted from the floating rate or rates then in effect pursuant to the terms of the Note to the Fixed Rate for an Interest Period designated by Borrower.

Section 3.02. Exercise of Conversion Option.

(a) Borrower may exercise the Conversion Option on any Business Day by (i) giving Lender an Interest Rate Notice in accordance with the Note designating the Fixed Rate and the desired Interest Period and (ii) thereafter accepting a Fixed Rate in the manner provided in this Article III.

(b) Upon or after delivery of an Interest Rate Notice designating the Fixed Rate, but in no event later than 5:00 p.m. New York time on the Business Day immediately preceding the last day of the ensuing Exercise Period (as defined in Section 3.02(c) below), Borrower shall deliver to Lender written notice ("Timing Notice") identifying one or more representatives of Borrower (and their telephone numbers), each of whom (i) is individually authorized to accept or reject the Fixed Rate obtainable by Lender and offered to Borrower, as hereinafter provided, and (ii) will be available to Lender by telephone until 5:00 p.m. New York time on the Business Day said timing Notice is given and from 9:00 a.m. New York time until 3:00 p.m. New York time on the next following Business Day.

(c) An "Exercise Period" shall mean a period commencing at 9:00 a.m. New York time on the Monday (or, if such Monday is not a Business Day, the next following Business Day) next following the date on which an Interest Rate Notice designating the Fixed Rate is given to Lender and continuing through and including 3:00 p.m. New York time on the next following Thursday (or, if such Thursday is not a Business Day, the next preceding Business Day).

Section 3.03. Interest Rate Management Arrangement.

(a) Lender shall, by no later than 3:00 p.m. on the Business Day next following Borrower's giving of a Timing Notice during an Exercise Period, use all reasonable efforts to obtain an offer for an Interest Rate Management Arrangement having a term equal to the Interest Period designated in the Interest Rate Notice that will enable Lender to convert the interest rate on the affected Portion of Principal on Lender's books from a floating to a fixed rate of interest (subject, however, to adjustment as provided in the Note). Prior to accepting such offer for an Interest Rate Management Arrangement, Lender shall telephonically quote to Borrower the fixed per annum interest rate together with all Funding Costs that will result from effectuating such an Interest Rate Management Arrangement, which rate Borrower shall immediately either accept or reject. If Lender is able to contact Borrower and Borrower fails to immediately accept or reject the offered Fixed Rate, Lender shall have no obligation to further attempt to effectuate such an Interest Rate Management Arrangement. The Fixed Rate offered by Lender shall be the sum of the fixed rate of interest obtainable in the offered Interest Rate Management Arrangement plus five hundred fifty one-thousandths of one percent (0.550%).

(b) If Borrower accepts the Fixed Rate quoted by Lender, Lender shall use all reasonable efforts to accept and enter into the offered Interest Rate Management Arrangement. If Lender is able to enter into the offered Interest Rate Management Arrangement then, commencing on the third (3rd) Business Day after Lender enters into the offered Interest Rate Management Arrangement (the "Conversion Date"), the interest rate on the Portion of Principal to which the Fixed Rate is to apply shall, without further notice to or action by Borrower or Lender, bear Interest at the Fixed Rate for the designated Interest Period. Borrower's acceptance of a Fixed Rate shall be irrevocable for the designated interest Period.

(c) If Borrower rejects the Fixed Rate quoted by Lender pursuant to Subsection 3.03(a) or if Lender is unable to contact Borrower to obtain Borrower's election as to such Fixed Rate, Lender shall not accept the offered Interest Rate Management Arrangement and shall, until 3:00 p.m. on the final Business Day of the Exercise Period then in effect, continue to use all reasonable efforts to seek an Interest Rate Management Arrangement that will result in a Fixed Rate acceptable to Borrower. If Borrower fails to accept a Fixed Rate by 3:00 p.m. on such date, Borrower shall have no further right during such Exercise Period to convert the interest rate on the Note from a floating to a fixed rate. Borrower shall nonetheless retain the right, subject to the same terms and conditions hereof, to give another Interest Rate Notice designating the Fixed Rate and, during the ensuing Exercise Period, to give the Timing Notice and accept a Fixed Rate.

(d) If Borrower accepts the Fixed Rate, Borrower shall reimburse Lender for all Funding Costs incurred by Lender as a result of Borrower's exercise of the Conversion Option and acceptance of a Fixed Rate.

(e) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the following limitations shall apply to Borrower's rights in respect of the Conversion Option:

- (i) In exercising the Conversion Option, Borrower may designate an Interest Period that expires on or before, but not after the Maturity Date. If Borrower designates the Fixed Rate for an Interest Period that expires prior to the Maturity Date, then the applicable rate or rates of interest for the remainder of the Loan Term shall be that or those rates from time to time in effect by reason of Borrower's election of such rate or rates pursuant to Section 3(b) of the Note or by operation of the other provisions of the Note.
- (ii) In exercising the Conversion Option, Borrower must designate as the Portion of Principal to bear interest at the Fixed Rate the entire principal balance of the Loan outstanding at such time. Amounts thereafter advanced under the Note shall bear interest at the Eurodollar Rate or Prime Rate in accordance with the terms of the Note, but shall not be entitled to bear interest at the Fixed Rate unless and until (A) the Interest Period for the Fixed Rate as previously selected by Borrower expires prior to the Maturity Date and Borrower thereafter again exercises the Conversion Option or (B) the entire remaining balance of the Loan still available to be drawn has been drawn and Lender, upon Borrower's delivery of an appropriate Interest Rate Notice, is able to obtain an Interest Rate Management Arrangement that will permit Lender, on terms reasonably acceptable to Lender and Borrower, to convert the interest rate on the amount of such entire remaining balance to a fixed rate of interest.

Section 3.04. Conditions to Lender's Obligation to Enter Into an

Interest Rate Management Arrangement. Lender's obligation to enter into an

Interest Rate Management Arrangement and thereby convert the interest rate on the Note to the Fixed Rate shall in all respects be conditioned upon the satisfaction (or waiver by Lender) of all of the following conditions:

(a) Borrower shall have delivered to Lender Borrower's certificate that no material adverse change in the financial condition of Borrower and Guarantors' certificate that no material adverse change in the financial condition of Guarantors has occurred since the date hereof.

(b) There shall exist at the Conversion Date (i) no uncured Event of Default and (ii) no fact or circumstance, which, with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not then being cured in accordance with the terms of this Agreement and the Loan Documents.

(c) All of the representations and warranties set forth in this Agreement, the Loan Documents and other documents delivered to Lender in connection with the funding of the Loan shall be true and correct in all material respects as of the Conversion Date, and Borrower shall have recertified such representations and warranties to Lender as of such date.

(d) As of the Conversion Date, there shall be (i) no litigation pending nor shall lit litigation have been threatened in writing by a potential claimant or a potential claimant's counsel with respect to the Trust Estate, and (ii) no condemnation or similar proceeding shall be pending nor shall same have been threatened by a duly authorized official of a Governmental Authority acting in his official capacity with respect to all or any part of the Trust Estate, either of which, if determined adversely to Borrower, would materially and adversely affect the Trust Estate or the priority of Lender's lien thereon or the financial condition of Borrower or Guarantors

(e) Borrower shall have complied in all respects with the applicable terms and conditions of this Article III.

ARTICLE IV

CONDITIONS TO THE INITIAL DISBURSEMENT

The obligation of Lender to make the Initial Disbursement to or for the account of Borrower shall be subject to the satisfaction of all the conditions set forth in this Article IV and, absent satisfaction or Lender's written waiver of the same, Lender shall have no obligation to make the Initial Disbursement.

Section 4.01. Loan Documents. The following Loan Documents shall have -----
been duly executed by all parties thereto other than Lender, acknowledged as required, and delivered either to Lender or, as to Loan Documents that are to be

recorded or filed, to the Agent with written instructions satisfactory to Lender that such Loan Documents be filed or recorded prior to the funding of the Initial Disbursement:

(a) this Agreement;

(b) the Note;

(c) the Deed of Trust;

(d) such Form UCC-1 Financing Statements as Lender may require naming Borrower as debtor;

(e) the Assignment of Rents;

(f) a Notice of Assignment of the OCC Lease in form and substance satisfactory to Lender as required by the Assignment of Rents;

(g) the Assignment of Project Documents; and

(h) the Guarantees.

Section 4.02. Title Policies. Lender shall have received ALTA

extended coverage mortgagee form of title insurance policies 1987 form B (the "Title Policy") (with proof of the payment of the premiums therefor) or commitments therefor in form and substance acceptable to Lender issued by the Agent on behalf of the Title Companies, together with (a) an executed coinsurance agreement in form and substance satisfactory to Lender and (b) reinsurance from other title insurance companies approved by Lender and evidenced by executed reinsurance agreements satisfactory to Lender containing a right of direct access, insuring the lien of the Deed of Trust to be a first lien against the Premises, free and clear of all defects, encumbrances and exceptions, including mechanics' Liens and claims of Liens, other than the Permitted Exceptions, together with such affirmative insurance as Lender may require. The aggregate amount of the Title Policies shall be not less than the maximum amount of the Loan, the coverage then provided by the Title Policies shall be in the amount of the Initial Disbursement, and the Title Policies shall contain a "pending disbursements" clause in substantially the following form:

"Pending disbursement of the full proceeds of the loan secured by the mortgage set forth under Schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made in good faith and without knowledge of any defects in, or objections to, the title up to the face amount of the policy. At the time of each disbursement of the proceeds of the loan,

the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement."

Section 4.03. Survey. Lender shall have received a current survey

(the "Survey") of the Premises prepared by a surveyor acceptable to Lender who is qualified as a land surveyor in the District of Columbia, which shall be satisfactory, in form and substance, to Lender and which survey shall (a) on its face set forth (i) the legal description of the Premises and (ii) a certification from the surveyor to Lender and the Title Companies that it was prepared in compliance with standards of the American Land Title Association and otherwise containing such certifications of fact as Lender may require; (b) show the locations of the Improvements then constructed on the Premises; (c) show that the Improvements, to the extent then constructed, are located entirely within the Land property lines and do not encroach upon any easement or breach or violate any Law or any covenant, condition or restriction of record, or any building or zoning ordinance; and (d) otherwise satisfy the reasonable requirements of Lender and the Title Companies.

Section 4.04. Insurance. Lender shall have received evidence that the

insurance required under Section 1.08 of the Deed of Trust is in full force and effect with all annual premiums paid.

Section 4.05. Flood Insurance. Lender shall have been provided with

satisfactory evidence, which may be in the form of a letter from an insurance broker, municipal engineer, or other knowledgeable source unaffiliated with Borrower, as to whether (a) the Premises is located in an area designated by the Department of Housing and Urban Development as having special flood or mudslide hazards, and (b) the community in which the Project is located is participating in the National Flood Insurance Program. If both of the aforesaid conditions exist, Lender shall have received evidence that satisfactory policies of flood insurance covering the Project are in full force and effect with all annual premiums paid and that such policies have been endorsed to name Lender as a loss payee pursuant to the standard mortgage clause without contribution.

Section 4.06. Existence and Authorization. Lender shall have received

true, correct, and complete executed copies of the following documents:

(a) With respect to each Guarantor, each general Partner of Borrower, and each general Partner of a general Partner of Borrower that is a corporation:

(i) The certificate of incorporation of such corporation and all amendments thereof, certified by the Secretary of State of the state of such corporation's incorporation, together with a certificate of said Secretary of State to the effect that the corporation is in good standing therein;

(ii) A certificate from the Secretary of State or comparable official of the jurisdiction in which the Premises are located (if other than such corporation's state of incorporation) to the effect that the corporation is in good standing and qualified to do business therein;

(iii) Bylaws certified to Lender by the secretary of the corporation; and

(iv) A certificate of the secretary of the corporation certifying (A) resolutions of the shareholders and directors of the corporation authorizing the consummation of the transactions contemplated by the Loan Documents to which such corporation is a party or a signatory and the execution, delivery, and performance of each of the Loan Documents to which such corporation is a party or a signatory and (B) the incumbency and signature of each of the officers of the corporation to execute any Loan Documents; and

(b) With respect to Borrower and each Guarantor, each general Partner of Borrower, and each general partner of a general partner of Borrower that is a partnership:

(i) The partnership or joint venture agreement and all amendments, attachments and agreements related thereto certified to Lender by all general Partners thereof;

(ii) All certificates filed or required to be filed by the partnership in the jurisdiction of its formation and the jurisdiction where the Premises are located in order for it to do business in those jurisdictions; and

(iii) Such evidence as may be available from the Secretary of State or comparable official of the jurisdiction of the partnership's formation to the effect that the partnership continues to exist and is in good standing.

Section 4.07. Opinion of Borrower's Counsel. Lender shall have

received a favorable opinion of Borrower's counsel to the following effect:

(a) Borrower is duly organized, validly existing, in good standing, and authorized to do business in the District of Columbia.

(b) All Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by Borrower and constitute legal, valid, binding and enforceable agreements in accordance with their respective terms under federal and District of Columbia law, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium law, or other laws affecting creditors rights generally, and do not breach or violate any agreement, court order, or law of which such counsel has knowledge and by or under which Borrower is bound or affected.

(c) Such other matters as Lender may require.

Section 4.08. Opinion from Counsel to Each Guarantor. Lender shall

have received a favorable opinion from counsel to each Guarantor to the same effect as the opinion of Borrower's counsel (to the extent applicable).

Section 4.09. UCC Search. Lender shall have received current searches

of the UCC filing offices in such jurisdictions as Lender may require and the land records in the District of Columbia showing no security interests affecting the Premises, the Project, Borrower, the general Partners of Borrower, the general Partners of the general Partners of Borrower or Guarantors other than those expressly permitted by the Loan Documents.

Section 4.10. Hazardous Material. Borrower shall have furnished

Lender with a report or reports satisfactory to Lender showing no Hazardous Material present at or conveyed from or to the Premises, except to the extent used in construction of the Project and for which there is no practical alternative and which will be used in strict compliance with all Laws and removed in its entirety from the Project promptly upon completion of such use. Borrower shall have furnished Lender with evidence satisfactory to Lender that no Hazardous Material will be knowingly incorporated into the Project by Borrower or, following Completion of Construction, present at or conveyed from or to the Premises except for petroleum products, cleaning solvents, paint and other similar materials necessary in the ordinary operation of the Premises and which are stored, handled and disposed of in strict compliance with all Laws applicable thereto.

Section 4.11. Streets and Utilities. Borrower shall have furnished

evidence satisfactory to Lender that (a) all utility services necessary for the construction of the Project and the operation thereof for its intended purposes are available at the boundaries of the Premises and in adequate supply at the boundaries of the Premises and (b) the Project has lawful, adequate, unobstructed, and unimpaired access to public streets.

Section 4.12. Project Budget. Lender shall have received and approved

a detailed budget of all Project Costs, together with supporting documentation reasonably requested by Lender, which budget shall, upon approval by Lender, be initialed by Borrower and Lender and attached hereto as Schedule 4.12.

Section 4.13. Construction Schedule. Lender shall have received and

approved a detailed schedule for the construction of the Project and corresponding expenditures, which schedule shall show, among other things, a trade-by-trade breakdown of the estimated periods of commencement and completion of the work of each such trade. Upon approval by Lender, the schedule shall be initialed by Borrower and Lender and attached hereto as Schedule 4.13.

Section 4.14. Permits. Lender shall have received evidence (a) that

Borrower has obtained all approvals, permits, licenses and other authorization of Governmental Authorities (i) for that portion of construction of the Project covered by the Plans for which the Initial Disbursement is being requested and (ii) for future construction to the extent then obtainable and (b) that there is no basis to believe that any and all approvals, permits, licenses and other authorizations of Governmental Authorities needed for Completion of Construction will not be forthcoming in a timely manner consistent with the Construction Schedule.

Section 4.15. Plans. Lender shall have received and approved the

Plans for the Project, to the extent available as of the date the Initial Disbursement is funded. Plans shall be scheduled by sheet number, title, date and revised date, which schedule shall be true and correct, and such Plans shall include the filed plans referred to in any permit for the Project.

Section 4.16. Architect Materials. Lender shall have received and

approved (a) a true, correct and complete copy of the fully executed Architect Contract for each Architect, (b) a consent executed by each Architect, substantially in the form of Exhibit J-1 hereto, and (c) a certificate executed by each Architect, substantially in the form of Exhibit J-2 hereto. Lender shall have received and approved copies of all inspection and test records and reports made by or for each Architect with respect to the Project.

Section 4.17. General Contractor's Materials. Lender shall have

received and approved a true, correct and complete copy of the fully executed Construction Contract, together with a consent and certificate executed by the Contractor substantially in the form of Exhibit K.

Section 4.18. Contractor and Subcontractor Materials. Lender shall

have received (a) a list of all Contractors and Subcontractors and (b) copies of all Contracts and Subcontracts as executed or as then being negotiated.

Section 4.19. Engineer's Certificate. Lender shall have received from

Flack & Kurtz, Consulting Engineers, and from any other engineer providing services on the Project, an executed certificate substantially in the form of Exhibit L hereto.

Section 4.20. Other Project Documents. Lender shall have received

true, correct and complete copies of any and all Project Documents not elsewhere identified herein and reasonably requested by Lender, and such additional information as Lender may require relative to the development, construction, use, occupancy, and management of the Project.

Section 4.21. Consultants' Report. Lender shall have received reports

from Lender's Consultants, including the Inspecting Engineer, addressed to Lender regarding such matters as Lender requests and, without limiting the foregoing, to the effect that (a) the Plans conform with generally acceptable building construction practice, including architectural, structural, mechanical and electrical aspects thereof, (b) the Inspecting Engineer concurs with (i) the Hard Costs shown in the Project Budget, and (ii) the Construction Schedule prepared by Borrower, (c) based upon the information submitted by Borrower or such other Person as the Inspecting Engineer may deem necessary or appropriate, all permits, licenses and approvals required for the construction of the Project have been obtained to the extent applicable to the state of construction or no impediment exists to further required permits, licenses and approvals being timely obtained, (d) Contracts and Subcontracts are in effect which satisfactorily provide for the construction of the Project, (e) all roads and utilities necessary for the full utilization of the Project for its intended purposes have been completed or there are sufficient amounts budgeted for such improvements, (f) the construction of the Project theretofore performed has been completed substantially in accordance with the Plans reviewed by Inspecting Engineer and approved by Lender, and (g) the Project has, in the aggregate, reached a stated percentage of completion.

Section 4.22. Cost to Complete. Lender shall have determined in the

exercise of its sole discretion that the Project can be built for not more than the amount specified therefore in the Project Budget.

Section 4.23. OCC Materials. Lender shall have received an executed

estoppel certificate from the OCC substantially in the form of Exhibit M hereto and an executed

subordination, nondisturbance and attornment agreement substantially in the form of Exhibit N hereto.

Section 4.24. Appraisal. Lender shall have approved the Appraisal

heretofore delivered by Borrower.

Section 4.25. Fees. Borrower shall have made arrangements reasonably

satisfactory to Lender for the payment from the Initial Disbursement of the following fees, costs and expenses:

(a) A commitment fee of Three Hundred Twenty Thousand Dollars (\$320,000.00), to be retained by Lender whether or not any further Disbursements are made under this Agreement;

(b) The fees, costs and other expenses then due and payable to Lender's Consultants under their agreements with Lender;

(c) Reimbursement to Lender for monies it has heretofore' paid to its Consultants in connection with the transactions contemplated by the Loan Documents; and

(d) Lender's counsel's fees and disbursements incurred in connection with the Loan.

Section 4.26. General Conditions.

(a) On the date of funding of the Initial Disbursement, there shall exist (i) no Event of Default and (ii) no fact or circumstance, which, with the passage of time, giving of notice or action of third parties, could become an Event of Default.

(b) All representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan shall be true and correct in all material respects.

(c) Lender shall have received such additional agreements, certificates, reports, approvals, instruments, documents, financing statements, consents and opinions as Lender may reasonably request, all in form and substance reasonably satisfactory to Lender.

Section 4.27. Construction-related Conditions. Lender shall have

received all of the following documents, materials and information with respect to the Initial Disbursement:

(a) A Request for Disbursement;

(b) All information required by Section 5.06 (to the extent the Initial Disbursement is for Stored Materials);

(c) Partial Lien waivers and affidavits of payment in the form of Exhibit I hereto from the General Contractor and all Contractors and Subcontractors for the full amount (less actual retainage) of all Hard Costs due and owing to the General Contractor, Contractors and Subcontractors as of the date of the last payment from Borrower (or an Affiliate) to such Persons;

(d) A certificate from each Architect with responsibility for work being paid for from the Initial Disbursement to the effect set forth in Section 5.03(c);

(e) A certificate from the General Contractor to the effect set forth in Section 5.03(d); and

(f) As to any phase of construction that has been completed, the information and materials set forth in Section 5.03(f).

ARTICLE V

CONDITIONS TO ALL SUBSEQUENT DISBURSEMENTS

The obligation of Lender to make each Disbursement after the Initial Disbursement to or for the account of Borrower shall be subject to the satisfaction of all the conditions set forth in this Article V and, absent satisfaction or Lender's written waiver of the same, Lender shall have no obligation to make such Disbursement.

Section 5.01. Initial Disbursement. All conditions to making the

Initial Disbursement shall have been satisfied or waived in writing by Lender and the Initial Disbursement shall have been made.

Section 5.02. General Conditions.

(a) All representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan, including without limitation all Requests for Disbursement, shall be true and correct in all material respects on and as of the date of the Disbursement then to be made as though made on and as of that date, except to the extent otherwise disclosed by Borrower to Lender in writing, provided that the facts set forth in such disclosures are acceptable to Lender in its sole discretion.

(b) On the date of funding the Disbursement, there shall exist (i) no Event of Default and (ii) no fact or circumstance which, with the passage of time, giving of notice or action of third parties, could become an Event of Default.

Section 5.03. Request for Disbursement Documents. Prior to each

Disbursement, Borrower shall have furnished to Lender and Lender shall have received and approved all of the following documents, materials, and information:

(a) A Request for Disbursement;

(b) Partial Lien waivers in the form of Exhibit I hereto from the General Contractor and all Contractors and Subcontractors for the full amount (less actual retainage) of all Hard Costs covered by all prior Requests for Disbursement, except that Borrower shall not be required to obtain Lien waivers (i) with respect to (and shall not be entitled to any Disbursement for) any claim for labor, service, equipment or material that is being actively contested in accordance with the requirements of the Deed of Trust and (ii) with respect to any Contractor or Subcontractor that only supplies materials to the Project and whose Contract or Subcontract requires the payment of less than One Hundred Thousand Dollars (\$100,000.00) in the aggregate, except to the extent Lender has given Borrower not less than fifteen (15) days' prior written notice that a Lien waiver will be required from such Contractor or Subcontractor for a subsequent Disbursement;

(c) A certificate from each Architect with responsibility for work being paid for from that Disbursement, in the form set forth in Exhibit H, with respect to that portion of the Project for which such Architect has design responsibility, to the effect that, in the Architect's professional opinion: (i) all revisions to the Plans since the date of the last Disbursement are in conformity with all applicable Laws, (ii) the work completed to the date of the Disbursement is in substantial conformity with the Plans, Construction Contract and applicable Contract if any, and (iii) stating the percentage of completion of the work on such portion of the Project;

(d) A certificate from the General Contractor or appropriate Contractor, if any (with respect to Hard Costs only), in the form set forth in Exhibit H, setting forth all incurred Items of Project Costs for the periods since the last Request for Disbursement and from the inception of the Project (or, as appropriate, the Spec Tenant Improvements), all Items of Project Costs projected to complete the Project (or, as appropriate, the Spec Tenant Improvements), any variance between actual and projected Project Costs and the amounts set forth in the Project Budget, the percentage of materials provided and/or work completed for each Item from the inception of the Project (or, as appropriate, the Spec Tenant

Improvements) to the date of the certification, and all changes from the previous certificate which are known or reasonably anticipated by the General Contractor or appropriate Contractor, if any.

(e) A report from the Inspecting Engineer with respect to any revised Plans, Project Budget and Construction Schedule (or, as to Spec Tenant Improvements, any new plans, schedule and budget) stating (i) that in the opinion of Inspecting Engineer, all Change Orders and modifications or amendments to the Plans, Project Budget and Construction Schedule (or, as to Spec Tenant Improvements, any new plans, schedule and budget) required hereby to be approved by Lender have been approved by Lender; (ii) that, in the opinion of Inspecting Engineer, based on a review of the partial Lien waivers, certificates and other reports submitted to substantiate the Request for Disbursement, the construction of the Project (or, as appropriate, the Spec Tenant Improvements) theretofore performed has been completed substantially in accordance with the Plans, Construction Contract and applicable Contract, if any, reviewed by Inspecting Engineer and approved by Lender; (iii) what percentage of completion in the aggregate has been reached in the construction of the Project (or, as appropriate, the Spec Tenant Improvements); (iv) the extent to which, if any, the Disbursements for the Hard Costs not yet approved are not sufficient to complete construction of the Project; (v) whether completion of the portions of the Project not yet completed can, in Inspecting Engineer's opinion, be completed prior to the Completion Date (or, with respect to Spec Tenant Improvements only, the completion date set forth in the supplemental schedule for such Spec Tenant Improvements); and (vi) that Inspecting Engineer has approved the items referred to in Sections 5.03(b), (c), and (d) hereof; and

(f) As to a stage of construction which has been completed, any required reports or approvals covering structural and mechanical work and certifications or other appropriate written statements from the appropriate Governmental Authorities for electrical work with respect to such stage to the extent reasonably obtainable.

Section 5.04. Title Endorsements. Prior to each Disbursement, Lender

shall have received from the Agent on behalf of the Title Companies endorsements to the Title Policies extending the coverage to be provided thereby to the date and to the full amount of the requested Disbursement, without exception for mechanics Liens or claims of Liens, or any other matter not previously approved by Lender in writing. Such endorsements will insure the Deed of Trust to be a first lien on the Project, subject only to the Permitted Exceptions.

Section 5.05. Plan and Permit Approval. Lender shall have received

and approved all changes to the Plans (to the extent required by Section 7.05(e) hereof) and all new Plans and all permits, licenses, approvals and other authorizations

from Governmental Authorities necessary to complete the work contemplated by such Plans, to the extent then required or obtainable, for the development, construction, use and occupancy of the Project in respect of which the Disbursement is requested.

Section 5.06. Stored Materials. Lender will make Disbursements for the -----

cost of Stored Materials (not including any profit or overhead of General Contractor or any Contractor or Subcontractor (other than the manufacturer or supplier of such materials) payable in respect of such Stored Materials, for which a Disbursement shall be made only after incorporation of the Stored Materials into the Project) subject to the other provisions of this Agreement, and further provided that Lender shall have received the following, in form and substance satisfactory to Lender:

(a) for materials stored on the Premises, invoices indicating actual cost of the Stored Materials, not including profit and overhead;

(b) evidence that the Stored Materials are appropriate for purchase during the then current stage of construction;

(c) evidence that the Stored Materials have been paid for and are owned by (or upon payment of the amount to be disbursed pursuant to the applicable Request for Disbursement shall be paid for and owned by) Borrower free of all lien rights or claims of the vendor or any third party;

(d) evidence satisfactory to Lender that the Stored Materials are securely stored on-site or in a bonded warehouse or storage yard approved by Lender and, if stored in a warehouse or storage yard, the warehouse or storage yard has been notified that Lender has a security interest in the subject stored materials and the original warehouse receipt;

(e) for those stored materials stored off-site, a certificate or binder of insurance from Borrower or the supplier, fabricator or other subcontractor, covering the Stored Materials against loss, theft and damage in a manner and amount satisfactory to Lender, naming Lender as a loss-payee; and

(f) evidence of filing of any UCC-1 financing statement or statements required to perfect Lender's lien with respect to such Stored Materials, and satisfactory assurance to Lender that such materials are covered by the security agreement provisions of the Deed of Trust and that Lender has a perfected security interest in such materials.

Section 5.07 Contractors and Subcontractors. To the extent required -----

by Section 7.07 hereof, Lender shall have received copies of all Contracts and Subcontracts not theretofore reviewed by Lender.

Section 5.08. Final Construction Disbursement. The final Disbursement

of Hard Costs for all portions of the Project excluding Spec Tenant Improvement Costs and the release of related retainage (to the extent not theretofore released pursuant to Section 2.09(b)) shall be made subject to satisfaction of all of the foregoing as well as the following conditions:

(a) Lender shall have received a certification by Borrower and a letter from each Architect other than the Architect for the Spec Tenant Improvements that all work on the Project other than the Spec Tenant Improvements has been finished and made available for use substantially in accordance with the Plans, Construction Contract, other applicable Contract if any, and OCC Lease;

(b) Lender shall have received a certificate of Inspecting Engineer stating, in effect, that all of the Project other than the Spec Tenant Improvements has been completed in a good and workmanlike manner substantially in accordance with the Plans, Construction Contract, other applicable Contract if any, and OCC Lease;

(c) Lender shall have received final Lien waivers and affidavits of payment from the General Contractor and all Contractors and Subcontractors who have performed work, labor or services or furnished supplies in connection with the construction, of the project substantially in the form of Exhibit I hereto, modified to state that all work, labor, services and materials to be performed or provided by such Person have been performed and provided and, upon payment of a specified sum, all amounts owing to such Person in respect of the Project will then be paid in full; and

(d) Lender shall have received final and comprehensive endorsements to the Title Policies or evidence satisfactory to Lender that the Title Companies are in a position to issue to Lender final policies of title insurance with such endorsements thereto as Lender may reasonably require, insuring the Deed of Trust as a first lien, subject only to the Permitted Exceptions and providing coverage in the full amount of the Loan.

Section 5.09. Advances Without Requests. Notwithstanding anything

to the contrary and without regard to the minimum Disbursement amount set forth in Section 2.05(a), Borrower hereby authorizes Lender to disburse proceeds of the Loan to pay (i) interest and fees on the dates when interest and fees are due and owing in accordance with Section 2.12 hereof and the terms of the Note and the other Loan Documents and (ii) upon the occurrence of an Event of Default, or upon Borrower's default on any obligation to pay money in any way related to the Project which default Lender reasonably believes may have a material adverse effect on the Project, (A) all costs of title searches or abstracts, document taxes, stamp

taxes and recording expenses; (B) the Inspecting Engineer's fees and expenses reasonably incurred; (C) reasonable fees and expenses for any services of a Consultant which may be required for purposes contemplated by this Agreement; and (D) notwithstanding that Borrower may not have requested a Disbursement of such amount, subject to the further provisions of the Deed of Trust, all costs, fees and expenses due to (1) contractors, subcontractors, laborers, materialmen or other persons furnishing labor, services or materials used or to be used on or in connection with the Project, (2) taxing authorities or insurers in payment of taxes or hazard, liability or title insurance premiums when due, and/or (3) the holder, of any Lien on the Premises or Project or Borrower's interest therein, as necessary to discharge such Lien. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make such Disbursements. However, the provisions of this Article V shall neither require Lender to make such Disbursements, nor prevent Borrower from paying interest and fees from its own funds. Any Disbursement so made shall be deemed made to and received by Borrower and shall be added to the unpaid principal balance of the Note. Lender will promptly advise Borrower of the making of any Disbursement pursuant to this Section 5.09, and such notice shall set forth, in reasonable detail, a description of those Items which were paid with the proceeds of such Disbursement.

Section 5.10. Surveys. If necessary in the reasonable judgment of

Lender or if required by either of the Title Companies, Borrower, within thirty (30) days after written notice from Lender or such Title Company, shall from time to time furnish to Lender updates of the Survey certified to Lender and the Title Companies and updated by inspection with respect to all relevant requirements and giving current information as described in Section 4.03. Within thirty (30) days after Completion of Construction, Borrower shall deliver to Lender a final, "as-built" version of the Survey which shall show: (a) the Project as completed in accordance with the Plans and otherwise in accordance with the provisions of this Agreement, (b) all easements affecting the Premises, whether benefiting or burdening same, rights of way and existing utility lines, whether recorded or disclosed by a physical inspection of the Premises, (c) a calculation of the dimensions of the Premises, (d) the lines of the public streets abutting the Premises and the widths thereof, (e) encroachments and the extent thereof in feet and inches onto the Premises and all encroachments by any buildings, structures or improvements located on the Premises onto any easements over, and onto property adjacent to, the Premises, and (f) all Improvements, and any other physical matters on the ground which may adversely affect the Premises or title thereto and the relationship of such Improvements and other physical matters by distances to the perimeter of the Premises, established building lines and street lines.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement and to make the Initial Disbursement and each subsequent Disbursement under the Loan, Borrower makes the following representations and warranties which shall survive the execution and delivery of this Agreement, the Note and the other Loan Documents and shall be remade from time to time as elsewhere provided in this Agreement.

Section 6.01. Existence. Borrower is a limited partnership duly

organized and validly existing under the laws of the District of Columbia. Borrower has the authority, rights and franchises to own its properties, to carry on its business as now conducted, to perform its obligations hereunder and under the other Loan Documents, to complete the Project in accordance with the Plans, and to own and operate the Project as a first-class commercial office building. Borrower has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business. Borrower conducts no business, directly or indirectly, except for the development, construction, ownership, and operation of the Project and of Phase II, and the ownership of Lot 872.

Section 6.02. Authorization, Enforceable Obligation. Borrower has the

authority and legal right to execute, deliver and perform the Loan Documents to which Borrower is a party, to borrow under the Loan Documents and to grant the liens and security interests contemplated thereby, and has taken all necessary action to authorize the borrowings on the terms and conditions hereof and the execution, delivery and performance of the Loan Documents to which Borrower is a party. No consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with any Governmental Authority which has not been obtained is required for the execution, delivery and performance by Borrower of the Loan Documents to which it is a party. Each of the Loan Documents to which Borrower is a party has been executed and delivered by a Person duly authorized to execute and deliver such documents on behalf of Borrower and constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.

Section 6.03. Conflicting Agreements. Neither the execution nor

delivery of this Agreement or any other Loan Document or any amendments thereto, nor fulfillment of or compliance with the terms and provisions hereof or thereof, nor

the consummation of the transactions contemplated hereby or by any of the other documents referred to herein, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien (other than the lien of the Loan Documents) upon any of the properties or assets of Borrower pursuant to its partnership agreement, any award of any arbitrator or any agreement (including any Project Document and any agreement with Borrower's partners), instrument, order, judgment, decree, statute, law, ordinance, franchise, certificate, permit, rule, regulation or the like to which Borrower is subject, or to or by which its properties or its assets or the Trust Estate are bound or affected.

Section 6.04. Required Documents. Borrower has furnished Lender true, -----
correct and complete certified copies of all documents and materials to be furnished under Section 4.06 hereof.

Section 6.05. No Material Litigation. No litigation, investigation or -----
administrative proceeding of or before any court, arbitrator or governmental authority is pending or has been threatened in writing by or on behalf of a potential claimant against Borrower, the general Partners of Borrower or assets of Borrower or that would, if determined adversely, be likely to have a material adverse effect on (a) Borrower's ability to perform its obligations under the Loan Documents in accordance with the terms thereof, (b) the validity of this Agreement or any other Loan Document, or (c) Lender's security under this Agreement or any other Loan Document. No notice has been received by Borrower of any proceeding to condemn, purchase or otherwise acquire the Trust Estate or any part thereof or interest therein, and, to the best of Borrower's knowledge, no such proceeding has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 6.06. Margin Regulations. No part of the proceeds of the Loan -----
will be used to purchase or carry any margin stock (as such term is defined in Regulations G, U and X of the Board of Governors of the Federal Reserve System). Borrower is not 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.

Section 6.07. Compliance With Applicable Laws. Each of Borrower, the -----
Project, and the Trust Estate is in compliance with the requirements of all Laws, the failure to comply with which would materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any of the other Loan Documents, and no written notice of non-compliance with any of the foregoing has been received by Borrower from any Governmental Authority. No consent, approval or

authorization, or registration, declaration or filing with any Governmental Authority or any other Person is required for the valid execution, delivery and performance by Borrower of this Agreement or any other Loan Document, or the carrying out of the transactions contemplated hereby or thereby. All approvals, permits, licenses and other authorizations of Governmental Authorities required for the current stage of construction of the Project and for future stages to the extent now obtainable have been obtained and are in full force and effect and true and complete copies thereof have been furnished to Lender. Borrower has no basis to believe that any and all approvals, permits, licenses and other authorizations of Governmental Authorities needed for Completion of Construction will not be forthcoming in a timely manner consistent with the Construction Schedule.

Section 6.08. OCC Lease. Borrower has furnished to Lender a true and

complete copy of the OCC Lease with all amendments and supplements thereto. The OCC Lease is in full force and effect and (a) no notice of default has been given by either Borrower or the OCC thereunder, (b) there are no material defaults under any of the provisions thereof and (c) all conditions to the effectiveness and continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied.

Section 6.09. No Brokers. Borrower and Lender each represent to the

other that they have not dealt with any mortgage or other broker or finder in connection with the Loan. Borrower and Lender agree to indemnify, defend and hold the other harmless from and against any claim for brokerage fees or commissions or other compensation in connection with the Loan by reason of an alleged misrepresentation of the statement made by it in the immediately preceding sentence. In case any action, suit or proceeding is brought against Lender by reason of such alleged misrepresentation by Borrower (a) Lender shall give prompt notice thereof to Borrower, (b) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (c) if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower unless Lender waives its right to indemnification under this Section. In case any action, suit or proceeding is brought against Borrower by reason of such alleged misrepresentation by Lender, (i) Borrower shall give prompt notice thereof to Lender, (ii) Lender may, at Lender's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Borrower, and (iii) if Lender elects to defend such action, suit or proceeding, Borrower shall not compromise or settle any such action, suit or proceeding without the consent of Lender, unless Borrower waives its right to indemnification under this Section.

Section 6.10. Project Documents. All material Project Documents,

excluding the Plans, Construction Contract, and the Architect Contract for each Architect, and, to the best of Borrower's knowledge after due inquiry, all other Project Documents, are listed in Schedule 6.10 annexed hereto and made a part hereof, and, to the extent required by the provisions of this Agreement or to the extent Lender has so requested, true and complete copies of all Project Documents, including the Plans, Construction Contract, and the Architect Contract for each Architect, together with all amendments thereof and modifications thereto, have been delivered to Lender. All Project Documents are in full force and effect in accordance with their respective terms, and no party to any Project Document has asserted any claim of default or offset against the other with respect thereto that remains uncured.

Section 6.11. Plans. All Plans for the Project are listed in Schedule

6.11 hereto. The Plans have been approved, and all amendments and supplements to the Plans will be approved, by (a) all Governmental Authorities with jurisdiction over the Project, to the extent required, (b) the General Contractor (to the extent required by the Construction Contract), and (c) the beneficiary of any restrictive covenant requiring such approval.

Section 6.12. Project Budget and Construction Schedule. The Project

Budget accurately reflects, to the best of Borrower's knowledge and belief, all Project Costs which have been and will be incurred by Borrower in the acquisition, development and construction of the Project. The Construction Schedule accurately reflects, to the best of Borrower's knowledge and belief, the time required to complete the entire Project and each portion thereof.

Section 6.13. Streets and Utilities. All utility services necessary

for the construction of the Project and the operation thereof for its intended purposes are available at the boundaries of the Premises, including water supply, fire protection, storm and sanitary sewer, gas, electricity, and telephone facilities. The Project has lawful, adequate, unobstructed, and unimpaired access to public streets.

Section 6.14. ERISA. Borrower does not have a defined benefit pension

plan under the Employee Retirement Income Security Act of 1974, as amended, the unfunded liabilities of which could, upon termination of the plan, be held to be a liability of Borrower by the Pension Benefit Guaranty Corporation.

Section 6.15. Environmental. Except as disclosed in the Environmental

Report, there are not now and, to Borrower's best knowledge after due inquiry; never have been any Hazardous Materials present at or conveyed from or to the Premises or

incorporated into the Project, except for Hazardous Materials used in the normal course of construction of the Project, as to which there exists no practical alternative and which have been used or are being used in strict compliance with all Laws and have been or will be removed in their entirety from the Premises promptly upon completion of such use.

Section 6.16. Whole Tax Parcel. The Land constitutes a single, whole

tax parcel and is assessed separately from any other real property.

Section 6.17. Casualty. The Project has not been materially damaged

by fire or other casualty, or if damaged, Lender as loss payee has received insurance proceeds and, if necessary, a Completion Deposit in the manner, amount and as otherwise contemplated by Section 1.09 of the Deed of Trust and such proceeds and Completion Deposit are sufficient to effect the satisfactory restoration of the Project and to permit Completion of Construction on or prior to the Completion Date and in accordance with all of the terms and provisions of this Agreement.

Section 6.18. True Statements. Neither this Agreement, any other Loan

Document nor any other document delivered to Lender in connection with the Loan (including without limitation all Requests for Disbursements) contains, or will contain when made, any untrue statement of a material fact and by this reference all representations and warranties made in any of the Loan Documents are hereby made a part of this Agreement to the same extent as if fully set forth herein.

ARTICLE VII

AFFIRMATIVE AND NEGATIVE COVENANTS -----

Section 7.01. Commencement and Completion of Construction. Borrower

shall proceed with the construction of the Project with due diligence, substantially in accordance with the Construction Schedule, and subject to the terms of this Section 7.01, shall effect Completion of Construction on or prior to the Completion Date. Borrower shall thereafter complete all incomplete portions of the Project in a timely fashion in compliance with the OCC Lease and all other applicable Space Leases. The Completion Date may be extended for a period not to exceed sixty (60) days by Force Majeure, provided that (i) Borrower shall promptly, but in no event later than ten (10) days after the occurrence of Force Majeure circumstances, notify Lender of the existence of such Force Majeure circumstances, which notice shall set forth the date upon which such circumstance began, (ii) Borrower shall provide Lender with such evidence of the Force Majeure circumstances as

Lender shall reasonably request, including any information provided by General Contractor to Borrower in General Contractor's request for extension of the Completion Date pursuant to the terms of the Construction Contract or by Borrower to the OCC under the OCC Lease and (iii) dates for the performance of Borrower's obligations under the OCC Lease shall be extended by an equal period pursuant to Section 28.16 of the OCC Lease. The progress of construction of the Project shall be deemed to be substantially in accordance with the Construction Schedule so long as target dates set forth in such schedule have been met or, if such target dates have not been met, Lender has determined in its reasonable discretion that Completion of Construction will occur not later than the Completion Date as extended in compliance with this Section 7.01. Borrower shall not permit construction to cease for more than ten (10) consecutive days or for more than twenty (20) days in the aggregate, subject, however, to delays for Force Majeure as permitted by this Section 7.01. During any discontinuance of construction, Borrower shall make adequate provision, acceptable to Lender, for the protection of the Project to the extent then constructed, against deterioration and against other loss, damage or theft.

Section 7.02. Encroachments. Borrower shall construct the

Improvements entirely on the Land without encroachment upon any lot line or boundary, easement or right-of-way or any other land, except for the existing encroachment of the foundation of the Project onto land adjacent to the Land to the east, as shown on the Survey heretofore delivered to Lender.

Section 7.03. Conformity with Plans. Borrower shall construct the

Project in substantial conformity with the Plans and in a good and workmanlike manner with new materials of good quality. If at any time construction of the Improvements is not in compliance with the foregoing requirements, Borrower shall promptly give notice thereof to Lender and Lender shall have the right to stop such nonconforming construction and order repair or reconstruction in accordance with the foregoing requirements and to withhold all further Disbursements until construction is in satisfactory compliance therewith. Upon notice from Lender to Borrower, or Borrower's discovery irrespective of such notice, that construction is not in substantial conformity with such requirements, Borrower shall commence correcting the deviation as promptly as practical and, in any event, within fifteen (15) days after such notice or discovery and shall prosecute such work diligently to completion, which in no event shall be later than sixty (60) days after such notice or discovery. If Lender reasonably determines that the corrective work is not proceeding satisfactorily, Lender may, upon not less than fifteen (15) days' notice to Borrower, prosecute such corrective work to completion at Borrower's expense. Lender's approval of any

Disbursement shall not constitute a waiver of Lender's right to require correction of any such defects or departures from the Plans not theretofore discovered by, or called to the attention, of Lender.

Section 7.04. Compliance with Laws and Other Requirements. Borrower

shall in all material respects with all conditions, covenants, restrictions, Space Leases, easements, reservations, rights and rights of way and all applicable Laws and other requirements relating to the Trust Estate and the Project, and obtain in a timely fashion all necessary approvals, consents, licenses and permits of all Governmental Authorities.

Section 7.05. Change Orders. Change Orders:

(a) Shall all be in writing, numbered in sequence, and signed by Borrower and General Contractor or the appropriate Contractor;

(b) Shall all, as part of each Request for Disbursement, be certified by Borrower and each Architect, the Architect's professional opinion, with respect to that portion of the Project for which such Architect has design responsibility, to be in compliance with all applicable Laws and other requirements;

(c) Shall all contain an estimate by Borrower and General Contractor or the appropriate Contractor of the increase or decrease in each Item of Project Costs that would be caused by the change (or, if the Change Order involves changes both increasing or decreasing estimated Project Costs, the amount of each change either increasing or decreasing Project Costs shall be stated), as well as the aggregate amount of changes in estimated Project Costs, both increases and decreases, previously made;

(d) Shall, if a Major Change Order, be submitted to Lender not later than five (5) Business Days prior to the proposed effectiveness thereof; and

(e) Shall be subject to the prior written approval of Lender where (i) the change affects the structural aspects or intended use of the Improvements, (ii) the Change Order includes any change that, regardless of the net effect of the aggregate Change Order, increases or decreases any estimated Project Costs by Seventy-Five Thousand Dollars (\$75,000.00) or more, or (iii) together with prior Change Orders, whether or not approved, the change involves an aggregate amount, whether for increases or decreases, of over Five Hundred Thousand Dollars (\$500,000.00) or (iv) the change would cause any Governmental Authority to suspend or revoke any license, approval, permit or other authorization. (All such

Change Orders are herein referred to as "Major Change Orders".) If any Change Order involves a net increase in estimated Project Costs the payment of which increase is not the sole obligation of the OCC or another Space Tenant under its respective Space Lease, whether or not such Change Order is subject to Lender's prior approval, Lender shall have no obligation to make any further Disbursements unless the Loan taking such Change Order into account, remains in balance.

Section 7.06. Project Budget; Annual Operating Budget.

(a) Subject to the provisions of Section 2.14 hereof, Borrower shall complete the entire Project within the Project Budget and operate the Project within the applicable Annual Operating Budget. Unless Lender otherwise consents in writing, Borrower shall not materially supplement, modify or amend the approved Project Budget or applicable Annual Operating Budget other than as permitted under Sections 2.06, 7.05 or 7.06(b) hereof.

(b) Borrower shall promptly notify Lender of any fact or circumstance that may render the Project Budget inaccurate with respect to any Project Costs reflected therein or render any Annual Operating Budget inaccurate with respect to any operating expenses reflected therein. With respect to the Annual Operating Budget only, the same shall not be deemed to have been rendered inaccurate by any variation or variations which in the aggregate are equal to or less than ten percent (10%) of the total amount of such budget.

Section 7.07. Contractors and Subcontractors.

(a) Borrower shall not permit the performance of any work on the Project pursuant to any Contract or Subcontract (i) with a total payment in excess of One Hundred Thousand Dollars (\$100,000) or (ii) which Lender has requested to review, until Lender shall have received copies of such Contract or Subcontract.

(b) Borrower shall deliver to Lender from time to time not later than five (5) Business Days after Lender's demand therefor correct lists of all Contractors and Subcontractors employed in connection with the Project and copies of such Contractors' and Subcontractors' contracts. Each such list shall show the name, address and telephone number of each such Contractor or Subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, the approximate dollar value of such labor, work and materials itemized with respect to each Contractor and Subcontractor, and the unpaid portion and status of such work or whether such materials have been delivered. In the event that Lender reasonably determines that any information provided to Lender

is incomplete, Lender and its Consultants shall have the right, without either the obligation or the duty, to contact directly each Contractor and Subcontractor to verify the facts disclosed by such list or any other information provided by Borrower or relating to the Project. In the event that Borrower or General Contractor shall fail to maintain the same in respect of the performance of any Contractor or Subcontractor, Lender may require that the performance of any such Contractor or Subcontractor be secured by a payment and performance bond in form, and issued by a surety company, reasonably acceptable to Lender; provided, however, that Lender shall not be entitled to require that

the performance of any Subcontractor be bonded if the performance of another Person retaining such Subcontractor has been bonded as to the portion of the work to be performed by such Subcontractor.

Section 7.08. Permits and Warranties. Borrower shall deliver to

Lender from time to time not later than five (5) days after Lender's demand therefor, originals or copies of: (a) all building and other permits approvals, and authorizations required in connection with the construction of the Project or the operation or occupation of the Premises or any part thereof promptly upon issuance and receipt by Borrower thereof, and in any event before any act is done which requires the issuance of the respective permit, approval or authorization, and (b) upon request of Lender, all warranties and guaranties received from any person furnishing labor, materials, equipment, fixtures or furnishings in connection with the Project.

Section 7.09. Protection Against Liens and Claims.

(a) Borrower shall take all reasonable steps to forestall the assertion of claims of Lien against the Project or the Trust Estate or any part thereof.

(b) In the event that any claim is asserted against Lender or the Undisbursed Construction Funds by any Person furnishing labor, services, equipment or material to the Project and the claim is not being contested in accordance with the Deed of Trust, Lender may, in its sole discretion, file an interpleader action requiring all claimants to interplead and litigate their respective claims, and in any such action Lender shall be released and discharged from all obligations with respect to any funds deposited in court, and Lender's reasonable costs and expenses, including without limitation reasonable attorneys fees, shall be paid from such funds or from any undisbursed portion of the Loan. Any such funds deposited in court and all reasonable costs and expenses of Lender in connection therewith shall be deemed to be Disbursements under this Agreement and the Note.

Section 7.10. Removal of Personalty. Borrower shall not:

(a) Install in or otherwise use in connection with the Project any materials, equipment or fixtures under any security agreement or similar agreement however denominated whereby the right is reserved or accrues to anyone to remove or repossess any such items or whereby any person other than Lender reserves or acquires a Lien upon such items;

(b) Remove or permit the removal of any Personal Property located on the Property or used in connection with the Project, except in compliance with the terms of the Deed of Trust; or

(c) Without the consent of Lender, permit the storage of any Personal Property at any location other than the Premises except for Personal Property stored in a bonded warehouse facility, segregated and separately identified to the Project, and insured to the reasonable satisfaction of Lender.

Section 7.11. Insurance. Borrower shall provide or cause to be

provided the policies of insurance required by Section 1.08 of the Deed of Trust.

Section 7.12. Title Reports. Borrower shall deliver or cause to be

delivered to Lender, in form and substance satisfactory to Lender: (a) such endorsements and binders to the Title Policies and (b) such preliminary title reports and other title searches as may be required by the terms of this Agreement or as Lender may from time to time reasonably require in connection with Disbursements hereunder.

Section 7.13. Entry and Inspection. Lender and its Consultants,

including the Inspecting Engineer, shall, during normal construction and business hours, upon notice to General Contractor (which may be telephonic) and subject to Space Tenants' rights under any Space Leases, have the right of entry and free access to the Premises and the right to inspect all work done, labor performed, and materials furnished in and about the Project and to examine all Plans, wherever located. Borrower will cooperate and will cause Architect, General Contractor and all Contractors and Subcontractors to cooperate with Lender and its Consultants to enable Lender and its Consultants to perform their functions. At the time of each inspection by the Inspecting Engineer, Borrower will make available to the Inspecting Engineer, on demand, daily log sheets covering the construction period showing the date, weather, Contractors and Subcontractors on the job, number of workers and status of construction.

Section 7.14. Physical Security of Project. Borrower shall provide

such watchmen and take such other measures to protect the physical security of the Project and the Trust Estate as Lender may from time to time reasonably require.

Section 7.15. Information Covenants.

(a) Borrower shall keep and maintain or will cause to be kept and maintained, on a fiscal year basis in accordance with consistently applied generally accepted accounting practices customarily used in the real estate industry, complete and accurate books, accounts and records reflecting all of the financial affairs of Borrower and all of the earnings and expenses in connection with the operation of the Trust Estate or in connection with any services, equipment or furnishings provided in connection with the operation of the Trust Estate, and, without expense to Lender, shall deliver to Lender annually, within ninety (90) days after the close of each of Borrower's fiscal years (i) an operating statement (including, without limitation, the amount of rent escalations under the Qualifying Space Leases for such fiscal year) and an annual budget certified by a general Partner of Borrower or the chief financial officer of the Person that directly or indirectly controls the day-to-day operations and management of the Trust Estate showing in reasonable detail the income and expenses of the operations of the Trust Estate, a statement of profit and loss, and a balance sheet for the immediately preceding fiscal year of Borrower, (ii) a complete copy of a financial statement of Borrower for the immediately preceding fiscal year of Borrower certified to Lender by a general partner or other principal of Borrower, containing a statement of surplus, and a balance sheet of Borrower, and (iii) a rent roll current to within thirty (30) days, showing the Space Tenants in occupancy, their square footage, their fixed and basic rents, and their tax and operating escalations. Lender or its designee will be permitted upon not less than ten (10) days prior notice to Borrower, to examine such books and records and all supporting vouchers and data at the office of Borrower with respect to the Trust Estate and make such copies or extracts at Borrower's expense thereof as Lender or its designee shall reasonably desire. Lender shall not have any duty to make any such inspection and shall not incur any liability or obligation as a result of not making such inspection. Lender agrees that any information obtained by Lender in its review or examination of Borrower's books and records pursuant to this Section 7.15 shall be confidential and solely for the benefit of Lender and any Loan Participant. Each participation agreement between Lender and any Loan Participant shall require such Loan Participant to maintain the confidentiality of any information obtained by Lender in its review of Borrower's books and records; however, Lender shall have no liability to Borrower by reason of any Loan Participant's breach of such covenant.

(b) Each annual statement shall be accompanied by a certificate of Borrower, dated as of the delivery of such statement to Lender, stating that Borrower, to the best of its knowledge, knows of no Event of Default that is continuing, or,

if any such Event of Default is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that to the best of its knowledge Borrower has fulfilled all its obligations under this Agreement and the other Loan Documents that are required to be fulfilled on or prior to the date of such certificate.

(c) Borrower shall deliver or cause to be delivered to Lender, not later than ninety (90) days after the end of each calendar year during the Loan Term a financial statement of each Guarantor, certified, respectively, by each Guarantor.

(d) Borrower shall furnish to Lender within thirty (30) days after request therefor such further detailed information covering the operation of the Trust Estate and the financial affairs of Borrower and each Guarantor as may be reasonably requested by Lender.

(e) Borrower shall deliver to Lender as soon as practicable and in any event within ten (10) days of Borrower's learning thereof, notice of:

(i) Any dispute raised by the General Contractor under the Construction Contract relating to an increase in the Contract Sum (as therein defined) and any material delay in the progress of the Project, whether or not constituting Force Majeure;

(ii) Any litigation affecting or relating to (A) Borrower, (B) any Guarantor which would materially, adversely affect such Guarantor's ability to perform its obligations under the Loan Documents, (C) the Trust Estate or (D) the Project;

(iii) Any dispute involving any Governmental Authority relating to the Trust Estate or the Project, the adverse determination of which might materially adversely affect the Trust Estate or the Project;

(iv) Any threat or commencement of proceedings in condemnation or eminent domain relating to the Trust Estate; and

(v) Any event which, with the giving of notice and/or the passage of time, could become an Event of Default, together with a written statement setting forth the nature of the event and the action Borrower proposes to take with respect thereto.

(f) Borrower shall deliver or cause to be delivered to Lender, as soon as available and in any event within thirty (30) days after the end of each calendar quarter,

a report as to the status of construction and leasing of the Project including leasing schedules and reports, executed copies of any Space Leases entered into during such quarter, a list of all Space Leases then pending or the subject of negotiation by Borrower and such other leasing information as Lender shall reasonably request with respect to the Space Leases and the Trust Estate.

(g) Borrower shall deliver or cause to be delivered to Lender, on the date on which Borrower submits its final Request for Disbursement of Hard Costs under Section 5.08 and not later than sixty (60) days prior to the end of each calendar year thereafter, an annual operating budget (the "Annual Operating Budget") for the Project which shall be subject to approval by Lender in its reasonable judgment. Lender's failure to disapprove a proposed Annual Operating Budget within thirty (30) days after submission shall be deemed to be Lender's approval of such submission.

Section 7.16. Management of Property. Borrower shall not enter into

any agreement providing for the management, leasing or operation of all or any part of the Premises without the prior, written consent of Lender, such consent not to be unreasonably withheld or delayed. Lender hereby approves Boston Properties, a Massachusetts business trust, as manager of the Premises provided that Boston Properties is and remains an Affiliate of Mortimer B. Zuckerman and/or Edward H. Linde. Each manager of the Project shall execute and deliver to Lender a consent on Lender's standard form to the collateral assignment to Lender of the management contract for the Project.

Section 7.17. Project Documents.

(a) Except to the extent otherwise provided for herein, Borrower shall maintain in full force and effect, and shall comply with all of its obligations under, each of the Project Documents, including without limitation the Architect Contract and the Construction Contract.

(b) Unless Lender otherwise consents in writing Borrower shall not: (i) permit any of the Project Documents to be materially supplemented, modified, amended or terminated excluding any supplements, modifications or amendments in respect of Change Orders not requiring Lender's approval hereunder; (ii) waive, or consent to any departure from, any of the material provisions of any of the Project Documents; or (iii) transfer, convey, encumber, assign or release any interest in any of the Project Documents (except under the Loan Documents).

Section 7.18. Operation and Maintenance of Project. Borrower shall (i)

use its best efforts to keep the Project and the Improvements fully leased in a manner consistent with the

highest commercial use thereof and at prevailing rates, (ii) enter into appropriate leases, service contracts and maintenance or operating agreements in accordance with the terms of this Agreement and the other Loan Documents, and (iii) make all necessary and customary capital improvements, repairs, replacements, additions, renovations or refurbishing of or to the Trust Estate. Borrower shall incur and pay or cause to be paid all costs, expenses and charges necessary or appropriate to comply with the requirements of this Section 7.18.

Section 7.19. Environmental. No Hazardous Material shall be used

during construction of the Project unless there exists no practical alternative thereto and then such Hazardous Material shall be used and stored in strict compliance with all Laws and shall be removed in its entirety from the Premises promptly upon completion of such use. Borrower shall establish and maintain a procedure to monitor the compliance of the Project with all applicable Laws relating to Hazardous Materials.

Section 7.20. Other Business. Borrower shall not engage in any

business other than the developing, constructing, operating, owning, managing, financing, and leasing of the Project and Phase II and the ownership of Lot 872. Except with Lender's prior written approval, not to be unreasonably withheld, Borrower will not change the height, bulk, location or use of Phase II or Lot 872 from that heretofore presented to Lender so as to materially adversely affect the Premises.

Section 7.21. Further Encumbrance. Except as otherwise expressly

permitted by this Section 7.21, Borrower shall not further mortgage, encumber for debt or pledge the Project, Trust Estate, Revenues or any part thereof or any interest therein (including, without limitation, any air or development rights). Borrower shall be permitted to further encumber for debt, mortgage or pledge the Trust Estate or a part thereof as security for additional indebtedness ("Subordinate Financing") provided that all of the following conditions have been met by Borrower to Lender's reasonable satisfaction or Lender has waived the same in writing:

(a) Borrower has validly elected the Fixed Rate under the Note for an Interest Period ending on the Maturity Date.

(b) The Debt Service Coverage Ratio (calculated as if the Subordinate Financing had occurred and payments of principal and interest were payable with respect thereto) for the month preceding the month in which the Subordinate Financing is to occur, shall be equal to or greater than 1.15.

(c) After taking the Subordinate Financing into account, the Loan to Value Ratio as of the date of the Subordinate Financing shall be no greater than eighty percent (80%) .

(d) Borrower shall give Lender telephonic notice, promptly confirmed in writing, of Borrower's intention to engage in any such Subordinate Financing at least twenty (20) days prior to Borrower's entering into such Subordinate Financing. Not later than ten (10) days prior to the closing of such Subordinate Financing, Borrower shall submit to Lender all documentation with respect to such Subordinate Financing. Lender shall have ten (10) days from receipt of such documentation to approve such documentation and if Lender shall not have responded to Borrower's request for approval within ten (10) days after receipt thereof, Lender shall be deemed to have approved the documentation with respect to such Subordinate Financing. All documentation with respect to any Subordinate Financing shall be approved by Lender if such documentation, in Lender's reasonable judgment, (i) expressly provides that the Subordinate Financing and all rights given to the lender under such Subordinate Financing (".Subordinate Lender") shall be subject and subordinate to the Loan and all Loan Documents (as then in effect) in all respects, and (ii) provides for the following:

(A) The Subordinate Financing shall not contain any provisions which conflict with the Deed of Trust or the Assignment of Rents with regard to the collection and release and of insurance proceeds, distribution of condemnation awards and collection of rents following an Event of Default or shall expressly provide that the Deed of Trust and Assignment of Rents control with respect to the foregoing. The Subordinate Financing shall not assign to the Subordinate Lender any interest in the Rents payable under a Government Lease (as those terms are defined in the Assignment of Rents).

(B) Any debt service or other payment paid on the Subordinate Financing out of Revenues from the Trust Estate after an Event of Default has occurred, shall be held in trust by the Subordinate Lender for the benefit of Lender and shall be paid over to Lender upon request if Lender has given the Subordinate Lender notice of such Event of Default and the Subordinate Lender (i) has not cured such Event of Default within ten (10) days after receipt of notice thereof, or (ii) with respect to non-monetary defaults, (A) the Subordinate Lender has not commenced action to remedy such Event of Default within thirty (30) days after notice and (B) the Subordinate Lender is not pursuing such remedial action to completion with due diligence, provided in each case that at the time of such action by the Subordinate Lender the Borrower would be entitled to cure the applicable Event of Default.

(C) The Subordinate Lender shall enter into non-disturbance agreements with Space Tenants under Space Leases if Lender has entered into or, after the date of the Subordinate Financing, Lender enters into such agreements with such tenants.

(e) There shall exist at the time of such Subordinate Financing no Event of Default nor any fact or circumstance, which with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not then being cured in accordance with the terms of this Agreement and the other Loan Documents.

(f) The Subordinate Lender shall be an Institutional Lender at the time of entry into the Subordinate Financing.

(g) With respect to any Subordinate Financing permitted hereunder and approved by Lender pursuant hereto, Lender shall, upon request and at Borrower's sole cost, enter into an agreement with the Subordinate Lender pursuant to which Lender shall agree to provide the Subordinate Lender with (i) concurrent notices of any notice of default which could become an Event of Default under any of the Loan Documents, and (ii) an opportunity to cure any such default within the applicable notice and grace periods, if any, given to Borrower under the applicable provisions of any of the Loan Documents.

Section 7.22. Transfers. Borrower will not cause, permit or suffer a

Transfer, other than to a Permitted Transferee, a Subordinate Lender or a party claiming by, through or under a Subordinate Lender (by virtue of foreclosure, sale or by accepting a deed in lieu of foreclosure), without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 7.22, Lender shall consider, by way of illustration and not in limitation, the following factors in its determination of granting consent to any such Transfer: (i) the financial condition of the proposed transferee; (ii) the general reputation in the community of the proposed transferee; and (iii) the management and real estate experience of the proposed transferee. For purposes of this Section 7.22, if Lender has not responded to Borrower's request for approval or consent within ten (10) days following receipt thereof, Lender's rights regarding prior approval or consent shall be deemed waived; provided, however, Lender's right to consent or approve the proposed transferee shall not be deemed waived if Lender has requested further information concerning such proposed transferee as in its reasonable judgment is necessary to evaluate Borrower's request. Lender shall have an additional ten (10) day period following receipt of such additional information by Lender in which to approve or disapprove the proposed transferee. If Lender has not

responded within the ten (10) day period referred to in the preceding sentence, Lender shall be deemed to have waived its right to so consent.

Section 7.23. Reimbursable Expenses. Borrower shall reimburse Lender

for all Out-of-Pocket Costs in connection with (a) the preparation, negotiation, execution and delivery of the Loan Documents and all certificates, agreements, instruments and opinions delivered in connection herewith and therewith, (b) any amendment, modification or supplement to any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (c) any waiver of any provision of this Agreement, any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (d) any restructuring of the terms of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, and (e) the administration and enforcement of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith from and after the occurrence of an Event of Default or following an acceleration of the Loan. All of the foregoing expenses shall be reimbursed by Borrower whether or not Lender gives notice to Borrower of such Event of Default under this Agreement or takes any other action to enforce the provisions of any of the Loan Documents or any agreement or instrument delivered in connection herewith and therewith. Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, recording and enforcement of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith and shall save Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes and fees. All amounts payable pursuant to this Section 7.23 shall be due and payable not later than ten (10) Business Days following written demand by Lender, together with interest thereon (i) if Lender has actually paid such amount, at the Prime Rate (as defined in the Note) from the date of demand therefor through the date which is ten (10) Business Days after demand therefor (the "Due Date"), and (ii) whether or not Lender has actually paid such amount, at the Involuntary Rate from the Due Date through the date of payment by Borrower. The obligation to pay such amounts shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of any such liability, claims or losses pursuant to this Section 7.23 exists.

Section 7.24. Preservation of Existence. Borrower shall, as long as

any part of the Loan remains unpaid, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a partnership under the laws of the state of its formation and will comply with all regulations, rules, statutes, orders and

decrees of all Governmental Authorities applicable to the Trust Estate or any part thereof, subject, however, to Borrower's right to contest such regulations, rules statutes, orders and decrees pursuant to Section 1.11 of the Deed of Trust.

Section 7.25. Future Tenant Estoppel Certificates.

(a) From time to time during the Loan Term upon Lender's request, but not more often than once each calendar year other than following the occurrence of an Event of Default, Borrower shall, within forty-five (45) days following request by Lender, deliver to Lender estoppel certificates in the form prepared by Lender with respect to all Major Leases and shall use all reasonable efforts to deliver to Lender such estoppel certificates with respect to all other of the Qualifying Space Leases, which estoppel certificates shall be executed by Borrower and each other party to the appropriate Qualifying Space Lease, stating (i) that the Qualifying Space Lease is unmodified and in full force and effect or, if modified, stating the modification(s), if any, (ii) whether or not, to the best knowledge of each party to such Qualifying Space Lease, any other party to such Qualifying Space Lease is in default in any respect under such Qualifying Space Lease and, if so, specifying such default, and (iii) any other matters that may be reasonably requested by Lender. If Borrower is unable to deliver any such estoppel certificate to Lender because, despite Borrower's reasonable efforts, the Space Tenant from whom it has been requested has not delivered it to Borrower, Borrower shall deliver Borrower's certificate to Lender as to the matters set forth in Clauses (i)-(iii) and shall deliver the Space Tenant's estoppel certificate to Lender within two (2) Business Days after receiving it.

(b) At any time during the Loan Term, Borrower shall, within ten (10) days after request by Lender, execute and deliver Borrower's certificate stating (i) that the Qualifying Space Leases are unmodified and in full force and effect as modified, stating the modification(s), and (ii) that all rents due under Qualifying Space Leases have been paid when due, or if not, specifying the Qualifying Space Leases under which rents have not been paid when due.

Section 7.26. Use of Proceeds. Borrower will use the proceeds of the

Loan and any Completion Deposit solely to pay Project Costs.

Section 7.27. Publicity. Promptly following the Initial Disbursement,

Borrower shall, at its sole expense, publish in a publication of its choice a "tombstone notice" of the Loan in form and substance mutually satisfactory to Lender and Borrower.

Section 7.28. Name. Borrower shall not change its name without

Lender's prior consent.

Section 7.29. Consultants' Fees. Borrower shall pay all fees and

expenses of Lender's Consultants which are reasonable and customary, such obligation on the part of Borrower to survive the repayment of the Loan. After a default by Borrower in the payment of any of the fees, costs and other expenses of Lender's Consultants or after any Event of Default, Lender, in its discretion, may pay such fees, costs and other expenses at any time by a Disbursement for Soft Costs under the Loan or from any Completion Deposit and Borrower hereby authorizes Lender to make such payments.

Section 7.30. Partnership Agreement; No Partnership Distributions.

Borrower shall not amend its agreement of limited partnership so as to limit the authority of the current general Partner of Borrower to control and act for Borrower, shorten the term of such agreement, modify the permitted purposes of Borrower, or adversely affect either the ability of Borrower to perform its obligations under the Loan Documents or the interests of Lender thereunder. Except as part of the Initial Disbursement to reimburse Land and related acquisition costs, Borrower will not, without the prior written consent of Lender, make any distribution of partnership assets or proceeds to any Partner of Borrower in such Person's capacity as a Partner other than for reimbursement of actual expenses incurred by a Partner of Borrower on behalf of Borrower, whether or not such a partnership distribution is permitted under the terms of Borrower's partnership agreement; provided, however, if (a) Completion of Construction shall have occurred; (b) no monetary default or Event of Default under the Loan Documents shall then exist or would exist after giving effect to the proposed distribution, then, to the extent of Net Cash Flow excluding cash from the Loan, Borrower, not more frequently than quarterly, may make distributions of partnership assets or proceeds (other than Loan proceeds) to any Partner of Borrower. Nothing in this Section 7.30 shall prohibit Borrower's paying a development fee to a Partner or Affiliate of Borrower, provided that such payment is pursuant to and in accordance with an agreement heretofore approved by Lender or hereafter entered into with Lender's approval, which approval shall not be withheld or delayed unreasonably provided that the fee to be paid thereunder is within the amount of the Item established therefor in the Project Budget.

Section 7.31. Major Leases. Borrower shall fully perform in a timely

fashion all of its obligations under all Major Leases, including the OCC Lease.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following specified

events shall constitute an "Event of Default" under this Agreement whether the occurrence of such event shall be voluntary or involuntary or come about or be affected by operation of law or otherwise:

(a) If any representation, warranty or statement made by (i) Borrower herein, in any other Loan Document or any Request for Disbursement, certificate, document, financial or other statement given by Borrower in connection with the Loan, or (ii) Guarantors in any of the Guarantees or any certificate, document, financial or other statement given by Guarantors in connection with the Loan, shall prove to have been untrue or incorrect in any material respect when made and the existence of the facts constituting such untruth or incorrectness shall have a material and adverse effect upon the value of the Trust Estate or Lender's security for the Loan; or

(b) If any Lien Or security interest created by any Loan Document, at any time after the execution and delivery thereof and for any reason, ceases or fails to constitute a valid, perfected and subsisting first lien or security interest in and to the property purported to be covered thereby, subject only to the Permitted Exceptions; or

(c) If the Project or any portion thereof is not completed in substantial conformity with the Plans in an orderly and expeditious manner substantially in accordance with the time references set forth in the Construction Schedule or before the Completion Date, subject to the provisions of Section 7.01, or is not, through Completion of Construction, free and clear of mechanics', materialmen's and other Liens asserted by suppliers of labor, services, equipment or material to the Project, subject to Borrower's rights under the Deed of Trust to contest Liens; provided, however, that Borrower's failure to achieve Completion of Construction by the Completion Date (as same may be extended by Force Majeure) shall not constitute an Event of Default if (i) the requirements set forth in clauses (a), (b), and (f) of the definition of Completion of Construction have by such date been satisfied, (ii) Borrower's failure to satisfy the requirements in clauses (c), (d), and (e) of the definition of Completion of Construction is due solely to Unavoidable Government Delay, (iii) the written declaration required by Section 2.3 of the OCC Lease has been executed, setting forth all information therein required, including the Lease Commencement Date (as defined in the OCC Lease), and (iv) by July 1, 1992 either

(A) Borrower shall have achieved Completion of Construction or (B) Lender shall be and remain reasonably satisfied that Borrower's continuing failure to achieve Completion of Construction is not reasonably likely to have a material adverse effect on the security for the Loan; or

(d) If all or a substantial or material portion of the Trust Estate is injured, damaged or destroyed by fire or other casualty or damaged thereby to an extent that would, in Lender's reasonable judgment, prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date; provided, however, that such damage shall not constitute an Event of Default if Borrower shall be entitled to restore the Trust Estate in accordance with the terms of the Deed of Trust; or

(e) If Borrower is enjoined by any Governmental Authority from constructing the Project or performing its obligations hereunder and such injunction is not released or stayed within thirty (30) days after the granting thereof, or such longer period of time, not to exceed sixty (60) days upon the prior consent of Lender, not to be unreasonably withheld, unless Borrower demonstrates to the reasonable satisfaction of Lender that such injunction will be released or stayed and Lender reasonably determines that such injunction will not prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date; or

(f) If all or a substantial or material portion of the Trust Estate is condemned, seized or appropriated by any Governmental Authority; provided, however, that if such a taking is a partial taking and Borrower shall be entitled to restore the Trust Estate in accordance with the Deed of Trust, such taking shall not be deemed to be an Event of Default; or

(g) If Completion of Construction shall not occur by the Completion Date; or

(h) If a default by Borrower shall occur under the Architect Contract, Construction Contract or any Major Lease (including the OCC Lease), which default Lender reasonably determines is likely to affect Borrower's ability to complete construction of the Project before the Completion Date, and, if such default is subject to cure, shall remain uncured on the date that is the last day of the grace period applicable to such default; or

(i) If the General Contractor or any Architect shall fail to perform or observe any term, covenant or agreement contained in the Construction Contract or any

Architect Contract, respectively, or in the consent signed by the General Contractor or such Architect for the benefit of Lender and (i) Lender has determined, in its reasonable judgment, that such failure would have a material adverse effect on the Project or would prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date, (ii) such failure shall continue for a period of twenty (20) calendar days from the date that notice of such determination is given to Borrower, (iii) Borrower shall fail to submit to Lender the name of a proposed successor General Contractor or Architect within twenty (20) calendar days thereafter, (iv) Lender shall disapprove such proposed successor General Contractor subsequent to such twenty (20) day period (provided that Lender's approval shall not be unreasonably withheld), and (v) Borrower shall fail to enter into a replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such replacement General Contractor or Architect and such replacement Architect or General Contractor shall fail to execute a consent in favor of Lender substantially in the form, respectively, of Exhibit J or K within such time period; provided, however, that if Lender fails to approve the first successor General Contractor or Architect submitted by Borrower, then Borrower shall have an additional ten (10) days between steps (iv) and (v) above to submit the name of a second proposed successor General Contractor or Architect and Lender shall have an additional ten (10) days after such subsequent submission to approve such proposed successor; or

(j) The General Contractor or the Architect shall cease to act as General Contractor or Architect for the Project, and (i) Borrower shall fail to submit to Lender the name of a proposed successor General Contractor or Architect within thirty (30) calendar days thereafter, or (ii) Lender shall disapprove such proposed successor General Contractor or Architect subsequent to such thirty-day period (provided that Lender's approval shall not be unreasonably withheld) or (iii) Borrower shall fail to enter into a replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such replacement General Contractor or Architect and such replacement Architect or General Contractor shall fail to execute a consent in favor of Lender substantially in the form, respectively, of Exhibit J or K within such time period; provided, however, that if Lender fails to approve the first successor General Contractor or Architect proposed by Borrower, Borrower shall have an additional twenty (20) days between steps (ii) and (iii) above to propose a second successor General Contractor or Architect, which Lender shall expeditiously approve or disapprove, and there shall be no Event of Default if Borrower enters into a

replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such second replacement General Contractor or Architect; or

(k) If the Loan is not in balance and the Contractor or Subcontractor for the Item or Items out of balance have not provided payment and performance bonds as provided in Section 2.14 within thirty (30) days after notice from Lender;

(l) If Borrower shall fail to perform or observe any other covenant, term or agreement on its part contained in this Agreement and not otherwise provided for in this Section 8.01, which failure shall have continued unremedied for thirty (30) days after notice thereof has been given to Borrower by Lender, provided, however, that if in Lender's reasonable judgment the nature of the failure referred to in this clause (1) is such that it is curable by Borrower but cannot be cured within said thirty (30) days, then an Event of Default shall not be deemed to have occurred hereunder so long as (x) Borrower has commenced to cure said failure within said thirty (30) day period, and has notified Lender of such commencement within said thirty (30) days, (y) Borrower thereafter proceeds with diligence to cure the same in Lender's reasonable judgment, and (z) sufficient progress is being made in curing such default, in Lender's reasonable judgment; or

(m) If any Event of Default shall have occurred and remain uncured under any other Loan Document; or

(n) If a default shall occur under any guaranty now or hereafter provided in respect of the Loan, including without limitation the Guarantees, and such default shall remain uncured beyond the applicable notice and grace period thereunder, if any; or

(o) If any of the Guarantees is not in effect, unless it has lapsed pursuant to its terms, or the obligation to make payments of the guaranteed obligations under any such guaranty is determined by a court of competent jurisdiction to be unenforceable; or

(p) The termination, liquidation or dissolution or the commencement of proceedings towards the liquidation or dissolution of Borrower, or a general Partner of Borrower or a general partner of a general Partner of Borrower (unless immediately reconstituted pursuant to the provisions of its partnership agreement or applicable law or in connection with a Transfer to a Permitted Transferee); or

(q) The occurrence, prior to Completion of Construction, of a material and adverse change in the financial condition of Borrower or any Guarantor which, in the sole judgment of Lender, renders it unable to fulfill its financial obligations as they become due; or

(r) If Borrower is unable to satisfy or cause the satisfaction of any condition for the receipt of a Disbursement, or to resolve the situation to the reasonable satisfaction of Lender, for a period in excess of thirty (30) days after written notice from Lender; or

(s) If any certificate of occupancy or building permit for the Project or any portion thereof is revoked, cancelled or otherwise ceases to be effective; provided, however, that such revocation, cancellation or suspension shall not be an Event of Default if, prior to Completion of Construction, Borrower is diligently proceeding to cure such default, such cure may be effected within the Project Budget or with a Completion Deposit, and the time required to cure such default does not materially adversely affect Borrower's ability to meet the Construction Schedule or adversely affect any of Lender's collateral security for the Loan, and after completion of Construction, such revocation, cancellation or suspension shall not permit the OCC to cease paying rent under the terms of the OCC Lease.

Section 8.02. Remedies.

(a) If any Event of Default shall occur, all obligations of Lender under this Agreement, including without limitation Lender's obligation to make any further Disbursements or to advance funds from any Completion Deposit, at the option of Lender, shall cease and terminate, and Lender may declare the entire outstanding Loan, including interest thereon and any other fees, costs and charges then payable under any of the Loan Documents, immediately due and payable, whereupon the same shall become immediately due and payable, without presentment, protest or further demand or notice of any kind, all of which are hereby expressly waived by Borrower; and, upon such occurrence of an Event of Default or at any time following Lender's declaration that the Loan is due and payable as provided above, Lender, in addition to the foregoing, may immediately exercise any and all other rights, remedies and recourse available to it at law or in equity or under this or any of the other Loan Documents (including, without limitation, the right to sell the Trust Estate and/or foreclose any and all liens and security interests securing the repayment of the Loan under the Deed of Trust and the other Loan Documents).

(b) Borrower hereby irrevocably constitutes and appoints Lender, the Inspecting Engineer and/or any other independent contractor selected by Lender as its true and lawful attorney-in-fact, with full power, of substitution, for the purpose of performing Borrower's obligations in the name of Borrower under the Loan Documents and completing construction of the Project, whether or not substantially in accordance with the Plans (with such additions, changes and corrections in the Plans as shall be necessary or desirable in Lender's opinion to complete the Project), but Lender may act pursuant to this power-of-attorney only after an Event of Default occurs. The foregoing power-of-attorney shall be deemed coupled with an interest and shall be irrevocable until payment in full of the Loans and all other sums due and owing to Lender under any of the Loan Documents. Without limiting the generality of the foregoing, said attorney-in-fact is hereby empowered by Borrower to do any one or more of the following:

(i) To use any funds of Borrower in Lender's possession and any Disbursements not yet approved or disbursed hereunder, for the purpose of completing the Project in the manner called for by the Plans or as provided in clause (ii) below and all sums advanced hereunder and any other amounts expended by Lender to complete the Project shall be deemed to have been advanced to or for the account of Borrower pursuant hereto;

(ii) To make such additions, changes and correction in the Plans as shall be necessary or desirable in Lender's opinion to complete the Project as contemplated by the Plans;

(iii) To employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(iv) To employ attorneys to defend against attempts to interfere with the exercise of the powers granted hereby;

(v) To pay, settle or compromise all bills and claims which are or may be liens against the Premises or Project or may be necessary or desirable for the completion of the Project or the clearance of title;

(vi) To execute all applications and certificates in the name of Borrower which may be required by any construction contract;

(vii) To prosecute and defend all actions or proceedings in connection with tile construction of the Project

on the Premises and to take such action, require such performance and do any and every other act as is deemed reasonably necessary by Lender to complete the Project;

(viii) To let new or additional contracts with the same contractor(s) or others to the extent not prohibited by their existing contracts;

(ix) To employ watchmen and erect security fences to project the Project from injury; and/or

(x) To take such action and require such performance as it deems necessary under any of the bonds which may be, or insurance policies to be or which have been, furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder and, in connection therewith, to execute instruments of release and satisfaction.

(c) Without limiting any other similar rights herein granted, from and after the occurrence of an Event of Default, Borrower does irrevocably permit and authorize Lender to advance any Disbursement directly to General Contractor, Contractors, Subcontractors, materialmen, suppliers and other persons to pay for the completion of the Project, but Lender is not under any obligation so to do. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and all such advances shall satisfy pro tanto the obligations of Lender hereunder as fully as if made to or for the

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account of Borrower regardless of the disposition thereof by any contractors, materialmen, suppliers or such other persons. Lender may impose any condition for such direct payment including, but not limited to, receipt of estoppel certificates, waivers of lien, releases and the like.

(d) Any and all costs and expenses (including attorneys' fees and disbursements) incurred by Lender in pursuing its remedies hereunder and exercising such power-of-attorney shall be additional indebtedness of Borrower to Lender hereunder, and shall be secured by the Security Documents.

(e) Other than as may result from the negligence or willful misconduct of Lender or its agents, servants or employees, Borrower does hereby indemnify and hold Lender harmless from and against any and all liability, claims, cost, damage, and Out-of-Pocket Costs which may be imposed upon or incurred by Lender by reason of action taken by Lender hereunder, and from and against any and all claims or 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 and conditions of any

obligation of Borrower, to the extent same (i) arise during or relate to the period prior to Lender's taking possession of the Trust Estate following the occurrence of an Event of Default or (ii) arise during or relate to the period following Lender's taking possession of the Trust Estate and involve the acts or failures to act of Borrower or its agents, servants or employees. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, as a condition of Borrower's indemnity obligation under this Section 8.02(c), (i) Lender shall give prompt notice to Borrower of any such action, suit or proceeding, and (ii) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender and (iii) if Borrower elects to defend such action, suit, or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower unless Borrower waives its right to the foregoing indemnification. Lender may, however, engage its own counsel, at its expense, to participate in said defense and in such case, the respective counsel for Borrower and Lender shall cooperate with each other with respect thereto (it being understood that at all times counsel for Borrower shall control such defense) and shall provide each other with copies of all papers filed in such case which, when practical, shall be delivered prior to filing thereof, or otherwise contemporaneously with filing thereof, and with such other papers as shall be reasonably requested by the other counsel which shall be delivered promptly upon request therefor. All sums determined to be payable by Borrower to Lender by reason of the foregoing indemnity pursuant to a non-appealable order of a court of competent jurisdiction, shall be due and payable by Borrower to Lender within ten (10) Business Days after demand therefor or on such later date as specifically set forth in such demand, and if such sums are not timely paid, said sums shall bear interest at the Involuntary Rate from the date such payment was due through the date of payment.

(f) Notwithstanding anything to the contrary contained herein, Lender is not and shall not be obligated to attempt to use, operate, occupy or manage the Trust Estate or any part thereof or perform any of the terms conditions and agreements herein or in any of the other Loan Documents or in any other documents on the part of Borrower to be performed, and Lender shall have no liability whatsoever to Borrower or, unless and until Lender takes possession of the Trust Estate following the occurrence of an Event of Default, any other person or entity (other than by reason of its gross negligence or wilful misconduct) for failing, attempting or ceasing to perform the same, or for the manner of performing or attempting to perform the same, or any part thereof.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Expenses. Borrower shall pay all Out-of-Pocket Costs

and all costs and expenses incurred by Borrower in connection with the Loan and any advance thereunder including, without limitation, the fees and expenses set forth in Section 7.30 hereof, recording fees for any documents that Lender reasonably deems it appropriate to record, recording taxes when required by the terms of this Agreement to be paid by Borrower (including any such costs associated with recording tax audits or investigations demanded or conducted by a state or local tax authority with respect to the Deed of Trust) transfer taxes, license and permit fees, appraisal fees, costs of environmental inspections, filing fees, title premiums and other fees of the Title Company, as and when appropriate.

Section 9.02. Entire Agreement. This Agreement, taken together with

all of the other Loan Documents and all certificates and other documents delivered by Borrower to Lender, embodies the entire agreement with respect to the subject matter hereof, and supercedes or incorporates all prior negotiations or agreements written and oral.

Section 9.03. Counterparts. This Agreement may be executed in any

number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

Section 9.04. Governing Law/Venue/Jurisdiction. This Agreement and

the other Loan Documents are to be governed by and construed in accordance with the laws of the District of Columbia. By its execution and delivery of the Note and this Agreement, Borrower shall be deemed to have agreed that the appropriate venue and jurisdiction for any litigation pertaining to the Loan, the Note or the Loan Documents shall be in the District of Columbia and that the appropriate location for any foreclosure sale pertaining to the collateral described in the Loan Documents shall be in the District of Columbia.

Section 9.05. Severability. If any of the terms and provisions

specified herein is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such term or provision to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the terms

and provisions herein, shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable term or provision was not contained therein, and that the rights, obligations and interest of Borrower and Lender under the remainder of this Agreement, shall continue in full force and effect.

Section 9.06. Successors and Assigns. All covenants and agreements

herein shall bind the respective successors and assigns of Borrower and Lender (but this provision is not intended nor shall it be construed to permit Borrower to transfer or assign its rights and obligations hereunder or under the Loan Documents except as permitted by the provisions of the Loan Documents), whether so expressed or not, and all such covenants shall inure to the benefit of Lender and Borrower and their respective nominees, successors and assigns, whether so expressed or not. All successors and assigns of Borrower, including all Persons succeeding to Borrower's interest in the Trust Estate as permitted by the Loan Documents or otherwise consented to by Lender, shall, prior to such succession or assignment, expressly assume in writing all of Borrower's obligations under the Loan Documents.

Section 9.07. Setoff. Borrower hereby waives any and all rights of

setoff with respect to principal and interest due on the Note and any other payments due Lender under the Loan Documents, including rights of setoff with respect to the Note and the Loan Documents which may arise from claims, transactions or occurrences heretofore unknown to Borrower.

Section 9.08. Time of the Essence. Time is of the essence with regard

to Borrower's performance under the terms and provisions of this Agreement, the other Loan Documents and any amendment, modification or revision hereof or thereof, subject, however, to the applicable grace periods, if any, set forth in the Loan Documents. No extension of time for the payment of the Loan or any installment thereof made by agreement with any person now or hereafter liable for payment of the Loan shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Agreement, either in whole or in part.

Section 9.09. Headings. The Table of Contents, and the titles and

headings of Articles and Sections of this Agreement are intended for convenience only, and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 9.10. Notices. Each notice, request, demand, instruction or

other communication required by the Note, this Agreement or the Loan Documents to be given to Borrower or

Lender shall be in writing and shall be either (a) personally delivered to the parties named below by a commercial messenger service regularly retaining receipts for such delivery (b) sent by registered or certified mail, return receipt requested, or (c) delivered by a reputable air courier service such as Federal Express, Express Mail, Airborne or Emery Air, shall be effective upon delivery thereof to the addresses, and shall be addressed to the parties as set forth below:

To Borrower: Southwest Market Limited Partnership
 c/o Boston Properties
 8 Arlington Street
 Boston, Massachusetts 02116
 Attention: Vice President-Treasurer

and Boston Properties
 599 Lexington Street, Suite 1300
 New York, New York 10022
 Attention: Senior Vice President

and Boston Properties
 500 E Street S.W.
 Washington, D.C. 20024
 Attention: Regional General Counsel

To Lender: The Sumitomo Bank Limited,
 New York Branch
 One World Trade Center
 Suite 9651
 New York, New York 10048
 Attn: Real Estate Finance
 Department

With a Copy to: Gibson, Dunn & Crutcher
 1050 Connecticut Avenue, N.W.
 Washington, D.C. 20036
 Attn: Michael A. Barrett, Esq.
 (Matter No: 88291-00038)

If Lender or Borrower desires to change its address for the purpose of receipt of notice, or to change the other party to receive a copy of notice, such notice or change of address or recipient shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Any notice given in accordance with the terms hereof, the delivery of which is refused by the addressee, shall be effective at the time of such attempted delivery.

Section 9.11. Successive Remedies. No power or remedy herein

conferred is exclusive of or shall prejudice any other power or remedy of Lender given by law or by the terms of any of the Loan Documents. Each such power or remedy may be exercised by Lender from time to time as often as it deems necessary.

Section 9.12. No-Waiver. No failure by Lender to insist, or election

by Lender not to insist, upon the strict performance of any of the terms, provisions or conditions of this Agreement or any of the Loan Documents shall be deemed to be a waiver of the same or any other term, provision or condition thereof and Lender shall have the right at any time thereafter to insist upon strict performance of any and all of the same. If Lender advances any portion of the Loan in the absence of strict compliance with any or all of the conditions of Lender's obligations to make such advance, the same shall be deemed to have been made in pursuance of this Agreement and not to be a modification hereof.

Section 9.13. Estoppel Certificates/Non-disturbance/Other Agreements.

Within ten (10) Business Days after request by Borrower, (a) Lender shall deliver to Borrower an estoppel certificate, duly executed and acknowledged by Lender, stating the outstanding principal amount of the Loan and whether there exists any Event of Default under any of the Loan Documents, and (b) Lender shall execute and deliver a subordination, non-disturbance and attornment agreement in substantially the form attached to the Deed of Trust as Schedule C, for any Qualifying Space Lease entered into subsequent to the date hereof. If Borrower shall pay, in full, the principal of and premium, if any, and interest in the Note in accordance with the terms thereof and hereof and all other sums payable hereunder and under the other Loan Documents by Borrower and shall fully repay the Loan and shall comply with all the terms, conditions and requirements hereof and the other Loan Documents, then upon prior notice to Lender, Lender shall on such date of payment execute and deliver to Borrower such discharges, assignments and/or satisfactions as Borrower may reasonably request and shall accommodate Borrower by appearing at the closing of such assignment, discharge or satisfaction or make such other arrangement with respect thereto mutually satisfactory to Lender and Borrower, provided that Borrower shall pay all Out-of-Pocket Costs with respect thereto.

Section 9.14. Cross-Default. Any Event of Default under this

Agreement shall be deemed to be an Event of Default under each of the Loan Documents, entitling Lender to exercise any or all remedies available to Lender under the terms of any or all Loan Documents.

Section 9.15. Purpose of Loans. Borrower hereby represents and

warrants that the indebtedness evidenced by the Note is being obtained solely for the purpose of carrying on a business or commercial enterprise. Nothing contained in the preceding sentence shall be deemed to be a limitation of Borrower's use of the proceeds of the Loan.

Section 9.16. Inconsistencies with Loan Documents. In the event of any

conflict between this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement shall control; provided, however, that any provision of any other Loan Documents which imposes additional burdens on Borrower or restricts the rights of Borrower or gives Lender additional rights or remedies shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

Section 9.17. Survival. All of the representations, warranties,

terms, covenants, agreements and conditions contained in this Agreement shall specifically survive the execution and delivery of this Agreement and the other Loan Documents and the advance of the Loan and shall, unless otherwise expressly provided, continue in full force and effect until the Loan or the portion thereof which has been advanced, together with interest thereon, and all other costs, charges and other sums payable hereunder or thereunder, are paid in full.

Section 9.18. Indemnification. Borrower shall indemnify Lender for

and hold Lender harmless from and against any and all claims, damages, losses, liabilities, Out-of-Pocket Costs of any kind whatsoever (other than such Out-of-Pocket Costs which are the responsibility of Lender pursuant to the terms of this Agreement) which Lender may incur (or which may be claimed against Lender) by reason of, or in connection with (a) the destruction of the Trust Estate (or any part thereof in a casualty for which insurance was required under the Loan Documents and was not obtained and kept in full force and effect by Borrower, (b) all obligations, covenants, representations and warranties of Borrower under the Trust Estate relating to Hazardous Material to the full extent of any losses or damages (including those resulting from diminution in the value of the Trust Estate incurred by Lender as a result of the existence of Hazardous Material to the extent such Hazardous Material existed prior to the date Lender has taken possession and has assumed control of the Trust Estate pursuant to the Deed of Trust, and (c) any action or proceeding to which Lender is made a party by reason of Lender's holding of an interest in the Trust Estate; provided, however, Borrower shall have no obligation to indemnify Lender for any such claims, damages, losses, liabilities, costs or expenses arising by

reason of the negligence or willful misconduct of Lender or Lender's agents, servants or employees. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, as a condition to Borrower's indemnity obligation under this Section 9.18 (i) Lender shall give prompt notice to Borrower of any such action, suit or proceeding, (ii) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (iii), if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower, unless Lender waives its right to the foregoing indemnification. Lender may, however, engage its own counsel, at its expense, to participate in said defense and in such case, the respective counsel for Borrower and Lender shall cooperate with each other with respect thereto (it being understood that at all times counsel for Borrower shall control such defense) and shall provide each other with copies of all papers filed in such case which, when practical, shall be delivered prior to filing thereof, or otherwise contemporaneously with filing thereof, and with such other papers as shall be reasonably requested by the other counsel which shall be delivered promptly upon request therefor. All sums determined to be payable by Borrower to Lender by reason of the foregoing indemnity pursuant to a non-appealable order of a court of competent jurisdiction shall be due and payable by Borrower to Lender within ten (10) Business Days after demand therefor or on such later date as specifically set forth in such demand, and if such sums are not timely paid, said sums shall bear interest at the Involuntary Rate from the date such payment was due through the date of payment. This Section 9.18 shall survive the payment in full of the Indebtedness.

Section 9.19. No Agency, Partnership or Joint Venture: Nonliability

of Lender.

(a) Lender is not the agent or representative of Borrower, and Borrower is not the agent or representative of Lender. Borrower and Lender intend and agree that the relationship between them shall be solely that of creditor and debtor. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Borrower and Lender.

(b) All inspections of the construction of the Project made by or through Lender are for purposes of administration of the Loan only and Borrower is not entitled rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans, state of completion or otherwise. Borrower shall make its own inspections of such construction to determine that the

quality of the work and all other requirements of such construction are being performed in a manner satisfactory to Borrower and in conformity with the Plans and all other requirements.

(c) By accepting or approving anything required to be observed, performed, fulfilled or given to Lender pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, survey, appraisal, lease or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Lender.

(d) Lender neither undertakes nor assumes any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, including without limitation matters relating to the quality, adequacy or suitability of: (i) the Plans (ii) Architects, Contractors, Subcontractors and other Persons employed or utilized in connection with the construction of the Improvements, or the workmanship of or the materials used by any of them, or (iii) the progress or course of construction and its conformity or nonconformity with the Plans.

(e) Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction.

Section 9.20. Negotiated Document. Lender and Borrower acknowledge

that the provisions and the language of this Agreement and the other Loan Documents have been negotiated, and agree that no provision of this Agreement or any other Loan Document shall be construed against either Lender or Borrower by reason of either Lender or Borrower having drafted such provision, this Agreement or any other Loan Document.

Section 9.21. Limitation on Recourse. Except for certain limited

personal liability as specified below, it is expressly understood and agreed that the extent of liability for payment by the Borrower of any sums due under this Agreement, the Note, the Deed of Trust or any of the other Loan Documents is limited to (a) the Trust Estate, and all Revenues therefrom received by the Borrower after the occurrence of an Event of Default which are not applied to the Loan or to Expenses of the Trust Estate, and (b) proceeds of insurance on said Trust Estate or proceeds on account of condemnation

thereof (to the extent such proceeds are not applied by the Lender in restoration or repair of the Trust Estate pursuant to the terms of the Deed of Trust), the Lender agreeing not to look personally to the Borrower, the general partners of the Borrower (a "P-1"), the partners or shareholders of any general partner of the Borrower (a "P-2"), or the owners of partnership or shareholder interests, whether owned or held directly or indirectly, in partners of the general partners of the Borrower (a "P-3"), for payment of any such sums. The Lender, for itself and its successors, endorsees, participants and assigns, hereby waives any right to enforce collection of any money judgment against any assets of the Borrower, any P-1, P-2, or P-3, other than as set forth in clauses (a) and (b) above, whether by reason of a judgment pursuant to an action brought under the Note or any action in foreclosure or otherwise for a deficiency judgment against the Borrower, and P-1, P-2, P-3, other than as set forth in clauses (a) and (b) above. However, notwithstanding the foregoing, the Borrower and each P-1, P-2 and P-3 shall be fully subject to personal liability (i) for fraud, respectively, by Borrower or such P-1, P-2 or P-3 and (ii) to the extent that the proceeds of insurance on the Trust estate, the proceeds on account of condemnation thereof, or Revenues of the Trust Estate are received by the Borrower or such P-1, P-2 or P-3 after the occurrence of an Event of Default and are not applied to the Loan, the Expenses of the Trust Estate or, in respect of insurance or condemnation proceeds, in restoration or repair of the Trust Estate pursuant to the terms of the Deed of Trust. The foregoing provisions shall not in any way be deemed to release, affect or impair the indebtedness and obligations evidenced by the Note or the security therefor, or the Lender's right to enforce its remedies under the Deed of Trust or any other of the Loan Documents by any action, including, without limitation, an action brought under the Note or any sale or foreclosure under the Deed of Trust. The foregoing provisions shall not in any way be deemed to release, affect or impair the indebtedness and obligations evidenced by the Note or the security therefor, or the Lender's right to enforce its remedies under the Deed of Trust or any other of the Loan Documents by any action, including, without limitation, an action brought under the Note or any sale or foreclosure under the Deed of Trust. Furthermore, none of the foregoing provisions shall in any way derogate from the liability which any person has assumed by a separate instrument in the nature of a guarantee of any obligation undertaken in connection with the Loan.

9.22 Actions on Behalf of Lender. Any consent, review, approval or

other similar act required of Lender under the terms of this Agreement or any other Loan Document may, at Lender's option, be done by or in consultation with any Consultant or Consultants to Lender. At Lender's direction,

Borrower shall provide such information to Consultants as may be required to be provided to Lender hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

SOUTHWEST MARKET LIMITED PARTNERSHIP,
a District of Columbia limited partnership

By: Boston Southwest Associates
Limited Partnership, a
Massachusetts limited
partnership, General Partner

ATTEST:

By: Independence Square, Inc.,
a Delaware corporation, its
managing general partner

/s/ Edward C. Wallace

Name: Edward C. Wallace

By: /s/ Mortimer B. Zuckerman

Mortimer B. Zuckerman
President

THE SUMITOMO BANK, LIMITED, a
Japanese banking institution, acting
through its NEW YORK BRANCH

ATTEST:

/s/ Lawrence Henry

Name: Lawrence Henry

By: /s/ Kozo Yoneda

Name: Kozo Yoneda

Title: Joint General Manager

CONSTRUCTION LOAN AGREEMENT

by and between

THE SUMITOMO BANK, LIMITED, NEW YORK BRANCH

and

SOUTHWEST MARKET LIMITED PARTNERSHIP

for

TWO INDEPENDENCE SQUARE

Dated as of February 22, 1991

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EXHIBITS

- Exhibit A - Form of Request for Disbursement
- Exhibit B - Form of Lien Waiver and Affidavit of Payment

SCHEDULES

- Schedule 4.12 - Project Budget
- Schedule 4.13 - Base Building Construction Schedule
- Schedule 6.11 - Project Documents
- Schedule 6.12 - Plans

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT made as of the 22 day of February, 1991 by and between SOUTHWEST MARKET LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the District of Columbia, having an office at c/o Boston Properties, 500 E Street, S.W., Washington, D.C., 20024 ("Borrower"), and THE SUMITOMO BANK, LIMITED, a Japanese banking institution acting through its NEW YORK BRANCH, having an office at One World Trade Center, Suite 9651, New York, New York 10048 ("Lender");

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

WHEREAS, pursuant to that certain commitment letter dated September 28, 1990 from Lender to Borrower, as amended by that certain letter from Lender to Borrower dated December 12, 1990 (collectively, the "Commitment"), and on the terms and conditions hereinafter set forth, Lender is willing to lend to Borrower the aggregate sum of up to ONE HUNDRED TWENTY-FIVE MILLION DOLLARS (\$125,000,000), to be evidenced by a promissory note and secured by, among other things, a lien upon certain real property located in the District of Columbia;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the capitalized

terms set forth in this Article I shall have the meanings given them in this Article I. Capitalized terms used in this Agreement but not defined in this Article I shall have the meanings set forth elsewhere in this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings given such terms in the Note or, if not defined therein, in the Deed of Trust (as those terms are hereinafter defined).

Affiliate. As used herein, "Affiliate" shall mean each of: (a) any

general Partner, (b) any Guarantor, and

(c) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Borrower, any general Partner or any Guarantor. For purposes of this and all other definitions, the term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities or equity interests, by contract, mutual understanding, family relationship or otherwise.

Agent. As used herein, "Agent" shall mean Commercial Settlements, -----
Inc., a District of Columbia corporation, an authorized agent of the Title Companies.

Agreement. As used herein, "Agreement" shall mean this Construction -----
Loan Agreement, including all schedules and exhibits hereto, as the same may be amended or otherwise modified from time to time.

Annual Operating Budget. As used herein, "Annual Operating Budget" -----
shall have the meaning given such term in Section 7.15(h) hereof.

Appraisal. As used herein, "Appraisal" shall mean an appraisal of the -----
fair market value of the Project performed by the Appraiser in accordance with the rules and guidelines of the American Institute of Real Estate Appraisers.

Appraised Value of the Trust Estate. As used herein, "Appraised Value -----
of the Trust Estate" shall mean the fair market value of Borrower's estate in the Trust Estate as set forth (a) as of the date hereof in the Appraisal performed and prepared by the Appraiser dated November 2, 1990, and delivered to Lender in connection with the making of the Loan or (b) thereafter, from time to time, in a current Appraisal prepared by the Appraiser.

Appraiser. As used herein, "Appraiser" shall mean Leggat McCall & -----
Werner Appraisal and Consulting Company, Inc., or another appraiser designated by Borrower and approved by Lender, such approval not to be unreasonably withheld or delayed.

Architect. As used herein, "Architect" shall mean each of the -----
following: (a) with respect to all of the Project other than the Tenant Improvements, Kohn Pedersen Fox Associates P.C.; (b) with respect to the GSA Tenant Improvements only, Greenwell Goetz Architects, P.C. ("Greenwell Goetz"); and (c) with respect to the Retail Tenant Improvements to be constructed pursuant to a Space Lease, the Person

designated by Borrower or the Space Tenant to perform the design services for such Retail Tenant Improvements. Architect also shall mean, with respect to the successor or successors to each Architect in (a), (b) and (c) above, each such other Person as may hereafter be designated by Borrower or a Space Tenant and reasonably approved by Lender in accordance with the terms hereof to act in the place of any of the foregoing Persons as architect for such Person's respective portion of the Project; provided, however, that Lender shall have such approval right only to the extent that Borrower has the right to designate and/or approve such successor Architect in accordance with the terms of such Person's contract with Borrower or a Space Tenant.

Architect Contract. As used herein, "Architect Contract" shall mean

each of the following: (a) with respect to Kolin Pedersen Fox Associates P.C., that certain agreement with Borrower dated December 18, 1989; (b) with respect to Greenwell Goetz, that certain agreement dated July 1, 1990 providing for interior design services for the GSA Tenant Improvements, (c) with respect to a Person designated by Borrower or a retail Tenant to perform the design services for Retail Tenant Improvements, the contract between Borrower and such Person for such services; and (d) the contract between Borrower and any subsequent Architect similarly providing for architectural services for the Project.

Assignment of Project Documents. As used herein, "Assignment of

Project Documents" shall mean the Collateral Assignment of Project Documents from Borrower to Lender of even date herewith in a form mutually agreed to by Borrower and Lender.

Assignment of Rents. As used herein, "Assignment of Rent" shall mean

the Collateral Assignment of Leases, Rents, Profits and Income and Pledge of Accounts with an effective date the same as the date hereof in a form mutually agreed to by Borrower and Lender.

Base Building. As used herein, "Base Building" shall mean the

structure, built in accordance with the Plans, as it exists at the completion of all work shown on the Two Independence Square Preliminary Schedule, dated August 15, 1990, and after the issuance of a certificate of occupancy by the appropriate Governmental Authority for all work shown on the Preliminary Schedules.

Base Building Construction Schedule. As used herein, Base Building

Construction Schedule shall mean the schedule of dates upon which completion of certain portions of the Base Building is anticipated to occur, which schedule is, pursuant to Section 4.13, attached hereto as Schedule 4.13.

Bid Protest Guaranty. As used herein, "Bid Protest Guaranty" shall

mean the joint and several guaranty of even date herewith made by Guarantors in favor of Lender in a form mutually agreed to by Borrower and Lender guaranteeing payment to Lender of the entire Indebtedness.

Bid Protest Litigation. As used herein, "Bid Protest Litigation" shall

mean that certain civil action No. 90-2951, filed December 4, 1990 in the United States District Court for the District of Columbia (the "District Court") challenging the award of the GSA Building Lease to Borrower for which the District Court issued an order dated January 11, 1991, dismissing plaintiff's suit and confirming the award of the GSA Building Lease to Borrower, and from which plaintiff has outstanding rights to request a modification from the District Court or to appeals.

Business Day. As used herein, a "Business Day" shall mean a day on

which (a) commercial banks in New York City are open for business, (b) commercial banks in London, England are open for business, and (c) dealings in U.S. Dollar deposits are carried on in the London Interbank Eurodollar Market (as defined in the Note).

Change Order. As used herein, "Change Order" shall mean a change in

the Plans, or in the Construction Contracts.

Completion Date. As used herein, "Completion Date" shall mean January

1, 1994, subject to extension for Force Majeure and Unavoidable Government Delay as provided in this Agreement.

Completion Guaranty. As used herein, "Completion Guaranty" shall mean

the joint and several guaranty of even date herewith made by Guarantors in favor of Lender in a form mutually agreed to by Borrower and Lender, guaranteeing Lien-free completion of the entire Project.

Completion of Construction. As used herein, "Completion of

Construction" shall mean that (a) the core, shell and other portions of the Project (other than Tenant Improvements) have been constructed in a good and workmanlike manner substantially in accordance with the Plans and with all Laws and all requirements of the National Fire Protection Association (or its successor); (h) all required inspections by Governmental Authorities have been completed and either a permanent certificate of occupancy or a temporary certificate of occupancy subject to no conditions that cannot be satisfied within the Project Budget and Construction Schedule has been obtained covering all of the core, shell and other "base building" portions of the Project such that (without limiting the foregoing), upon construction of the Tenant Improvements, the entire Project may lawfully be occupied for its intended

purpose; (c) all conditions to the Final Construction Disbursement as set forth in Section 5.08 have been satisfied or, in Lender's sole discretion, waived; (d) all Tenant Improvements required to be constructed by Borrower under the Government Leases shall have been constructed in a good and workmanlike manner substantially in accordance with the plans and specifications therefor and with all Laws and all requirements of the National Fire Protection Association (or its successor); (e) Borrower shall have obtained either a permanent certificate of occupancy or a temporary certificate of occupancy subject to no conditions that cannot be satisfied within the Project Budget and Construction Schedule covering the entire Leased Premises; and (f) the GSA shall have commenced paying Base Rent on the entire Leased Premises without protest and as required by the terms of the GSA Building Lease.

Construction Contract. As used herein, "Construction Contract" shall

mean (a) that certain Agreement Between Owner and General Contractor dated as of October 12, 1990, made by and between Borrower and McDevitt & Street Company, a Florida corporation, providing for the construction of the Project or (b) the lump-sum contract between Borrower and any subsequent General Contractor similarly providing for construction of the Project.

Construction Schedule. As used herein, "Construction Schedule" shall

mean the schedule of dates upon which completion of certain portions of the Project is anticipated to occur, which schedule shall be comprised of the Base Building Construction Schedule and the Tenant Improvements Schedule.

Consultants. As used herein, "Consultants" shall mean all independent

third-party consultants, including the Inspecting Engineer, that Lender reasonably deems necessary and selects to provide the following services to Lender: (a) review the Plans; (b) review Project Cost breakdowns and the Construction Schedule; (c) conduct compliance inspections with respect to the progress of construction of the Project and approve each element of a Request for Disbursement; and (d) perform such other services as may, from time to time, reasonably be required by Lender in connection with the performance of any undertaking of Lender contemplated hereunder or to protect or assess the value of Lender's security or to assist in enforcing Lender's rights under any of the Loan Documents.

Contract and Contractor. As used herein, "Contract" shall mean a

contract, other than the Construction Contract or Architect Contract, to which Borrower or Boston Properties, as Borrower's agent on behalf of Borrower, is a party for the supply of materials, labor, services or a combination thereof

in connection with the Project. As used herein, "Contractor" shall mean the Person who, as a party to a Contract, is to supply materials, labor, services or a combination thereof.

Conversion Date. As used herein, "Conversion Date" shall have the

meaning ascribed to such term in Subsection 3.03(b) hereof.

Debt Service Coverage Ratio. As used herein, "Debt Service Coverage

Ratio" shall mean the ratio obtained by dividing (a) Net Cash Flow for the pertinent period by (b) Project Debt Service for the pertinent period.

Deed of Trust. As used herein, "Deed of Trust" shall mean the

Construction Loan Deed of Trust and Security Agreement with an effective date the same as the date hereof, by and among Borrower, Lender and Gerald R. Perras and Stuart S. Levin as trustees for Lender, as the same may be modified, consolidated or restated from time to time.

Designated Representative. As used herein, "Designated Representative"

shall mean an individual authorized, from time to time, in writing by Borrower, with approval of Lender, to deliver Requests for Disbursements, certificates, and other documents and material to Lender pursuant to this Agreement and the other Loan Documents.

Disbursement. As used herein, "Disbursement" shall mean each of the

disbursements of the proceeds of the Loan made pursuant to this Agreement.

Environmental Guaranty. As used herein, "Environmental Guaranty" shall

mean the joint and several guaranty of even date herewith made by Guarantors in favor Lender in a form mutually agreed to by Borrower and Lender guaranteeing Borrower's performance of certain obligations under the Deed of Trust relating to Hazardous Material.

Environmental Report. As used herein, "Environmental Report" shall

mean the Geotechnical Environmental Site Assessment dated December 2, 1987 by Briggs Associates, Inc., the Report of Underground Storage Tank Removal dated March 20, 1990 (Proj. No. 5057 MD 20) by Briggs Associates, Inc., and the Environmental Report, Two Independence Square dated October 24, 1990 by Briggs Associates, Inc.

Event of Default. As used herein, "Event of Default" shall have the

meaning ascribed to such term in Section 8.01 hereof.

Exercise Period. As used herein, "Exercise Period" shall have the

meaning ascribed to such term in Subsection 3.02(c) hereof.

Expenses. As used herein, "Expenses" shall mean the actual costs

incurred by Borrower with respect to or allocable to a given period in
connection with the operation or ownership of the Trust Estate; provided,
however, that in the case of capital expenditures, Expenses shall mean the total
amount of such expenditures allocated over the useful life of the property for
which the expenditure was made, and in the case of prepaid expenditures, the
total amount of such prepaid expenditures allocated over the period for which
the expenditure was prepaid. Expenses shall not include (a) payments of
interest and other charges required to be made in respect of the Note, the Deed
of Trust or any other Loan Document, and (b) payments of principal, interest and
other charges required to be made by Borrower in respect of any other
indebtedness secured by all or any part of the Trust Estate or the Revenues, and
(c) distributions to Partners. Expenses shall include, without limitation: (i)
real property taxes; (ii) utility charges; (iii) premiums on insurance policies;
(iv) maintenance and cleaning expenses; (v) legal, accounting, brokerage, and
other professional fees attributable to the operation of the Trust Estate; and
(vi) all other expenses, fees, charges and costs incurred in connection with the
ownership or operation of the Trust Estate that are usually and customarily
incurred by owners of first-class commercial office buildings of a size and
usage comparable to the Trust Estate in the District of Columbia area, provided,
however, that no Item included in the Project Budget as an item to be financed
by the Loan shall be deemed part of "Expenses."

Final Construction Disbursement. As used herein, "Final Construction

Disbursement" shall have the meaning ascribed to such term in Section 5.08
hereof.

Final Disbursement of Loan Proceeds. As used herein, "Final

Disbursement of Loan Proceeds" shall have the meaning ascribed to such term in
Section 5.11 hereof.

Force Majeure. As used herein, "Force Majeure" shall mean the

occurrence of any of the following events which results in the delay of some
performance mandated by this Agreement: the enactment of any law or issuance of
any governmental order, rule or regulation establishing rationing or priorities
in the use of materials or restricting the use of labor; labor strikes or
lockouts; acts of God; enemy action; civil commotion or fire; or other similar
unavoidable casualties or events.

Funding Costs. As used herein, "Funding Costs" shall have the meaning

ascribed to such term in the Note.

General Contractor. As used herein, "General Contractor" shall mean

McDevitt & Street Company, a Florida corporation, or such other party as may
hereafter be designated by Borrower and reasonably approved by Lender in
accordance with the terms hereof to act as the general contractor for the
Project.

Government Leases. As used herein, "Government Leases" shall mean the

GSA Building Lease and the Parking Agreement.

Governmental Authority. As used herein, "Governmental Authority" shall

have the meaning ascribed to such term in the Deed of Trust.

GSA. As used herein, "GSA" shall mean the General Services

Administration, an agency of the United States government.

GSA Building Lease. As used herein, "GSA Building Lease" shall mean

that certain U.S. Government Lease for Real Property No. GS-11B-00111
"Negotiated," dated June 1, 1990, by and between Borrower as lessor and the
United States of America as lessee, and all attachments, exhibits and schedules
thereto, as the same hereafter may be amended, modified or supplemented in
accordance with the terms of the Loan Documents, the space covered by which
lease is intended to be used for office space and related facilities for NASA.

GSA Tenant Improvements. As used herein, "GSA Tenant Improvements"

shall have the meaning ascribed to such term in Section 2.12(b) hereof.

Guarantees. As used herein, "Guarantees" shall mean the Completion

Guaranty, the Interest Guaranty, the Environmental Guaranty and the Bid Protest
Guaranty.

Guarantors and Guarantor. As used herein "Guarantors" shall mean

Mortimer B. Zuckerman and Edward H. Linde, and "Guarantor" shall mean one of the
Guarantors.

Hard Costs. As used herein, "Hard Costs" shall mean those Project

Costs set forth on the Project Budget under the headings "Land Equity" and
"Building Construction", including without limitation costs of labor, materials,
equipment, and fixtures.

Hazardous Material. As used herein, "Hazardous Material" shall have

the meaning ascribed to such term in the Deed of Trust.

Improvements. As used herein, "Improvements" shall have the meaning

ascribed to such term in the Deed of Trust.

Indebtedness. As used herein, "Indebtedness" shall have the meaning

ascribed to such term in the Deed of Trust.

Initial Disbursement. As used herein, "Initial Disbursement" shall

mean the first disbursement of proceeds of the Loan made hereunder.

Inspecting Engineer. As used herein, "Inspecting Engineer" shall mean

EMJ Construction Consultants or such other party as shall hereafter be appointed
by Lender to act as the Inspecting Engineer.

Institutional Lender. As used herein, "Institutional Lender" shall

mean (a) a savings and loan association, a savings bank, a commercial bank or
trust company, an insurance company, an educational, religious or charitable
institution, an endowment fund, a federal, state, municipal or private, foreign
or domestic employees' welfare pension or retirement fund or system, an
investment banking firm, a real estate investment trust or other financial
institution provided that any such entity (i) is subject to or submits to
service of process within the State of New York and the District of Columbia,
(ii) has total assets of at least One Billion Dollars (\$1,000,000,000), (iii)
either (A) reports to or is subject to the supervision of the Comptroller of the
Currency, the Federal Deposit Insurance Corporation, the Department of Labor,
the Federal Reserve Board, the Office of Thrift Supervision or any similar state
or federal regulatory agency or official, or any successor to any of the
foregoing agencies, entities or officials, or (B) is subject to public financial
reporting requirements or oversight jurisdiction of the Securities and Exchange
Commission; (iv) is financially sound in Lender's sole discretion; and (v) is
acting in its own interest and capacity or as a fiduciary or trustee for any of
the foregoing; (b) an Affiliate of Borrower; or (c) any other Person approved by
Lender.

Interest Guaranty. As used herein, "Interest Guaranty" shall mean the

joint and several guaranty and indemnity of even date herewith made by
Guarantors in favor of Lender in a form mutually agreed to by Borrower and
Lender guaranteeing the payment of interest on the Note and indemnifying Lender
against certain liabilities.

Interest Rate Management Arrangement. As used herein, "Interest Rate

Management Arrangement" shall mean an interest rate swap agreement, an agreement providing for an interest rate ceiling (commonly known as a "cap") or an interest rate floor and ceiling (commonly known as a "collar"), or any other contractual protection against interest rate increases that is generally accepted in the financial industry and is in such form and on such terms as are customary in the ordinary conduct of Lender's business or are otherwise acceptable to Lender in its reasonable discretion.

Involuntary Rate. As used herein, "Involuntary Rate" shall have the

meaning ascribed to such term in the Note.

Item. As used herein, "Item" shall mean any identified line item set

forth in either the Project Budget or the Annual Operating Budget, as applicable.

Land. As used herein, "Land" shall have the meaning ascribed to such

term in the Deed of Trust.

Laws. As used herein, "Laws" shall mean all laws, rules, regulations,

codes, and ordinances of Governmental Authorities, and all rulings, orders, decisions and interpretations issued by Governmental Authorities in respect thereof.

Leased Premises. As used herein, "Leased Premises" shall mean all of

the space demised by the Government Leases.

Lien. As used herein, "Lien" shall mean any charge, lien (including

mechanics, materialmen and other liens), mortgage, deed of trust, pledge, security interest or other encumbrance of any nature whatsoever upon, of, or in property or other assets of a Person, whether absolute or conditional, voluntary or involuntary, whether created by agreement, assignment, statute, judicial proceedings or otherwise.

Loan. As used herein, "Loan" shall mean the aggregate of all principal

amounts advanced to Borrower pursuant to the terms hereof or pursuant to the other Loan Documents and all interest required by the terms hereof, by the terms of the Note or by the terms of the other Loan Documents to be paid by Borrower to Lender.

Loan Documents. As used herein, "Loan Documents" shall mean and include

this Agreement, the Note, the Deed of Trust, the Interest Guaranty, the Completion Guaranty, the Environmental Guaranty, the Bid Protest Guaranty, the Assignment of Rents, the Assignment of Project Documents, all UCC-1 Financing Statements given by Borrower to Lender, and any

and all other documents given from time to time as security for, or in evidence of, or to provide the terms of or otherwise in connection with the Loan and the Indebtedness.

Loan Participant. As used herein, "Loan Participant" shall have the

meaning ascribed to such term in the Note.

Loan Term. As used herein, "Loan Term" shall have the meaning ascribed

to such term in the Note.

Loan to Value Ratio. As used herein, "Loan to Value Ratio" shall mean

the ratio (expressed as a percentage) obtained at any particular time by dividing (a) the sum of (i) the then-outstanding principal balance of the Note and (ii) the then-outstanding principal balance of any other indebtedness secured by all or any part of the Trust Estate or the Revenues, by (b) the Appraised Value of the Trust Estate at the time.

Lot 872. As used herein, "Lot 872" shall mean that portion of Square

538, Lot 49, Assessment and Tax Lot 872, subject to a long-term leasehold interest of John Mandis, Inc., and improved as of the date hereof by a restaurant commonly known as the Market Inn.

Major Change Order. As used herein, "Major Change Order" shall have

the meaning ascribed to such term in Section 7.05(e) hereof.

Major Lease. As used herein, "Major Lease" shall mean any Space Lease

or other agreement demising thirty thousand (30,000) rentable square feet of space or more, including without limitation the Space Leases and other agreements set forth on Schedule B attached to the Deed of Trust.

Maturity Date. As used herein, "Maturity Date" shall have the meaning

ascribed to such term in the Note.

NASA. As used herein, "NASA" shall mean the National Aeronautics and

Space Administration, an agency of the United States government.

Net Cash Flow. As used herein, "Net Cash Flow" shall mean an amount

equal to Revenues for a particular period minus Expenses for such period.

Note. As used herein, "Note" shall mean the Promissory Note made by

Borrower to the order of Lender in the principal amount of One Hundred Twenty-Five Million Dollars (\$125,000,000) or such lesser amount as may be advanced by Lender to Borrower under this Agreement, and otherwise in the form mutually agreed to by Borrower and Lender.

Out-of-Pocket Costs. As used herein, "Out-of-Pocket Costs" shall have

the meaning ascribed to such term in the Deed of Trust.

Parking Agreement. As used herein, "Parking Agreement" shall mean that

certain Contract No. NASW-4580, dated February 26, 1991 by and between Borrower and NASA and all attachments, exhibits and schedules thereto, as the same hereafter may be amended, modified or supplemented in accordance with the terms of the Loan Documents, the space covered by which agreement is intended to be used for parking space for NASA.

Partner. As used herein, "Partner" shall mean those Persons identified

as limited or general partners in the limited partnership agreement of Borrower in effect on the date hereof, and any other Person hereafter holding legal and/or beneficial title to an equity interest in Borrower.

Permitted Exceptions. As used herein, "Permitted Exceptions" shall

have the meaning ascribed to such term in the Deed of Trust.

Permitted Transferee. As used herein, "Permitted Transferee" shall

mean a Person (a) in which Mortimer B. Zuckerman and Edward H. Linde in the aggregate or either alone shall have an indirect or direct ownership interest of at least twenty-five percent (25%) in the aggregate, (b) which shall be controlled by Mortimer B. Zuckerman and Edward H. Linde or by either alone, and (c) which (i) shall control Borrower or a Person that is the successor to Borrower and the day-to-day operations and management of the Trust Estate and (ii) shall have the right to make all significant economic and management decisions on behalf of Borrower (or such successor) without the need for the vote, approval or consent of any other Person other than a Permitted Transferee.

Person. As used herein, "Person" shall mean any natural person or

entity, including without limitation, any trustee, corporation, partnership, joint stock company, trust, association, unincorporated organization, bank, business association or firm, or Governmental Agency.

Personal Property. As used herein, "Personal Property" shall mean all

of Borrower's right, title and interest, whether now existing or hereafter acquired, in and to all furniture, furnishings, fixtures, machinery, equipment, inventory and other personal property of every kind, tangible or intangible, now or hereafter located at, upon or about the Premises and used or to be used in connection with or related or arising with respect to the Trust Estate and/or the Project,

excluding that personal property owned by any Space Tenant and located at, upon or about the Premises that does not become the property of Borrower under the terms of the applicable Space Lease.

Phase I. As used herein, "Phase I" shall mean the building on that

portion of Square 538, Lot 49 designated as Assessment and Tax Lot 873, known as One Independence Square, being built by Borrower in accordance with the loan agreement heretofore entered into by and between Borrower and Lender.

Plans. As used herein, "Plans" shall mean all preliminary and, as they

are developed in accordance with the provisions hereof, final drawings, plans, specifications and other documents (including but not limited to architectural, structural, mechanical, electrical, and safety), prepared by Borrower, Architect, General Contractor, any Contractor or Subcontractor, GSA, NASA or any other architect and/or engineer reasonably acceptable to Lender, which Plans shall be subject to Lender's prior written approval to the extent required by this Agreement, and which shall describe and show the construction and labor, materials, equipment and fixtures necessary for the completion of the Project.

Portion of Principal. As used herein, "Portion of Principal" shall

have the meaning ascribed to such term in the Note.

Premises. As used herein, "Premises" shall have the meaning ascribed

to such term in the Deed of Trust.

Project. As used herein, "Project" shall mean (a) the development of

the Premises in accordance with the Plans, including, without limitation, the construction of the Improvements and all Tenant Improvements and the performance of all other work required by the Plans or applicable Laws, whether on or off the Land, including without limitation (i) constructing parking, curbs, gutters, sidewalks, and public areas and amenities, (ii) providing landscaping, (iii) repairing, constructing or modifying streets, alleys and other passageways or connections with or support for the foregoing, (iv) repairing or constructing utilities, and (v) otherwise repairing or modifying existing improvements on or near the Land; and (b) the ownership and operation of the Premises developed as aforesaid.

Project Budget. As used herein, "Project Budget" shall mean the budget

now or, pursuant to Section 4.12, hereafter attached hereto as Schedule 4.12, prepared by Borrower, as the same may be modified from time to time in

accordance with the terms hereof, setting forth a projection of all Project Costs.

Project Costs. As used herein, "Project Costs" shall mean (a) the

costs identified on the Project Budget to be funded with the proceeds of the Loan; (b) all amounts payable to or for the benefit of the GSA, NASA or other government agency under the terms of the Government Leases, including amounts payable as liquidated damages, tenant improvement allowances, contributions for signs, logos and/or other mediums naming the Improvements, and contributions for improving the vicinity of the Premises; and (c) all other costs necessary to construct or otherwise payable in connection with the construction of the entire Project.

Project Debt Service. As used herein, "Project Debt Service" shall

mean the sum of (a) all payments of interest and other charges which must be made by Borrower during a particular period in respect of the Loan, plus (b) all payments of principal, interest, and other charges which must be made by the Borrower during such period in connection with all other indebtedness of the Borrower secured by the Project or revenues therefrom.

Project Development Agreement. As used herein, "Project Development

Agreement" shall mean the Development Agreement, dated as of December 1, 1989, between Borrower and Boston Properties, a Massachusetts business trust.

Project Documents. As used herein, "Project Documents" shall mean,

collectively, all agreements, documents, instruments and materials of whatever nature now or hereafter existing which relate to the Project or the Trust Estate, including but not limited to: (a) the Plans and all other plans, specifications, and drawings and all soil, environmental and engineering test reports relating to the Project, (b) all approvals, consents, licenses and permits issued by any Governmental Authority in connection with the Project, (c) the Construction Contract, the Architect Contract, all Contracts and Subcontracts, and all other agreements relating to the Project between Borrower and any consultant, architect, engineer, Contractor, Subcontractor, project manager or supervisor, laborer or supplier of materials, (d) all development, management and brokerage agreements, and (e) all payment or performance bonds, warranties, and guaranties with respect to any portion of the Project. Project Documents shall not include Space Leases.

Qualifying Space Lease. As used herein, a "Qualifying Space Lease"

shall mean a bona fide lease agreement pursuant to

which all or a portion of the Premises is or is intended to be occupied; provided, however, that (a) such lease is then in full force and effect; (b) such lease, if entered into after the date hereof, has been created substantially in accordance with all requirements applicable to leases as set forth in the Deed of Trust, Assignment of Rents, and other Loan Documents; and (c) either (i) the tenant under such lease is paying all the rent and other charges due thereunder or (ii) as to a tenant not yet paying rent, such tenant is obligated to pay all of such rent, costs, and other charges thereunder, subject only to satisfaction of conditions precedent to such obligation set forth in such lease and evidenced by an estoppel certificate in form and substance reasonably satisfactory to Lender. Lender hereby acknowledges and agrees that, subject to their remaining in full force and effect, the Government Leases shall be deemed to be Qualifying Space Leases.

Request for Disbursement. As used herein, "Request for Disbursement"

shall mean a written request for a Disbursement signed by the Designated Representative on behalf of Borrower in substantially the form of Exhibit A hereto.

Restaurant Improvements. As used herein, "Restaurant Improvements"

shall have the meaning ascribed to such term in Section 2.12(c) hereof.

Restaurant Lease. As used herein, "Restaurant Lease" shall have the

meaning ascribed to such term in the Deed of Trust.

Retail Tenant Improvements. As used herein, "Retail Tenant

Improvements" shall have the meaning ascribed to such term in Section 2.12(c) hereof.

Revenues. As used herein, "Revenues" shall mean all cash revenues

actually received by Borrower under Qualifying Space Leases and all binding and effective written licenses, concessions and other agreements providing for the use of space in the Premises entered into in accordance with the terms of the Loan Documents and assigned to Lender pursuant to one or more of the Loan Documents with respect to or allocable to a particular period; provided, however, that (a) Revenues shall not include payments made by a Space Tenant to Borrower for (i) a security deposit or (ii) Tenant Improvements to the extent such payments are transmitted to a contractor installing such Tenant Improvements or are retained by Borrower as reimbursement for the cost of installing such Tenant Improvements; and (b) with respect to percentage rent or other payments based on the revenues or income of a Space Tenant or other Person which Borrower proposes to include in the determination of Revenues, Revenues shall mean the monthly

average of percentage rent or such other payments received by Borrower for the previous twelve (12) months and to the extent Borrower has not received percentage rent or such other payments under such Qualifying Space Leases or other agreements for the previous twelve-month period, the percentage rent or such other payments for such Qualifying Space Leases or other agreements shall not be included in the calculation of Revenues.

Soft Costs. As used herein, "Soft Costs" shall mean all Project Costs

set forth on the Project Budget under the headings "Architect and Engineer", "Financing", "Marketing", "Carrying Costs", "Legal", and "Overhead", including without limitation fees for the Architect and the Lender's attorneys and Consultants, interest on the Loan, real estate taxes, transfer and recordation taxes, survey costs, and title insurance premiums.

Space Lease. As used herein, "Space Lease" shall have the meaning

ascribed to such term in the Deed of Trust.

Space Tenant. As used herein, "Space Tenant" shall have the meaning

ascribed to such term in the Deed of Trust.

Stored Materials. As used herein, "Stored Materials" shall mean

materials purchased by Borrower and stored at the Premises or at an off-site location reasonably acceptable to Lender for use in the Project, but not yet installed or incorporated into the Project.

Subcontract and Subcontractor. As used herein, "Subcontract" shall

mean a contract to which Borrower is not a party for the supply of materials, labor, services or a combination thereof in connection with the Project. As used herein, "Subcontractor" shall mean the Person who, as a party to a Subcontract, is to supply materials, labor, services or a combination thereof.

Subordinate Financing. As used herein, "Subordinate Financing" shall

have the meaning ascribed to such term in Section 7.21 hereof.

Subordinate Lender. As used herein, "Subordinate Lender" shall have

the meaning ascribed to such term in Section 7.21 hereof.

Survey. As used herein, "Survey" shall have the meaning ascribed to

such term in Section 4.03.

Tenant Improvement Costs. As used herein, "Tenant Improvement Costs"

shall mean those Hard Costs and Soft Costs attributable to construction of the Tenant Improvements as set

forth on the Project Budget under the headings "Tenant Work (NASA)" and "Tenant Work (Spec)"

Tenant Improvements. As used herein, "Tenant Improvements" shall mean,

with respect to each and every portion of space in the Improvements, all improvements, alterations, and tenant finish work required to be constructed by Borrower pursuant to a Space Lease, including, without limitation, GSA Tenant Improvements, Retail Tenant Improvements and Restaurant Improvements.

Tenant Improvements Schedule. As used herein, "Tenant Improvements

Schedule" shall mean the schedule required by Section 7.32 hereof to be provided to Lender of the dates upon which completion of Tenant Improvements is estimated to occur.

Termination Event. As used herein, "Termination Event" shall have the

meaning ascribed to such term in the Bid Protest Guaranty.

Timing Notice. As used herein, "Timing Notice" shall have the meaning

ascribed to such term in Section 3.02(b) hereof.

Title Companies. As used herein, "Title Companies" shall mean Chicago

Title Insurance Company, Ticor Title Insurance Company, Commonwealth Land Title Insurance Company and Lawyers Title Insurance Corporation, as coinsurers under agreements acceptable to Lender.

Title Policies. As used herein, "Title Policies" shall have the

meaning ascribed to such term in Section 4.02 hereof.

Transfer. As used herein, "Transfer" shall mean any or all of the

following events, whether effected voluntarily, involuntarily, by operation of law or otherwise: (i) the assignment, sale or other transfer of the Trust Estate or any part thereof or any interest therein (including, without limitation, any air or development rights), (ii) subject to the rights of tenants under the Government Leases, the lease or sublease of all or substantially all of the space in the Improvements, in a single or successive transactions to any single lessee or related lessees, and (iii) the transfer of any interest in Borrower or any interest in a Person which has a direct or indirect ownership interest in Borrower, other than the assignment or collateral assignment by a limited partner of such limited partner's interest in Borrower, provided the general partners of Borrower have consented to such assignment and that the interests so assigned do not exceed, in the aggregate, forty-nine percent (49%) of the partnership interests in Borrower.

Trust Estate. As used herein, "Trust Estate" shall have the meaning

ascribed to such term in the Deed of Trust.

Unavoidable Government Delay. As used herein, "Unavoidable Government

Delay" shall mean the actual delay of some performance mandated by this Agreement (other than a monetary obligation) due to any act or failure to act of the GSA or NASA or any person or firm exclusively employed or retained by, or under the exclusive direction of the GSA or NASA (including the issuance of a stop work order or an order suspending work other than a stop work order in connection with the Bid Protest Litigation) which extends the dates for the performance of Borrower's obligations under the GSA Building Lease by an equal period or, pursuant to Paragraph 4S.VIII. of Solicitation for Offers No. 89-047 (which is an attachment to and incorporated into the GSA Building Lease), would require the GSA Tenant Improvements to be deemed to be substantially complete prior to actual substantial completion thereof and as to which Borrower, to the extent required, has preserved its rights under Paragraph 45.1 of Solicitation for Offers No. 89-047.

Undisbursed Construction Funds. As used herein, "Undisbursed

Construction Funds" shall mean, as of any time of determination, the undisbursed principal portion of the Loan.

Section 1.02. Accounting Terms. All accounting terms not specifically

defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles customarily used in the real estate industry, applied on a consistent basis.

ARTICLE II

TERMS OF THE LOAN AND DISBURSEMENT OF PROCEEDS -----

Section 2.01. Agreement to Lend. Subject to and on the terms and

conditions of this Agreement and the other Loan Documents, Lender shall lend to Borrower and Borrower shall borrow from Lender the principal amount of up to ONE HUNDRED TWENTY-FIVE MILLION DOLLARS (\$125,000,000), such amount being the aggregate maximum principal amount that Lender shall under any circumstances be required to advance to Borrower.

Section 2.02. Repayment. On (a) the Maturity Date, (b) such earlier

date upon which the Loan becomes due and payable pursuant to the terms of the Loan Documents or (c) the occurrence of a Termination Event, Borrower shall fully repay to Lender the Loan and all other Indebtedness owed to Lender.

Section 2.03. Loan Documents. This Agreement, the Note, the Deed of Trust, and the other Loan Documents provide the terms of, evidence, and secure the Loan.

Section 2.04. Payment of Principal and Interest. The Loan shall bear interest at the rate or rates of interest calculated in accordance with the terms of the Note and shall be payable at the place and in the time and manner provided and more particularly set forth in the Note.

Section 2.05. Disbursements - General.

(a) Unless Lender otherwise agrees in writing:

(i) The principal amount of each Disbursement, including any portion thereof advanced for the payment of interest, shall not be less than the lesser of One Hundred Thousand Dollars (\$100,000.00) or an amount equal to the Undisbursed Construction Funds;

(ii) Not more than one Disbursement shall be made in any calendar month; and

(iii) Disbursements shall be made in accordance with and on the terms and conditions of this Article II and the other provisions of this Agreement.

(b) Borrower acknowledges and agrees that Lender may make Disbursements to Guarantors for Project Costs pursuant to, and in accordance with, the terms of the Completion Guaranty.

(c) Notwithstanding any other provision of this Agreement to the contrary, including, without limitation, Section 2.06 hereof, prior to the termination of the Bid Protest Guaranty Borrower shall not request and Lender shall not make any disbursement or reallocation of Loan proceeds for the Item designated "Land Equity" in an amount in excess of Seven Million Dollars (\$7,000,000) without Lender's prior written approval, which may be withheld in Lender's absolute discretion and which will not be deemed given after the passage of time. After the termination of the Bid Protest Guaranty, Borrower may request Disbursements for Land Equity in accordance with disbursements proposed for such Item in the Project Budget and Construction Schedule as previously approved by Lender.

(d) (i) If Borrower is enjoined or prevented by issuance of a stop work order or suspension of work by any Governmental Authority or court of competent jurisdiction from constructing the Project or performing its obligations hereunder, other than in connection with the Bid Protest Litigation, Lender shall make Disbursements for Project Costs incurred prior to the issuance of such injunction, stop work

order or suspension of work on and subject to the terms and conditions of this Agreement; provided, however, that in no event shall Lender be required, while any such injunction, stop work order or suspension of work remains in effect, to make any Disbursement for Project Costs incurred subsequent to such injunction, stop work order or suspension of work.

(ii) Lender shall not be required to make any Disbursements for Project Costs, without regard to when such Project Costs were incurred, during any period in which, in connection with the Bid Protest Litigation, Borrower is enjoined or prevented by issuance of a stop work order or suspension of work by any Governmental Authority or court of competent jurisdiction from constructing the Project or performing its obligations hereunder.

Section 2.06. Project Budget. The proceeds of the Loan shall be

disbursed to pay Project Costs in accordance with the Project Budget and this Agreement. The amount set forth in the Project Budget opposite each Item of Project Cost shall be the maximum amount of Loan funds which Lender shall disburse in payment of such Item, subject to any increase in the amount of such Item in accordance with the terms of this Section 2.06 and Section 2.10. Borrower, upon prior written notice to Lender, may reduce the amount remaining to be disbursed with respect to any Item to reflect actual or anticipated savings in Project Costs with respect thereto and allocate such savings to increase the amount remaining to be disbursed with respect to any other Item, provided, however, that the application of funds from such savings (i) among Items of Hard Costs, (ii) between an Item of Hard Costs and an Item of Soft Costs, or (iii) between the major Project Budget categories of Architecture and Engineer, Marketing, Legal, Overhead and Operating Costs shall not exceed ten percent (10%) of the cost Item, or with respect to clause (iii) above the major Project Budget category, to which such funds are applied without Lender's prior consent, which consent will not be unreasonably withheld or delayed and which will be deemed given if Borrower does not receive written objection from Lender within ten (10) Business Days after Borrower's notice to Lender; provided, however, that any reallocation made necessary by a unilateral change order by GSA under the GSA Building Lease shall not be subject to the ten percent (10%) limitation set forth herein. Borrower shall retain a numbered, sequential record of all such reallocations.

Section 2.07. Timing of Disbursements. No later than the tenth (10th)

Business Day of each calendar month (except in the case of the Initial Disbursement), and at such other times as Lender may agree, Borrower shall submit to Lender a Request for Disbursement accompanied by the information, documents and materials required pursuant to the provisions of this Agreement. Lender will not review and approve any Request for Disbursement

not submitted by the date set forth in the preceding sentence until the next succeeding month and no Loan funds will be disbursed other than pursuant to a Request for Disbursement that has been reviewed and approved by Lender. Each Request for Disbursement by Borrower shall constitute a representation and warranty by Borrower that, (i) at such time, each of the conditions precedent to Disbursements specified in Articles IV and V of this Agreement is satisfied, and (ii) all of the representations and warranties contained in Articles IV and V are true and correct in all material respects on the date of such Request for Disbursement. Lender shall make each Disbursement within the time period set forth in Section 2.09(i).

Section 2.08. Lender's Right to Condition Disbursements. In addition

to the conditions set forth in Articles IV and V of this Agreement, Lender shall have the right to condition any Disbursement upon Lender's use or receipt and approval of the following:

(a) Bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents reasonably necessary to enable Lender to confirm to its reasonable satisfaction the total amount expended, incurred or due for any requested or paid Item;

(b) Use of a voucher or joint check system acceptable to Lender for payments of Disbursements directly to any Contractor or Subcontractor if (i) there shall have occurred an Event of Default, or (ii) Borrower shall be in default on any obligation to pay such Contractor or Subcontractor and Lender reasonably believes the default will have a material adverse effect on the Project or Lender's security, or (iii) there shall have occurred a material adverse change in the financial condition of Borrower, any General Partner of Borrower or any Guarantor; or

(c) Any other documents, requirements, evidence or information that Lender may reasonably request under any provision of the Loan Documents.

Section 2.09. Disbursements for Project Costs. The amounts set forth

on the Project Budget shall be disbursed as follows:

(a) Each Request for Disbursement for each Item of Hard Costs and Soft Costs shall show this total amount incurred for work performed or material or equipment furnished for the periods since the last Request for Disbursement and from the inception of the Project and the percentage of materials provided and/or work completed for each such Item

from the inception of the Project to the date of the Request for Disbursement. The Request for Disbursement shall be in sufficient detail to show that the amount of the Disbursement requested is within the limits for each Item of Project Costs as shown in the Project Budget.

(b) Each Disbursement shall be in the amount requested by Borrower in the Request for Disbursement, which amount: shall not exceed, (i) with respect to Hard Costs, the Hard Costs incurred by Borrower as of the date of a Request for Disbursement, plus, subject to Section 5.06 hereinbelow, the

cost of Stored Materials not as yet installed or incorporated in the Project, less "retained amounts" provided for under the terms of the Construction

Contract and/or relevant Contracts or Subcontracts and (ii) with respect to Soft Costs, those Soft Costs incurred by Borrower as of the date of the Request for a Disbursement. Retainage shall be disbursed upon satisfaction of the conditions for the final disbursement of Hard Costs set forth in Section 5.08. However, retainage due a Contractor or Subcontractor (including the General Contractor to the extent that it is acting in the capacity of a Subcontractor) may be released upon completion of such Contractor's or Subcontractor's work, in accordance with the terms of the Construction Contract or applicable Contract or Subcontract, provided that (i) the labor and/or materials to be provided have been substantially completed or supplied pursuant to the Construction Contract or such applicable Contract or Subcontract and the Plans applicable to the Construction Contract or such Contract or Subcontract, (ii) the Contractor or Subcontractor has executed and delivered a final Lien waiver and affidavit of payment in the form of Exhibit B hereto, modified to state that all work and materials to be performed and supplied by such Contractor or Subcontractor have been performed and supplied and upon payment only of such retainage, all amounts owing to such Contractor or Subcontractor will be paid in full, and otherwise satisfactory to Lender and in compliance with the lien law of the District of Columbia, (iii) all requirements of all Governmental Authorities have been satisfied with respect to the Contractor's or Subcontractor's work, and (iv) Inspecting Engineer has confirmed in writing that such Contractor or Subcontractor has complied with clause (i) and (iii). Tenant Improvement Costs shall be disbursed subject to the additional conditions and limitations set forth in Section 2.12 hereof.

(c) There shall be deducted from each Disbursement and it shall not include: (i) any amounts previously disbursed hereunder, (ii) any costs covered by the Request for Disbursement not approved, certified or verified as required by this Agreement, (iii) any Soft Costs covered by the Initial Request for Disbursement and, thereafter, a previous

Request for Disbursement for which proof of payment has been requested but not received by Lender, (iv) any Hard Costs for which Lien waivers have not been received by Lender for the Initial Request for Disbursement to the extent required by Section 4.27(c) hereinbelow and, thereafter, all Requests for Disbursement submitted prior to the then-pending Request for Disbursement; and/or (v) any real estate taxes, mechanics Liens, security interests, claims or other charges against the Premises or Project and any interest, fees or other costs which Borrower may have failed to pay in accordance with this Agreement or the other Loan Documents.

(d) Except as may otherwise be expressly provided for herein with respect to Stored Materials, for purposes of this Section 2.09, Project Costs shall be deemed to have been "incurred" by Borrower at the following times: (i) Hard Costs--when the labor has been performed or the materials have been supplied and incorporated into the Project, payment therefor has been requested by the General Contractor or a Contractor and the Subcontractor, if any, therefor, and the General Contractor or Contractor and the Subcontractor, if any, therefor is entitled to payment pursuant to the Construction Contract and the applicable Contract or Subcontract; and (ii) Soft Costs--when such costs are due and payable (or have been paid by Borrower) and the services relating thereto have been rendered or the value thereof has been received by Borrower.

(e) All Hard Costs shall be certified by General Contractor (or the Contractor providing the labor or materials related to such Hard Costs) and Borrower in the manner provided in this Section 2.09 and in Section 5.03 and shall be verified by the Inspecting Engineer as having been incurred. Verification of the monthly progress and Hard Costs which have been incurred by Borrower from time to time and the estimated total Hard Costs from time to time may be made by Lender and/or Inspecting Engineer in its or their reasonable judgment.

(f) If (i) Borrower shall have requested an acceleration of payments under this Agreement or (ii) there shall have occurred an Event of Default or (iii) Borrower shall be in default on any obligation to pay money in any way related to the Project and Lender has reason to believe this default will have an adverse effect on the Project or Lender's security or (iv) Lender shall be entitled under any other Loan Document to advance funds or make payments in respect of the Project, and if Lender considers that its best interests and the best interests of the Project lie in accelerating the amounts to be advanced pursuant to this Article II, it shall be entitled to do so in amounts not more than was required under the applicable underlying contract and no person dealing with

Borrower or General Contractor or any other Person shall have standing to demand any different performance from Lender.

(g) Subject to the provisions of Section 2.11 governing disbursement of interest and Section 2.12 governing Tenant Improvement Costs, (i) all other Hard Costs incurred but not advanced during the course of construction of the Project shall be advanced upon the satisfaction of the conditions for the receipt of the Final Construction Disbursement set forth in Section 5.08 hereof, (ii) all other Soft Costs not advanced prior to Completion of Construction shall be advanced not more frequently than once a month for Soft Costs as incurred after completion of Construction and (iii) all Soft Costs and other savings not disbursed in (i) and (ii) above shall be disbursed in accordance with Section 5.11 hereof.

(h) If Lender is entitled and deems it appropriate to make Disbursements directly to the third parties entitled to payment as provided in Sections 2.08(b) and 2.09(f) hereof, all sums so advanced by direct payment shall satisfy pro tanto the obligations of Lender under this Agreement and

Lender shall have no obligation to see to the disposition by any such Person of any direct payments made to such Person.

(i) Each Disbursement shall be payable within five (5) Business Days after satisfaction of all conditions to the requested Disbursement.

Section 2.10. Disbursement of Contingency Funds. Any amount set

forth in the Project Budget for "Contingency" or "Change Orders" ("Contingency") may be used to pay any Project Costs not specifically included in the Project Budget, including excess costs on specific Items or costs associated with permitted Change Orders relating to specific Items. Contingency amounts may be disbursed upon the written request of Borrower to Lender and upon compliance with the conditions precedent applicable to the Item or Items for which contingency funds are requested. Use of Contingency funds (other than for application to Change Orders not subject to Lender's prior approval pursuant to Section 7.05 hereof) shall be subject to the prior reasonable approval of Lender. Prior to completion of the Base Building, no Contingency funds may be used to pay interest on the Loan. After completion of the Base Building, but prior to Completion of Construction, an amount not to exceed fifty percent (50%) of the balance of the Contingency funds available as of the date of completion of the Base Building may be used to pay interest on the Loan.

Section 2.11. Disbursement of Interest. The amount set forth under the

Item "Interest" shall be periodically disbursed directly to Lender in order to pay interest. No

amounts under the Item "Interest" shall be disbursed from Loan proceeds subsequent to the date of Completion of Construction until Lender makes the Final Disbursement of Loan Proceeds pursuant to the terms of Section 5.11 hereof. Pursuant to Section 2.15 hereinbelow, Lender is authorized to credit to Borrower's demand deposit account with Lender and to make Disbursements automatically from such demand deposit account to pay interest without request from or prior notice to Borrower. The amount of such Disbursements shall be added to the principal amount of the Loan, and Lender will provide Borrower with a monthly statement showing the total amount of such Disbursements. Depletion of the amounts set forth for the Item "Interest" shall not release Borrower from any of Borrower's obligations under the Loan Documents, including but not limited to its obligation to pay interest on the Loan.

Section 2.12. Disbursement of Tenant Improvement Costs.

(a) Tenant Improvement Costs shall be disbursed in the manner and on the terms and conditions provided in this Agreement for the disbursement of all other Project Costs, modified only as set forth in this Section 2.12.

(b) Lender's disbursement of Tenant Improvement Costs for Tenant Improvements required to be constructed under the GSA Building Lease (the "GSA Tenant Improvements") shall, in addition to the other terms and conditions of this Agreement, be subject to the following terms and conditions:

- (i) Lender shall not be required to make any Disbursement with respect to the GSA Tenant Improvements unless and until (A) Borrower has provided Lender with a detailed breakdown of the Project Costs included in the Project Budget under the heading "Tenant Work (NASA)" in form and substance reasonably satisfactory to Lender, (B) Borrower and Greenwell Goetz have executed a valid and binding contract, reasonably acceptable to Lender, for the planning and design of the GSA Tenant Improvements, which contract requires Greenwell Goetz to execute a certificate and consent in a form mutually satisfactory to Lender and Greenwell Goetz, to the extent applicable to the services to be provided by Greenwell Goetz and (c) Borrower has delivered to Lender a Tenant Improvements Schedule.

(ii) Each Request for Disbursement that includes any Tenant Improvement Costs for the GSA Tenant Improvements ("GSA Tenant Improvement Costs") shall be accompanied by a copy of (A) any invoice to be submitted to the GSA under Paragraph 103, Attachment I to the GSA Building Lease in respect of such GSA Tenant Improvement Costs, together with copies of all related materials and information to be submitted with such invoice, and (B) evidence of payment by the GSA of all prior invoices submitted for prior and current phases of construction, to the extent payment has been made.

(iii) In addition to all other limitations set forth in this Agreement, Lender will not make any Disbursement for GSA Tenant Improvement Costs for those items required under the GSA Building Lease to be paid for directly by GSA.

(c) Lender's disbursement of Tenant Improvement Costs for Tenant Improvements constructed in space in the Project other than that demised by the GSA Building Lease, designated in the Project Budget as "Tenant Work (Spec)" (the "Retail Tenant Improvements"), shall, in addition to the other terms and conditions of this Agreement, be subject to the following terms and conditions:

(i) In addition to all other limitations set forth in this Agreement the following limitations shall apply to Disbursements that include any Tenant Improvement Costs for Retail Tenant Improvements ("Retail Tenant Improvement Costs"):

(A) The aggregate of disbursements for Retail Tenant Improvements for space designated for food service (the "Restaurant Improvements") shall not exceed the lesser of (1) if such Restaurant Improvements are being constructed pursuant to a Space Lease, the actual aggregate allowance provided by Borrower for such Restaurant Improvements under such Space Lease and (2) whether or not such Restaurant Improvements are being constructed pursuant to a Space Lease, Five Hundred Thousand Dollars (\$500,000).

- (B) The aggregate of Disbursements for particular Retail Tenant Improvements for space other than the Restaurant Improvements shall not exceed the lesser of (1) if such Retail Tenant Improvements are being constructed pursuant to a Space Lease, the actual aggregate allowance provided by Borrower for such Retail Tenant Improvements under such Space Lease and (2) whether or not such Retail Tenant Improvements are being constructed pursuant to a Space Lease, One Hundred Thousand Dollars (\$100,000).
- (C) Notwithstanding Sections 2.12(c)(i)(A) and (B) above, to the extent that there are "savings" (as defined in the next sentence) with respect to the cost of constructing particular Retail Tenant Improvements, the amount of such savings may be applied by Borrower to increase the maximum amount of the Loan available for Retail Tenant Improvement Costs under clause (2) of Sections 2.12(c)(i)(A) and (B). "Savings" as used in the preceding sentence shall mean (Y) the amount by which the aggregate cost of constructing the Restaurant Improvements is less than Five Hundred Thousand Dollars (\$500,000) and (Z) the amount by which the aggregate cost of constructing the Retail Tenant Improvements excluding the Restaurant Improvements is less than One Hundred Thousand Dollars (\$100,000).
- (D) No Disbursement shall exceed the "Borrower's Share" (as hereinafter defined) multiplied by the then incurred but unpaid Retail Tenant Improvement Costs. The "Borrower's Share", shall be a fraction, the numerator of which shall be the aggregate maximum of all Disbursements available for particular Retail Tenant Improvements Costs, determined pursuant to Sections 2.12(c)(i)(A), (B) and (C) above, and the denominator of which shall be the total of such Retail

Tenant Improvement Costs, as reasonably estimated by Lender in consultation with Borrower.

- (ii) Prior to the first Disbursement for Retail Tenant Improvement Costs for particular Retail Tenant Improvements, Lender shall have received and approved (such approval not to be withheld or delayed unreasonably) the following:
 - (A) With respect to Retail Tenant Improvements to be designed by an architect, engineer, designer or space planner other than the Architect and/or to be constructed by a contractor other than the General Contractor, copies of the agreements with such Persons providing for the performance of all work required to complete such Retail Tenant Improvements;
 - (B) Copies of the Plans for such Retail Tenant Improvements; and
 - (C) A budget and construction schedule for the completion of such Retail Tenant Improvements.

If Borrower or an Affiliate is not required to design or construct the Retail Tenant Improvements for which a Disbursement is being requested, then the items identified in this Section 2.12(c)(ii) shall be provided by Borrower only to the extent required to be or, if not so required, actually made available to Borrower by the tenant under the pertinent Space Lease.

- (iii) Prior to the final Disbursement for Tenant Improvement Costs for particular Retail Tenant Improvements, Lender shall have received and approved certificates, letters, waivers, affidavits and endorsements to the effect set forth in Section 5.08, but limited to such Retail Tenant Improvements.

Section 2.13. Modifications to Project Budget. From time to time,

Borrower or Lender may determine that increases or decreases are necessary to the amounts set forth in the Project Budget because of actual or anticipated changes in

Project Costs (including unilateral GSA change orders). If, after due consultation and consideration of the views of Borrower and supporting documentation, Borrower and Lender do not agree on what increases or decreases need to be made to the Project Budget amounts set forth in the Project Budget, the determination of Lender shall control, unless Borrower delivers an acceptable letter of credit or other security to the Lender for the disputed amount, to the extent that the disputed amount increases the overall Project Budget.

Section 2.14. Balancing. Disbursements to pay Project Costs shall

only be made at such times as the Loan is "in balance." The Loan shall be deemed to be "in balance" only at such times as Lender shall determine, after consultation with Borrower, that the sum of (a) the portion of the Loan not yet disbursed for each Item of Project Costs (including Retainage on funds previously advanced on account of such Item), plus (b) any excess amounts from savings on any other Items to be applied to the Item in question plus (c) the portion of such Item to be paid by the GSA or another Space Tenant under the Government Leases or another Space Lease, is equal to or greater than the full cost of such Item. If the Loan is not in balance, Lender shall have no obligation to make, and Borrower shall not be entitled to receive, Disbursements pursuant hereto (excluding Disbursements for interest drawn by and paid to Lender) with respect to that portion of the Loan for each Item which is out of balance. When the Loan is again in balance, Lender shall resume funding the portion of the Loan for the Item in question in accordance with the terms of this Loan Agreement. With respect to those Items covered by the Construction Contract or other fixed price Contracts, if an Item or Items under the Construction Contract or such other Contract is or are out of balance by an aggregate amount of Five Hundred Thousand Dollars (\$500,000) or more, Lender shall have the right to require that the Contractor or Subcontractor performing the work for the Item or Items which is or are out of balance provide a payment and performance bond to guarantee the completion of the work for the Item or Items, to the extent the Contractor or Subcontractor has not already provided such bond.

2.15. Automatic Debit and Credit: Wire Transfers. Subject to Section

2.08(b), Disbursements of the Loan proceeds shall be made in immediately available funds by Lender crediting the Disbursement Account established by Borrower with Lender pursuant to the Assignment of Rents. Upon Borrower's request, Lender will wire such Loan proceeds from the Disbursement Account to such account(s) as Borrower shall designate in the related Request for Disbursement. Alternatively, upon Borrower's request, Lender shall wire such Loan proceeds directly to such accounts as Borrower shall

designate in the related Request for Disbursement without first depositing such proceeds into the Disbursement Account. Borrower hereby authorizes Lender to automatically debit the Disbursement Account for all interest, fees and other charges payable to Lender pursuant to the Note, this Agreement and/or any of the Loan Documents; provided, however, that the failure of Lender to so debit the Disbursement Account shall not relieve Borrower of any of its obligations under the Note, this Agreement and/or any of the Loan Documents.

ARTICLE III

BORROWER'S FIXED RATE OPTION

Section 3.01. Borrower's Fixed Rate Option. At any time after

Completion of Construction has occurred, Borrower shall have the right, on and subject to the terms and conditions hereinafter set forth (the "Conversion Option"), to cause the interest rate on a Portion of Principal to be converted from the floating rate or rates then in effect pursuant to the terms of the Note to the Fixed Rate for an Interest Period designated by Borrower.

Section 3.02. Exercise of Conversion Option.

(a) Borrower may exercise the Conversion Option on any Business Day by (i) giving Lender an Interest Rate Notice in accordance with the Note designating the Fixed Rate and the desired Interest Period and (ii) thereafter accepting a Fixed Rate in the manner provided in this Article III.

(b) Upon or after delivery of an Interest Rate Notice designating the Fixed Rate, but in no event later than 5:00 p.m. New York time on the Business Day immediately preceding the last day of the ensuing Exercise Period (as defined in Section 3.02(c) below), Borrower shall deliver to Lender written notice ("Timing Notice") identifying one or more representatives of Borrower (and their telephone numbers), each of whom (i) is individually authorized to accept or reject the Fixed Rate obtainable by Lender and offered to Borrower, as hereinafter provided, and (ii) will be available to Lender by telephone until 5:00 p.m. New York time on the Business Day said timing Notice is given and from 9:00 a.m. New York time until 3:00 p.m. New York time on the next following Business Day.

(c) An "Exercise Period" shall mean a period commencing at 9:00 a.m. New York time on the Monday (or, if such Monday is not a Business Day, the next following Business

Day) next following the date on which an Interest Rate Notice designating the Fixed Rate is given to Lender and continuing through and including 3:00 p.m. New York time on the next following Thursday (or, if such Thursday is not a Business Day, the next preceding Business Day).

Section 3.03. Interest Rate Management Arrangement.

(a) Lender shall, by no later than 3:00 p.m. on the Business Day next following Borrower's giving of a Timing Notice during an Exercise Period, use all reasonable efforts to obtain an offer for an Interest Rate Management Arrangement having a term equal to the Interest Period designated in the Interest Rate Notice that will enable Lender to convert the interest rate on the affected Portion of Principal on Lender's books from a floating to a fixed rate of interest (subject, however, to adjustment as provided in the Note). Prior to accepting such offer for an Interest Rate Management Arrangement, Lender shall telephonically quote to Borrower the fixed per annum interest rate together with all Funding Costs that will result from effectuating such an Interest Rate Management Arrangement, which rate Borrower shall immediately either accept or reject. If Lender is able to contact Borrower and Borrower fails to immediately accept or reject the offered Fixed Rate, Lender shall have no obligation to further attempt to effectuate such an Interest Rate Management Arrangement. The Fixed Rate offered by Lender shall be the sum of the fixed rate of interest obtainable in the offered Interest Rate Management Arrangement plus five hundred twenty-five one-thousandths of one percent (0.525%).

(b) If Borrower accepts the Fixed Rate quoted by Lender, Lender shall use all reasonable efforts to accept and enter into the offered Interest Rate Management Arrangement. If Lender is able to enter into the offered Interest Rate Management Arrangement then, commencing on the third (3rd) Business Day after Lender enters into the offered Interest Rate Management Arrangement (the "Conversion Date"), the interest rate on the Portion of Principal to which the Fixed Rate is to apply shall, without further notice to or action by Borrower or Lender, bear Interest at the Fixed Rate for the designated Interest Period. Borrower's acceptance of a Fixed Rate shall be irrevocable for the designated interest Period.

(c) If Borrower rejects the Fixed Rate quoted by Lender pursuant to Subsection 3.03(a) or if Lender is unable to contact Borrower to obtain Borrower's election as to such Fixed Rate, Lender shall not accept the offered Interest Rate Management Arrangement and shall, until 3:00 p.m. on the final Business Day of the Exercise Period then in effect, continue to use all reasonable efforts to seek an Interest Rate Management

Arrangement that will result in a Fixed Rate acceptable to Borrower. If Borrower fails to accept a Fixed Rate by 3:00 p.m. on such date, Borrower shall have no further right during such Exercise Period to convert the interest rate on the Note from a floating to a fixed rate. Borrower shall nonetheless retain the right, subject to the same terms and conditions hereof, to give another Interest Rate Notice designating the Fixed Rate and, during the ensuing Exercise Period, to give the Timing Notice and accept a Fixed Rate.

(d) If Borrower accepts the Fixed Rate, Borrower shall reimburse Lender for all Funding Costs incurred by Lender as a result of Borrower's exercise of the Conversion Option and acceptance of a Fixed Rate.

(e) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the following limitations shall apply to Borrower's rights in respect of the Conversion Option:

- (i) In exercising the Conversion Option, Borrower may designate an Interest Period that expires on or before, but not after the Maturity Date. If Borrower designates the Fixed Rate for an Interest Period that expires prior to the Maturity Date, then the applicable rate or rates of interest for the remainder of the Loan Term shall be that or those rates from time to time in effect by reason of Borrower's election of such rate or rates pursuant to Section 3(b) of the Note or by operation of the other provisions of the Note.
- (ii) In exercising the Conversion Option, Borrower must designate as the Portion of Principal to bear interest at the Fixed Rate the entire principal balance of the Loan outstanding at such time. Amounts thereafter advanced under the Note shall bear interest at the Eurodollar Rate or Prime Rate in accordance with the terms of the Note, but shall not be entitled to bear interest at the Fixed Rate unless and until (A) the Interest Period for the Fixed Rate as previously selected by Borrower expires prior to the Maturity Date and Borrower thereafter again exercises the Conversion Option or (B) the entire remaining balance of the Loan still available to be drawn has been drawn and Lender, upon Borrower's

delivery of an appropriate Interest Rate Notice, is able to obtain an Interest Rate Management Arrangement that will permit Lender, on terms reasonably acceptable to Lender and Borrower, to convert the interest rate on the amount of such entire remaining balance to a fixed rate of interest.

Section 3.04. Conditions to Lender's Enter Into an Interest Rate

Management Arrangement. Lender's obligation to enter into an Interest Rate

Management Arrangement and thereby convert the interest rate on the Note to the Fixed Rate shall in all respects be conditioned upon the satisfaction (or waiver by Lender) of all of the following conditions:

(a) Borrower shall have delivered to Lender Borrower's certificate that no material adverse change in the financial condition of Borrower and Guarantors' certificate that no material adverse change in the financial condition of Guarantors has occurred since the date hereof.

(b) There shall exist at the Conversion Date (i) no uncured Event of Default and (ii) no fact or circumstance, which, with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not then being cured in accordance with the terms of this Agreement and the Loan Documents.

(c) All of the representations and warranties set forth in this Agreement, the Loan Documents and other documents delivered to Lender in connection with the funding of the Loan shall be true and correct in all material respects as of the Conversion Date, and Borrower shall have recertified such representations and warranties to Lender as of such date.

(d) As of the Conversion Date, there shall be (i) no litigation pending nor shall litigation have been threatened in writing by a potential claimant or a potential claimant's counsel with respect to the Trust Estate, and (ii) no condemnation or similar proceeding shall be pending nor shall same have been threatened by a duly authorized official of a Governmental Authority acting in his official capacity with respect to all or ally part of the Trust Estate, either of which, if determined adversely to Borrower, would materially and adversely affect the Trust Estate or the priority of Lender's lien thereon or the financial condition of Borrower or Guarantors.

(e) Borrower shall have complied in all respects with the applicable terms and conditions of this Article III.

ARTICLE IV

CONDITIONS TO THE INITIAL DISBURSEMENT

The obligation of Lender to make the Initial Disbursement to or for this account of Borrower shall be subject to the satisfaction of all the conditions set forth in this Article IV and, absent satisfaction or Lender's written waiver of the same, Lender shall have no obligation to make the Initial Disbursement.

Section 4.01. Loan Documents. The following Loan Documents shall have

been duly executed by all parties thereto other than Lender, acknowledged as required, and delivered either to Lender or, as to Loan Documents that are to be recorded or filed, to the Agent with written instructions satisfactory to Lender that such Loan Documents be filed or recorded prior to the funding of the Initial Disbursement:

- (a) this Agreement;
- (b) the Note;
- (c) the Deed of Trust;
- (d) such Form UCC-1 Financing Statements as Lender may require naming Borrower as debtor;
- (e) the Assignment of Rents;
- (f) Notices of Assignment of the Government Lease in form and substance satisfactory to Lender as required by the Assignment of Rents;
- (g) the Assignment of Project Documents; and
- (h) the Guarantees.

Section 4.02. Title Policies. Lender shall have received ALTA extended

coverage mortgagee form of title insurance policies 1987 form B (the "Title Policies") (with proof of the payment of the premiums therefor) or commitments therefor in form and substance acceptable to Lender issued by the Agent on behalf of the Title Companies, together with (a) an executed coinsurance agreement in form and substance satisfactory to Lender and (b) reinsurance from other title insurance companies approved by Lender and evidenced by executed reinsurance agreements satisfactory to Lender containing a right of direct access, insuring the lien of the Deed of Trust to be a first lien against the Premises, free and

clear of all defects, encumbrances and exceptions, including mechanics' Liens and claims of Liens, other than the Permitted Exceptions, together with such affirmative insurance as Lender may require. The aggregate amount of the Title Policies shall be not less than the maximum amount of the Loan, the coverage then provided by the Title Policies shall be in the amount of the Initial Disbursement, and the Title Policies shall contain a "pending disbursements" clause in substantially the following form:

"Pending disbursement of the full proceeds of the loan secured by the mortgage set forth under Schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made in good faith and without knowledge of any defects in, or objections to, the title up to the face amount of the policy. At the time of each disbursement of the proceeds of the loan, the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement."

Section 4.03. Survey. Lender shall have received a current survey

(the "Survey") of the Premises prepared by a surveyor acceptable to Lender who is qualified as a land surveyor in the District of Columbia, which shall be satisfactory, in form and substance, to Lender and which survey shall (a) on its face set forth (i) the legal description of the Premises and (ii) a certification from the surveyor to Lender and the Title Companies that it was prepared in compliance with standards of the American Land Title Association and otherwise containing such certifications of fact as Lender may require; (b) show the locations of the Improvements then constructed on the Premises; (c) show that the Improvements, to the extent then constructed, are located entirely within the Land property lines and do not encroach upon any easement or breach or violate any Law or any covenant, condition or restriction of record, or any building or zoning ordinance; and (d) otherwise satisfy the reasonable requirements of Lender and the Title Companies.

Section 4.04. Insurance. Lender shall have received evidence that the

insurance required under Section 1.08 of the Deed of Trust is in full force and effect with all annual premiums paid.

Section 4.05. Flood Insurance. Lender shall have been provided with

satisfactory evidence, which may be in the form of a letter from an insurance broker, municipal engineer, or other knowledgeable source unaffiliated with Borrower, as to whether (a) the Premises is located in an area designated by

the Department of Housing and Urban Development as having special flood or mud slide hazards, and (b) the community in which the Project is located is participating in the National Flood Insurance Program. If both of the aforesaid conditions exist, Lender shall have received evidence that satisfactory policies of flood insurance covering the Project are in full force and effect with all annual premiums paid and that such policies have been endorsed to name Lender as a loss payee pursuant to the standard mortgage clause without contribution.

Section 4.06. Existence and Authorization. Lender shall have received

true, correct, and complete executed copies of the following documents:

(a) With respect to each Guarantor, each general Partner of Borrower, and each general Partner of a general Partner of Borrower that is a corporation:

(i) The certificate of incorporation of such corporation and all amendments thereof, certified by the Secretary of State of the state of such corporation's incorporation, together with a certificate of said Secretary of State to the effect that the corporation is in good standing therein;

(ii) A certificate from the Secretary of State or comparable official of the jurisdiction in which the Premises are located (if other than such corporation's state of incorporation) to the effect that the corporation is in good standing and qualified to do business therein;

(iii) Bylaws certified to Lender by the secretary of the corporation; and

(iv) A certificate of the secretary of the corporation certifying (A) resolutions of the shareholders and directors of the corporation authorizing the consummation of the transactions contemplated by the Loan Documents to which such corporation is a party or a signatory and the execution, delivery, and performance of each of the Loan Documents to which such corporation is a party or a signatory and (B) the incumbency and signature of each of the officers of the corporation to execute any Loan Documents; and

(b) With respect to Borrower and each Guarantor, each general Partner of Borrower, and each general partner of a general partner of Borrower that is a partnership:

(i) The partnership or joint venture agreement and all amendments, attachments and agreements

related thereto certified to Lender by all general Partners thereof;

(ii) All certificates filed or required to be filed by the partnership in the jurisdiction of its formation and the jurisdiction where the Premises are located in order for it to do business in those jurisdictions; and

(iii) Such evidence as may be available from the Secretary of State or comparable official of the jurisdiction of the partnership's formation to the effect that the partnership continues to exist and is in good standing.

Section 4.07. Opinion of Borrower's Counsel. Lender shall have received

a favorable opinion of Borrower's counsel to the following effect:

(a) Borrower is duly organized, validly existing, in good standing, and authorized to do business in the District of Columbia.

(b) All Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by Borrower and constitute legal, valid, binding and enforceable agreements in accordance with their respective terms under federal and District of Columbia law, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium law, or other laws affecting creditors rights generally, and do not breach or violate any agreement, court order, or law of which such counsel has knowledge and by or under which Borrower is bound or affected.

(c) Such other matters as Lender may require.

Section 4.08. Opinion from Counsel to Each Guarantor. Lender shall

have received a favorable opinion from counsel to each Guarantor to the same effect as the opinion of Borrower's counsel (to the extent applicable).

Section 4.09. UCC Search. Lender shall have received current searches

of the UCC filing offices in such jurisdictions as Lender may require and the land records in the District of Columbia showing no security interests affecting the Premises, the Project, Borrower, the general Partners of Borrower, the general Partners of the general Partners of Borrower or Guarantors other than those expressly permitted by the Loan Documents.

Section 4.10. Hazardous Material. (a) Borrower shall have furnished

Lender with a report or reports satisfactory to Lender showing no Hazardous Material present at the Premises,

except to the extent used in construction of the Project and for which there is no practical alternative and which will be used in strict compliance with all Laws and removed in its entirety from the Project promptly upon completion of such use. (b) Borrower shall have furnished Lender with a report that no Hazardous Material was present at the site in the past, or if it was, that all such materials were removed and disposed of in strict compliance with all applicable federal, state and local environmental statutes, regulations and requirements. (c) Borrower shall have furnished Lender with evidence satisfactory to Lender that no Hazardous Material will be knowingly incorporated into the Project by Borrower or, following Completion of Construction, present at or conveyed from or to the Premises except for petroleum products, cleaning solvents, paint and other similar materials necessary in the ordinary operation of the Premises and which are stored, handled and disposed of in strict compliance with all Laws applicable thereto.

Section 4.11. Streets and Utilities. Borrower shall have furnished

evidence satisfactory to Lender that (a) all utility services necessary for the construction of the Project and the operation thereof for its intended purposes are available at the boundaries of the Premises and in adequate supply at the boundaries of the Premises and (b) the Project has lawful, adequate, unobstructed, and unimpaired access to public streets.

Section 4.12. Project Budget. Lender shall have received and approved

a detailed budget of all Project Costs, together with supporting documentation reasonably requested by Lender, which budget shall, upon approval by Lender, be initialed by Borrower and Lender and attached hereto as Schedule 4.12.

Section 4.13. Base Building Construction Schedule. Lender shall have

received and approved a detailed schedule for construction of the Base Building and corresponding expenditures, which schedule shall show, among other things, a trade-by-trade breakdown of the estimated periods of commencement and completion of the work of each such trade. Upon approval by Lender, the schedule shall be initialed by Borrower and Lender and attached hereto as Schedule 4.13.

Section 4.14. Permits. Lender shall have received evidence (a) that

Borrower has obtained all approvals, permits, licenses and other authorization of Governmental Authorities (i) for that portion of construction of the Project covered by the Plans for which the Initial Disbursement is being requested and (ii) for future construction to the extent then obtainable and (b) that there is no basis to believe that any and all

approvals, permits, licenses and other authorizations of Governmental Authorities needed for Completion of Construction will not be forthcoming in a timely manner consistent with the Construction Schedule.

Section 4.15. Plans. Lender shall have received and approved the Plans

for the Project, to the extent available as of the date the Initial Disbursement is funded. Plans shall be scheduled by sheet number, title, date and revised date, which schedule shall be true and correct, and such Plans shall include the filed plans referred to in any permit for the Project.

Section 4.16. Stored Materials.

(a) Lender shall have received and approved a list of all Stored Materials currently stored on or off-site indicating actual cost of the Stored Materials, not including profit or overhead.

(b) If Borrower requests any payment for Stored Materials in the Initial Disbursement request, Borrower shall have provided all of the information required by Section 5.06 of this Agreement with respect to the Stored Materials for which payment as part of the Initial Disbursement is sought.

Section 4.17. Architects' Materials. Lender shall have received and

approved (a) a true, correct and complete copy of the fully executed Architect Contract for each Architect and (b) a consent and certificate executed by each Architect in a form mutually acceptable to Lender and such Architect. Lender shall have received and approved copies of all inspection and test records and reports made by or for each Architect with respect to the Project.

Section 4.18. General Contractor's Materials. Lender

shall have received and approved a true, correct and complete copy of the fully executed Construction Contract, together with a consent and certificate executed by the General Contractor in a form mutually acceptable to Lender and the General Contractor.

Section 4.19. Contractor and Subcontractor Materials. Lender shall

have received (a) a list of all Contractors and Subcontractors and (b) copies of all Contracts and Subcontracts as executed or as then being negotiated.

Section 4.20. Engineer's Certificate. Lender shall have received

from Flack & Kurtz, Consulting Engineers, and from any other engineer providing services on the Project, an executed certificate in a form mutually acceptable to Lender and such engineer.

Section 4.21. Other Project Documents. Lender shall have received

true, correct and complete copies of any and all Project Documents not elsewhere identified herein and reasonably requested by Lender, and such additional information as Lender may require relative to the development, construction, use, occupancy, and management of the Project.

Section 4.22. Consultants' Report. Lender shall have received reports

from Lender's Consultants, including the Inspecting Engineer, addressed to Lender regarding such matters as Lender requests and, without limiting the foregoing, to the effect that (a) the Plans conform with generally acceptable building construction practice, including architectural, structural, mechanical and electrical aspects thereof, (b) the Inspecting Engineer concurs with (i) the Hard Costs shown in the Project Budget, and (ii) the Base Building Construction Schedule prepared by Borrower, (c) based upon the information submitted by Borrower or such other Person as the Inspecting Engineer may deem necessary or appropriate, all permits, licenses and approvals required for the construction of the Project have been obtained to the extent applicable to the state of construction or no impediment exists to further required permits, licenses and approvals being timely obtained, (d) Contracts and Subcontracts are in effect which satisfactorily provide for the construction of the Project, (e) all roads and utilities necessary for the full utilization of the Project for its intended purposes have been completed or there are sufficient amounts budgeted for such improvements, (f) the construction of the Project theretofore performed has been completed substantially in accordance with the Plans reviewed by Inspecting Engineer and approved by Lender, and (g) the Project has, in the aggregate, reached a stated percentage of completion.

Section 4.23. Cost to Complete. Lender shall have determined in the

exercise of its sole discretion that the Project can be built for not more than the amount specified therefore in the Project Budget.

Section 4.24. Government Materials. Lender shall have received

executed attornment agreements and estoppel certificates from GSA and NASA relating to their respective Government Leases in a form reasonably satisfactory to Lender.

Section 4.25. Appraisal. Lender shall have approved the Appraisal

heretofore delivered by Borrower.

Section 4.26. Fees. Borrower shall have made arrangements reasonably

satisfactory to Lender for the payment from the Initial Disbursement of the following fees, costs and expenses:

(a) A commitment fee of Four Hundred Sixty-Eight Thousand Seven Hundred Fifty Dollars (\$468,750.00), to be retained by Lender whether or not any further Disbursements are made under this Agreement;

(b) The fees, costs and other expenses then due and payable to Lender's Consultants under their agreements with Lender,

(c) Reimbursement to Lender for monies it has heretofore paid to its Consultants in connection with the transactions contemplated by the Loan Documents; and

(d) Lender's counsel's fees and disbursements incurred in connection with the Loan.

Section 4.27. General Conditions.

(a) On the date of funding of the Initial Disbursement, there shall exist (i) no Event of Default and (ii) no fact or circumstance, which, with the passage of time, giving of notice or action of third parties, could become an Event of Default.

(b) All representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan shall be true and correct in all material respects.

(c) Lender shall have received such additional agreements, certificates, reports, approvals, instruments, documents, financing statements, consents and opinions as Lender may reasonably request, all in form and substance reasonably satisfactory to Lender.

Section 4.28. Construction-Related Conditions. Lender shall have

received all of the following documents, materials and information with respect to the Initial Disbursement:

(a) A Request for Disbursement;

(b) All information required by Section 5.06 (to the extent the Initial Disbursement is for Stored Materials);

(c) Partial Lien waivers and affidavits of payment in the form of Exhibit B hereto from the General Contractor and all Contractors and Subcontractors for the full amount (less actual retainage) of all Hard Costs due and owing to the General Contractor, Contractors and Subcontractors as of

the date of the last payment from Borrower (or an Affiliate) to such Persons;

(d) A certificate from each Architect with responsibility for work being paid for from the Initial Disbursement to the effect set forth in Section 5.03(c);

(e) A certificate from the General Contractor to the effect set forth in Section 5.03(d); and

(f) As to any phase of construction that has been completed, the information and materials set forth in Section 5.03(f).

Section 4.29. Bid Protest Litigation. The Bid Protest Litigation

shall have been terminated as set forth in Section 2.12(b) of the Bid Protest Guaranty, or, if not, Borrower shall have executed and delivered the Bid Protest Guaranty.

Section 4.30. Land Use Agreements. Borrower and Lender shall have

executed in a form mutually acceptable to the parties the Multiple Lot Agreement and Floor-Area-Ratio Agreement (both as defined in the Deed of Trust) relating to the operation and use of the Property, Phase I and Lot 872.

ARTICLE V

CONDITIONS TO ALL SUBSEQUENT DISBURSEMENTS

The obligation of Lender to make each Disbursement after the Initial Disbursement to or for the account of Borrower shall be subject to the satisfaction of all the conditions set forth in this Article V and, absent satisfaction or Lender's written waiver of the same, Lender shall have no obligation to make such Disbursement.

Section 5.01. Initial Disbursement. All conditions to making the

Initial Disbursement shall have been satisfied or waived in writing by Lender and the Initial Disbursement shall have been made.

Section 5.02. General Conditions.

(a) All representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan,

including without limitation all Requests for Disbursement, shall be true and correct in all material respects on and as of the date of the Disbursement then to be made as though made on and as of that date, except to the extent otherwise disclosed by Borrower to Lender in writing, provided that the facts set forth in such disclosures are acceptable to Lender in its sole discretion.

(b) On the date of funding the Disbursement, there shall exist (i) no Event of Default and (ii) no fact or circumstance which, with the passage of time, giving of notice or action of third parties, could become an Event of Default.

Section 5.03. Request for Disbursement Documents. Prior to each

Disbursement, Borrower shall have furnished to Lender and Lender shall have received and approved all of the following documents, materials, and information:

(a) A Request for Disbursement;

(b) Partial Lien waivers in the form of Exhibit B hereto from the General Contractor and all Contractors and Subcontractors for the full amount (less actual retainage) of all Hard Costs covered by all prior Requests for Disbursement, except that Borrower shall not be required to obtain Lien waivers (i) with respect to (and shall not be entitled to any Disbursement for) any claim for labor, service, equipment or material that is being actively contested in accordance with the requirements of the Deed of Trust and (ii) with respect to any Contractor or Subcontractor that only supplies materials to the Project and whose Contract or Subcontract requires the payment of less than One Hundred Thousand Dollars (\$100,000.00) in the aggregate, except to the extent Lender has given Borrower not less than fifteen (15) days' prior written notice that a Lien waiver will be required from such Contractor or Subcontractor for a subsequent Disbursement;

(c) A certificate from each Architect with responsibility for work being paid for from that Disbursement, in the form set forth in Exhibit A, with respect to that portion of the Project for which such Architect has design responsibility, to the effect that, in the Architect's professional opinion: (i) all new Plans and revisions to the existing Plans since the date of the last Disbursement are in conformity with all applicable Laws, (ii) the work completed to the date of the Disbursement is in substantial conformity with the Plans, Construction Contract and applicable Contract if any, and (iii) stating the percentage of completion of the work on such portion of the Project;

(d) A certificate from the General Contractor or appropriate Contractor, if any (with respect to Hard Costs only), in the form set forth in Exhibit A, setting forth all incurred Items of Project Costs for the periods since the last Request for Disbursement and from the inception of the Project (or, as appropriate, the Retail Tenant Improvements), all Items of Project Costs projected to complete the Project (or, as appropriate, the Retail Tenant Improvements), any variance between actual and projected Project Costs and the amounts set forth in the Project Budget, the percentage of materials provided and/or work completed for each Item from the inception of the Project (or, as appropriate, the Retail Tenant Improvements) to the date of the certification, and all changes from the previous certificate which are known or reasonably anticipated by the General Contractor or appropriate Contractor, if any;

(e) A report from the Inspecting Engineer with respect to any new or revised Plans, Project Budget and Construction Schedule stating (i) that in the opinion of Inspecting Engineer, all new Plans, Change Orders and modifications or amendments to the Plans, Project Budget and Construction Schedule required hereby to be approved by Lender have been approved by Lender; (ii) that, in the opinion of Inspecting Engineer, based on a review of the partial Lien waivers, certificates and other reports submitted to substantiate the Request for Disbursement, the construction of the Project (or, as appropriate, the Retail Tenant Improvements) theretofore performed has been completed substantially in accordance with the Plans, Construction Contract and applicable Contract, if any, reviewed by Inspecting Engineer and approved by Lender; (iii) what percentage of completion in the aggregate has been reached in the construction of the Project; (iv) the extent to which, if any, the Disbursements for the Hard Costs not yet approved are not sufficient to complete construction of the Project; (v) whether completion of the portions of the Project not yet completed can, in Inspecting Engineer's opinion, be completed prior to the Completion Date and (vi) that Inspecting Engineer has approved the items referred to in Sections 5.03(b), (c), and (d) hereof; and

(f) As to a phase of construction which has been completed, any required reports or approvals covering structural and mechanical work and certifications or other appropriate written statements from the appropriate Governmental Authorities for electrical work with respect to such stage to the extent reasonably obtainable.

(g) At Lender's reasonable discretion, an affidavit of subcontractor in the form of Exhibit C attached

hereto from each Major Subcontractor which sets forth the amounts owed to such Subcontractor's subcontractors, materialmen, and laborers.

Section 5.04. Title Endorsements. Immediately prior to each

Disbursement and, in connection therewith, upon Borrower's election of the Eurodollar Rate as the Interest Rate Option in accordance with the terms of the Note, Lender shall have received from the Agent on behalf of the Title Companies endorsements to the Title Policies extending the coverage to be provided thereby to the date and to the full amount of the requested Disbursement, without exception for mechanics Liens or claims of Liens, or any other matter not previously approved by Lender in writing. Such endorsements will insure the Deed of Trust to be a first lien on the Project, subject only to the Permitted Exceptions.

Section 5.05. Plans; Permit Approval. Lender shall have received and

approved all new Plans and all changes to the Plans (to the extent required by Section 7.05(e) hereof. Borrower shall have received and delivered to Lender evidence of receipt of all permits, licenses, approvals and other authorizations from Governmental Authorities necessary to complete the work contemplated by such Plans, to the extent then required or obtainable, for the development, construction, use and occupancy of the Project in respect of which the Disbursement is requested.

Section 5.06. Stored Materials. Lender will make Disbursements for the

cost of Stored Materials (not including any profit or overhead of General Contractor or any Contractor or Subcontractor (other than the manufacturer or supplier of such materials) payable in respect of such Stored Materials, for which a Disbursement shall be made only after incorporation of the Stored Materials into the Project) subject to the other provisions of this Agreement, and further provided that Lender shall have received the following, in form and substance satisfactory to Lender:

- (a) for materials stored on the Premises, invoices indicating actual cost of the Stored Materials, not including profit and overhead;
- (b) evidence that the Stored Materials are appropriate for purchase during the then current stage of construction;
- (c) evidence that the Stored Materials have been paid for and are owned by (or upon payment of the amount to be disbursed pursuant to the applicable Request for Disbursement

shall be paid for and owned by) Borrower free of all lien rights or claims of the vendor or any third party;

(d) evidence that (i) the Stored Materials are easily and readily identifiable for use as intended in the Project and (ii) are securely stored on-site or in a bonded warehouse or storage yard approved by Lender and, if stored in a warehouse or storage yard, the warehouse or storage yard has been notified that Lender has a security interest in the subject stored materials and the original warehouse receipt;

(e) for those stored materials stored off-site, a certificate or binder of insurance from Borrower or the supplier, fabricator or other subcontractor, covering the Stored Materials against loss, theft and damage in a manner and amount satisfactory to Lender, naming Lender as a loss-payee; and

(f) evidence of filing of any UCC-1 financing statement or statements required to perfect Lender's lien with respect to such Stored Materials, and satisfactory assurance to Lender that such materials are covered by the security agreement provisions of the Deed of Trust and that Lender has a perfected security interest in such materials.

Section 5.07. Contractors and Subcontractors. To the extent required

by Section 7.07 hereof, Lender shall have received copies of all Contracts and Subcontracts not theretofore reviewed by Lender.

Section 5.08. Final Construction Disbursement. The final Disbursement

of Hard Costs incurred but not advanced during the course of construction for all portions of the Project and the release of related retainage (to the extent not theretofore released pursuant to Section 2.09(b)) (the "Final Construction Disbursement") shall be made subject to satisfaction of all of the foregoing as well as the following conditions:

(a) Lender shall have received a certification by Borrower and a letter from each Architect that all work for which such Architect has design responsibility on the Project has been finished and made available for use substantially in accordance with the Plans, Construction Contract, other applicable Contract if any, and Government Leases;

(b) Lender shall have received a certificate of Inspecting Engineer stating, in effect, that all of the Project, except for Punch List Items (as defined in Section 5.11 hereof) and any remaining Retail Tenant Improvements for space other than Restaurant Improvements, has been completed in a good and workmanlike manner substantially in accordance with

the Plans, Construction Contract, other applicable Contract if any, and Government Leases;

(c) Lender shall have received Lien waivers and affidavits of payment from the General Contractor and all Contractors and Subcontractors who have performed work, labor or services or furnished supplies in connection with the construction of the Project substantially in the form of Exhibit B hereto, modified to state that all work, labor, services and materials to be performed or provided by such Person, except for Punch List Items and any remaining Retail Tenant Improvements for space other than Restaurant Improvements, have been performed and provided and, upon payment of a specified sum, all amounts owing to such Person in respect of the Project will then be paid in full; and

(d) Lender shall have received final and comprehensive endorsements to the Title Policies or evidence satisfactory to Lender that the Title Companies are in a position to issue to Lender final policies of title insurance with such endorsements thereto as Lender may reasonably require, insuring the Deed of Trust as a first lien, subject only to the Permitted Exceptions and providing coverage in the full amount of the Loan.

Section 5.09. Advances Without Requests. Notwithstanding anything to

the contrary and without regard to the minimum Disbursement amount set forth in Section 2.05(a), Borrower hereby authorizes Lender to disburse proceeds of the Loan to pay (a) interest and fees on the dates when interest and fees are due and owing in accordance with Section 2.11 hereof and the terms of the Note and the other Loan Documents and (b) upon the occurrence of an Event of Default, or upon Borrower's default on any obligation to pay money in any way related to the Project which default Lender reasonably believes may have a material adverse effect on the Project, (i) all costs of title searches or abstracts, document taxes, stamp taxes and recording expenses; (ii) the Inspecting Engineer's fees and expenses reasonably incurred; (iii) reasonable fees and expenses for any services of a Consultant which may be required for purposes contemplated by this Agreement; and (iv) notwithstanding that Borrower may not have requested a Disbursement of such amount, subject to the further provisions of the Deed of Trust, all costs, fees and expenses due to (A) contractors, subcontractors, laborers, materialmen or other persons furnishing labor, services or materials used or to be used on or in connection with the Project, (B) taxing authorities or insurers in payment of taxes or hazard, liability or title insurance premiums when due, and/or (C) the holder of any Lien on the Premises or Project or Borrower's interest therein, as necessary to discharge such Lien. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be

necessary for Lender to make such Disbursements. However, the provisions of this Article V shall neither require Lender to make such Disbursements, nor prevent Borrower from paying interest and fees from its own funds. Any Disbursement so made shall be deemed made to and received by Borrower and shall be added to the unpaid principal balance of the Note. Lender will promptly advise Borrower of the making of any Disbursement pursuant to this Section 5.09, and such notice shall set forth, in reasonable detail, a description of those Items which were paid with the proceeds of such Disbursement.

Section 5.10. Surveys.

(a) Within thirty (30) days after completion of the foundation of the Improvements, Borrower shall provide Lender with a surveyor's report which shows (i) the location of the foundations of the Improvements, (ii) that the foundations have been built within the boundaries of the Land, and (iii) that the foundations have been built without encroachments or violations of any easements, covenants, conditions or restrictions of record.

(b) If necessary in the reasonable judgment of Lender or if required by either of the Title Companies, Borrower, within thirty (30) days after written notice from Lender or such Title Company, shall from time to time furnish to Lender updates of the Survey certified to Lender and the Title Companies and updated by inspection with respect to all relevant requirements and giving current information as described in Section 4.03.

(c) Within thirty (30) days after Completion of Construction, Borrower shall deliver to Lender a final, "as-built" version of the Survey which shall show: (i) the Project as completed in accordance with the Plans and otherwise in accordance with the provisions of this Agreement, (ii) all easements affecting the Premises, whether benefiting or burdening same, rights of way and existing utility lines, whether recorded or disclosed by a physical inspection of the Premises, (iii) a calculation of the dimensions of the Premises, (iv) the lines of the public streets abutting the Premises and the widths thereof, (v) encroachments and the extent thereof in feet and inches onto the Premises and all encroachments by any buildings, structures or improvements located on the Premises onto any easements over, and onto property adjacent to, the Premises, and (vi) all Improvements, and any other physical matters on the ground which may

adversely affect the Premises or title thereto and the relationship of such Improvements and other physical matters by distances to the perimeter of the Premises, established building lines and street lines.

Section 5.11. Final Disbursement of Loan Proceeds.

(a) Provided that there exists no uncured Event of Default nor fact or circumstance which, with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not being cured in accordance with the terms of this Agreement and the Loan Documents, Lender shall disburse, either simultaneously with or after, and upon compliance with all the requirements of, (y) the Final Construction Disbursement (pursuant to Section 5.08 hereof) and (z) the disbursement of any Soft Costs after Completion of Construction (pursuant to Section 2.09(g) hereof) ("Final Disbursement of Loan Proceeds") so much of the Loan proceeds remaining as Borrower may request, subject to the escrow requirements set forth in subsection (b) of this Section 5.11, upon receipt of the following, which shall be satisfactory to Lender in Lender's reasonable discretion:

(i) a certification from Borrower that (A) all construction except for Punch List Items and any remaining Retail Tenant Improvements for space other than Restaurant Improvements has been completed and all Project Costs have been paid in full in accordance with the Project Documents, and (B) all representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan are true and correct in all material respects as of the date of the certification except as to such changes as may have been previously approved by Lender in writing;

(ii) a certification from the surveyor that the "as-built" survey delivered pursuant to Section 5.10 hereof has not changed from the date delivered, or, if it has changed, an updated survey showing all of the information required in Section 5.10(c) hereof;

(iii) estoppel certificates from all Space Tenants certifying that (A) such Space Tenant is currently paying rent under a Space Lease, (B) no notice of default has been given by either Borrower or the Space Tenant under such Space Lease, and (C) all conditions to the effectiveness and continuing effectiveness of such Space Lease required to be satisfied as of the date thereof have been satisfied;

(iv) a certificate from each Architect that, in the Architect's professional opinion, the portion of the Project for which such Architect has design responsibility has been completed but for any Punch List Items;

(v) a "punch list" agreed to by Borrower, the General Contractor, each Architect and the appropriate Space Tenant, and approved by Lender (which approval will not be unreasonably withheld, delayed or conditioned) setting forth only those details of finish work and adjustments which do not interfere with the use of the affected Premises and which remain to be completed (the "Punch List Items") and a cost estimate for each such Punch List Item;

(vi) lien waivers and affidavits of payment from the General Contractor and all Contracts and Subcontractors who have performed work, labor or services or furnished supplies in connection with the construction of the Project in the same form and substance as required by Section 5.08(c) hereof;

(vii) a Request for Disbursement, setting forth the amount of remaining Loan proceeds to be disbursed in the Final Disbursement of Loan Proceeds; and

(viii) a letter from the Appraiser, dated within thirty (30) days prior to the Final Disbursement of Loan Proceeds, which (A) confirms that, upon disbursement of so much of the remaining Loan proceeds as Borrower may request, the Loan to Value Ratio will not exceed seventy-five percent (75%) and (B) explains any changes in the Appraised Value of the Trust Estate or the methodology used to determine such updated Appraised Value of the Trust Estate.

(b) In the event that there are any Punch List Items or Retail Tenant Improvements for space other than Restaurant Improvements remaining to be completed when Borrower requests the Final Disbursement of Loan Proceeds, Borrower shall deposit with Lender in an interest-bearing escrow account an amount equal to two hundred percent (200%) of the estimated cost of such Punch List Items plus the entire amount of the undisbursed Loan proceeds designated in the Project Budget for the Retail Tenant Improvements for space other than Restaurant Improvements, to be held as additional security for the Loan and disbursed by Lender for the completion of the Punch List Items or Retail Tenant Improvements for space other than Restaurant Improvements upon application by Borrower in accordance with the Disbursement procedures set forth in this Loan Agreement. Borrower shall execute such documents as may be necessary to give Lender a perfected security interest in such escrow account.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement and to make the Initial Disbursement and each subsequent Disbursement under the Loan, Borrower makes the following representations and warranties which shall survive the execution and delivery of this Agreement, the Note and the other Loan Documents and shall be remade from time to time as elsewhere provided in this Agreement.

Section 6.01. Existence. Borrower is a limited partnership duly

organized and validly existing under the laws of the District of Columbia. Borrower has the authority, rights and franchises to own its properties, to carry on its business as now conducted, to perform its obligations hereunder and under the other Loan Documents, to complete the Project in accordance with the Plans, and to own and operate the Project as a first-class commercial office building. Borrower has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business. Borrower conducts no business, directly or indirectly, except for the development, construction, ownership, and operation of the Project and of Phase I, and the ownership of Lot 872.

Section 6.02. Authorization; Enforceable Obligation. Borrower has the

authority and legal right to execute, deliver and perform the Loan Documents to which Borrower is a party, to borrow under the Loan Documents and to grant the liens and security interests contemplated thereby, and has taken all necessary action to authorize the borrowings on the terms and conditions hereof and the execution, delivery and performance of the Loan Documents to which Borrower is a party. No consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with any Governmental Authority which has not been obtained is required for the execution, delivery and performance by Borrower of the Loan Documents to which it is a party. Each of the Loan Documents to which Borrower is a party has been executed and delivered by a Person duly authorized to execute and deliver such documents on behalf of Borrower and constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.

Section 6.03. Conflicting Agreements. Neither the execution nor

delivery of this Agreement or any other Loan Document or any amendments thereto, nor fulfillment of or compliance with the terms and provisions hereof or thereof, nor the consummation of the transactions contemplated hereby or by

any of the other documents referred to herein, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien (other than the lien of the Loan Documents) upon any of the properties or assets of Borrower pursuant to its partnership agreement, any award of any arbitrator or any agreement (including any Project Document and any agreement with Borrower's partners), instrument, order, judgment, decree, statute, law, ordinance, franchise, certificate, permit, rule, regulation or the like to which Borrower is subject, or to or by which its properties or its assets or the Trust Estate are bound or affected.

Section 6.04. Required Documents. Borrower has furnished Lender true,

correct and complete certified copies of all documents and materials to be furnished under Section 4.06 hereof.

Section 6.05. No Material Litigation. Except for the Bid Protest

Litigation, no litigation, investigation or administrative proceeding of or before any court, arbitrator or governmental authority is pending or has been threatened in writing by or on behalf of a potential claimant against Borrower, the general Partners of Borrower or assets of Borrower or that would, if determined adversely, be likely to have a material adverse effect on (a) Borrower's ability to perform its obligations under the Loan Documents in accordance with the terms thereof, (b) the validity of this Agreement or any other Loan Document, or (c) Lender's security under this Agreement or any other Loan Document. No notice has been received by Borrower of any proceeding to condemn, purchase or otherwise acquire the Trust Estate or any part thereof or interest therein, and, to the best of Borrower's knowledge, no such proceeding has been threatened by a duly authorized official of a Governmental Authority acting in his official capacity.

Section 6.06. Bid Protest Litigation. (a) Borrower has received a

notice to proceed with construction under the terms of the GSA Building Lease and has not received and is not operating in violation of any "stop-work" order or injunction (preliminary or permanent) issued in connection with the Bid Protest Litigation. (b) Borrower has furnished Lender true, complete and correct copies of all documents and materials requested by Lender that are in Borrower's possession and are pertinent to the Bid Protest Litigation.

Section 6.07. Margin Regulations. No part of the proceeds of the Loan

will be used to purchase or carry any margin stock (as such term is defined in Regulations G, U and X of the Board of Governors of the Federal Reserve System). Borrower is not 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.

Section 6.08. Compliance With Applicable Laws. Each of Borrower, the

Project, and the Trust Estate is in compliance with the requirements of all Laws, the failure to comply with which would materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any of the other Loan Documents, and no written notice of noncompliance with any of the foregoing has been received by Borrower from any Governmental Authority. No consent, approval or authorization, or registration, declaration or filing with any Governmental Authority or any other Person is required for the valid execution, delivery and performance by Borrower of this Agreement or any other Loan Document, or the carrying out of the transactions contemplated hereby or thereby. All approvals, permits, licenses and other authorizations of Governmental Authorities required for the current stage of construction of the Project and for future stages to the extent now obtainable have been obtained and are in full force and effect and true and complete copies thereof have been furnished to Lender. Borrower has no basis to believe that any and all approvals, permits, licenses and other authorizations of Governmental Authorities needed for Completion of Construction will not be forthcoming in a timely manner consistent with the Construction Schedule.

Section 6.09. Government Leases. Borrower has furnished to Lender

true and complete copies of the Government Leases currently in effect with all amendments and supplements thereto. Such leases are in full force and effect and (a) no notice of default has been given by either Borrower or the appropriate governmental agency thereunder, (b) there are no material defaults under any of the provisions thereof and (c) all conditions to the effectiveness and continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied.

Section 6.10. No Brokers. Borrower and Lender each represent to the

other that they have not dealt with any mortgage or other broker or finder in connection with the Loan. Borrower and Lender agree to indemnify, defend and hold the other harmless from and against any claim for brokerage fees or commissions or other compensation in connection with the Loan by reason of an alleged misrepresentation of the statement made by it in the immediately preceding sentence. In case any action, suit or proceeding is brought against Lender by reason of such alleged misrepresentation by Borrower (a) Lender shall give prompt notice thereof to Borrower, (b) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (c) if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such

action, suit or proceeding without the consent of Borrower unless Lender waives its right to indemnification under this Section. In case any action, suit or proceeding is brought against Borrower by reason of such alleged misrepresentation by Lender, (i) Borrower shall give prompt notice thereof to Lender, (ii) Lender may, at Lender's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Borrower, and (iii) if Lender elects to defend such action, suit or proceeding, Borrower shall not compromise or settle any such action, suit or proceeding without the consent of Lender, unless Borrower waives its right to indemnification under this Section.

Section 6.11. Project Documents. All material Project Documents, -----
excluding the Plans, Construction Contract, and the Architect Contract for each Architect, and, to the best of Borrower's knowledge after due inquiry, all other Project Documents, are listed in Schedule 6.11 annexed hereto and made a part hereof, and, to the extent required by the provisions of this Agreement or to the extent Lender has so requested, true and complete copies of all Project Documents, including the Plans, Construction Contract, and the Architect Contract for each Architect, together with all amendments thereof and modifications thereto, have been delivered to Lender. All Project Documents are in full force and effect in accordance with their respective terms, and no party to any Project Document has asserted any claim of default or offset against the other with respect thereto that remains uncured.

Section 6.12. Plans. All Plans for the Project required as of the -----
date hereof under the terms of the GSA Building Lease are listed in Schedule 6.12 hereto. The Plans listed therein have been approved, and all amendments and supplements to the Plans listed therein (a) will be approved by (i) the General Contractor (to the extent required by the Construction Contract), (ii) the beneficiary of any restrictive covenant requiring such approval, and (iii) the Space Tenant that will occupy the space covered by the Plans and (b) will be submitted to all Governmental Authorities with jurisdiction over the Project, to the extent required, in a form such Governmental Authorities are anticipated to approve.

Section 6.13. Project Budget and Construction Schedule. The Project -----
Budget accurately reflects, to the best of Borrower's knowledge and belief, all Project Costs which have been and will be incurred by Borrower in the acquisition, development and construction of the Project. The Construction Schedule accurately reflects, to the best of Borrower's knowledge and belief, the time required to complete the entire Project and each portion thereof.

Section 6.14. Streets and Utilities. All utility services necessary -----
for the construction of the Project and the

operation thereof for its intended purposes are available at the boundaries of the Premises, including water supply, fire protection, storm and sanitary sewer, gas, electricity, and telephone facilities. The Project has lawful, adequate, unobstructed, and unimpaired access to public streets.

Section 6.15. ERISA. Borrower does not have a defined benefit pension -----
plan under the Employee Retirement Income Security Act of 1974, as amended, the unfunded liabilities of which could, upon termination of the plan, be held to be a liability of Borrower by the Pension Benefit Guaranty Corporation.

Section 6.16. Environmental. Except as disclosed in the Environmental -----
Report, there are not now and, to Borrower's best knowledge after due inquiry, never have been any Hazardous Materials present at or conveyed from or to the Premises or incorporated into the Project, except for Hazardous Materials used in the normal course of construction of the Project, as to which there exists no practical alternative and which have been used or are being used in strict compliance with all Laws and have been or will be removed in their entirety from the Premises promptly upon completion of such use.

Section 6.17. Whole Tax Parcel. The Land constitutes a single, whole -----
tax parcel and is assessed separately from any other real property.

Section 6.18. Casualty. The Project has not been materially damaged -----
by fire or other casualty, or if damaged, Lender as loss payee has received insurance proceeds and, if necessary, a Completion Deposit in the manner, amount and as otherwise contemplated by Section 1.09 of the Deed of Trust and such proceeds and Completion Deposit are sufficient to effect the satisfactory restoration of the Project and to permit Completion of Construction on or prior to the Completion Date and in accordance with all of the terms and provisions of this Agreement.

Section 6.19. True Statements. Neither this Agreement, any other Loan -----
Document nor any other document delivered to Lender in connection with the Loan (including without limitation all Requests for Disbursements) contains, or will contain when made, any untrue statement of a material fact and by this reference all representations and warranties made in any of the Loan Documents are hereby made a part of this Agreement to the same extent as if fully set forth herein.

ARTICLE VII

AFFIRMATIVE AND NEGATIVE COVENANTS

Section 7.01. Commencement and Completion of Construction.

(a) Borrower shall proceed with the construction of the Project with due diligence, substantially in accordance with the Construction Schedule, and subject to the terms of this Section 7.01, shall effect Completion of Construction on or prior to the Completion Date.

(b) The Completion Date may be extended for a period not to exceed sixty (60) days by Force Majeure, provided that (i) Borrower shall promptly, but in no event later than ten (10) days after the occurrence of Force Majeure circumstances, notify Lender of the existence of such Force Majeure circumstances, which notice shall set forth the date upon which such circumstance began, (ii) Borrower shall provide Lender with such evidence of the Force Majeure circumstances as Lender shall reasonably request, including any information provided by General Contractor to Borrower in General Contractor's request for extension of the Completion Date pursuant to the terms of the Construction Contract or by Borrower to the GSA under the GSA Building Lease and (iii) dates for the performance of Borrower's obligations under the GSA Building Lease shall be extended by an equal period pursuant to Paragraph 45.VIII. of the Solicitation for Offers of the GSA Building Lease.

(c) The Completion Date may be extended for a period not to exceed ninety (90) days by Unavoidable Government Delay, provided that (i) Borrower shall promptly, but in no event later than ten (10) days after the occurrence of the Unavoidable Government Delay circumstances, notify Lender of the existence of such circumstances, which notice shall set forth the date on which such circumstances began and (ii) Borrower shall provide Lender with such evidence of the Unavoidable Government Delay circumstances as Lender shall reasonably request, including any information or notice provided by the GSA to Borrower under the GSA Building Lease.

(d) The progress of construction of the Project shall be deemed to be substantially in accordance with the Construction Schedule so long as target dates set forth in such schedule have been met or, if such target dates have not been met, Lender has determined in its reasonable discretion that Completion of Construction will occur not later than the Completion Date as extended in compliance with this Section 7.01.

(e) Borrower shall not permit construction to cease for more than ten (10) consecutive days or for more than twenty (20) days in the aggregate, subject, however, to delays for Force Majeure and Unavoidable Government Delay as permitted by this Section 7.01. During any discontinuance of construction, Borrower shall make adequate provision, acceptable to Lender, for the protection of the Project to the extent then constructed, against deterioration and against other loss, damage or theft.

Section 7.02. Encroachments. Borrower shall construct the

Improvements entirely on the Land without encroachment upon any lot line or boundary, easement or right-of-way or any other land, except as required or irrevocably permitted by any Governmental Authorities. Borrower shall (a) provide evidence of such requirement and (b) furnish Lender with affirmative title insurance coverage with respect to such required or irrevocably permitted encroachment.

Section 7.03. Plans.

(a) Borrower shall provide to Lender all Plans necessary for the construction of the Project as they are prepared and shall have all such Plans approved by all necessary entities as set forth in Section 6.12.

(b) Borrower shall construct the Project in substantial conformity with the Plans and in a good and workmanlike manner with new materials of good quality. If at any time construction of the Improvements is not in compliance with the foregoing requirements, Borrower shall promptly give notice thereof to Lender and Lender shall have the right to stop such nonconforming construction and order repair or reconstruction in accordance with the foregoing requirements and to withhold all further Disbursements until construction is in satisfactory compliance therewith. Upon notice from Lender to Borrower, or Borrower's discovery irrespective of such notice, that construction is not in substantial conformity with such requirements, Borrower shall commence correcting the deviation as promptly as practical and, in any event, within fifteen (15) days after such notice or discovery and shall prosecute such work diligently to completion, which in no event shall be later than sixty (60) days after such notice or discovery. If Lender reasonably determines that the corrective work is not proceeding satisfactorily, Lender may, upon not less than fifteen (15) days' notice to Borrower, prosecute such corrective work to completion at Borrower's expense. Lender's approval of any Disbursement shall not constitute a waiver of Lender's right to require correction of any such defects or departures from the Plans not theretofore discovered by, or called to the attention, of Lender.

Section 7.04. Compliance with Laws and Other Requirements. Borrower

shall comply in all material respects with all conditions, covenants, restrictions, Space Leases, easements, reservations, rights and rights of way and all applicable Laws and other requirements relating to the Trust Estate and the Project, and obtain in a timely fashion all necessary approvals, consents, licenses and permits of all Governmental Authorities.

Section 7.05. Change Orders. Change Orders:

(a) Shall all be in writing, numbered in sequence, and signed by Borrower and General Contractor or the appropriate Contractor;

(b) Shall all, as part of each Request for Disbursement, be certified by Borrower and each Architect, the Architect's professional opinion, with respect to that portion of the Project for which such Architect has design responsibility, to be in compliance with all applicable Laws and other requirements;

(c) Shall all contain an estimate by Borrower and General Contractor or the appropriate Contractor of the increase or decrease in each Item of Project Costs that would be caused by the change (or, if the Change Order involves changes both increasing or decreasing estimated Project Costs, the amount of each change either increasing or decreasing Project Costs shall be stated), as well as the aggregate amount of changes in estimated Project Costs, both increases and decreases, previously made;

(d) Shall, if a Major Change Order (as hereinafter defined), be submitted to Lender not later than five (5) Business Days prior to the proposed effectiveness thereof; and

(e) Shall, to the extent not a unilateral change order required by the GSA, be subject to the prior written approval of Lender where (i) the change affects the structural aspects or intended use of the Improvements, (ii) the Change Order includes any change that, regardless of the net effect of the aggregate Change Order, increases or decreases any estimated Project Costs by One Hundred Thousand Dollars (\$100,000.00) or more, or (iii) together with prior Change Orders, whether or not approved, the change involves an aggregate amount, whether for increases or decreases, of over Seven Hundred Fifty Thousand Dollars (\$750,000.00) or (iv) the change would cause any Governmental Authority to suspend or revoke any license, approval, permit or other authorization. (All such Change Orders are herein referred to as "Major Change Orders".) If any Change Order involves a net increase in estimated Project Costs the payment of which increase is not

the sole obligation of the GSA or another Space Tenant under its respective Space Lease, whether or not such Change Order is subject to Lender's prior approval, Lender shall have no obligation to make any further Disbursements unless the Loan, taking such Change Order into account, remains in balance.

Section 7.06. Project Budget; Annual Operating Budget.

(a) Subject to the provisions of Section 2.14 hereof, Borrower shall complete the entire Project within the Project Budget and operate the Project within the applicable Annual Operating Budget. Unless Lender otherwise consents in writing, Borrower shall not materially supplement, modify or amend the approved Project Budget or applicable Annual Operating Budget other than as permitted under Sections 2.06, 7.05 or 7.06(b) hereof.

(b) Borrower shall promptly notify Lender of any fact or circumstance that may render the Project Budget inaccurate with respect to any Project Costs reflected therein or render any Annual Operating Budget inaccurate with respect to any operating expenses reflected therein. With respect to the Annual Operating Budget only, the same shall not be deemed to have been rendered inaccurate by any variation or variations which in the aggregate are equal to or less than ten percent (10%) of the total amount of such budget.

Section 7.07. Contractors and Subcontractors.

(a) Borrower shall not permit the performance of any work on the Project pursuant to any Contract or Subcontract (i) with a total payment in excess of One Hundred Thousand Dollars (\$100,000) or (ii) which Lender has requested to review, until Lender shall have received copies of such Contract or Subcontract.

(b) Borrower shall deliver to Lender from time to time not later than five (5) Business Days after Lender's demand therefor correct lists of all Contractors and Subcontractors employed in connection with the Project and copies of such Contractors' and Subcontractors' contracts. Each such list shall show the name, address and telephone number of each such Contractor or Subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, the approximate dollar value of such labor, work and materials itemized with respect to each Contractor and Subcontractor, and the unpaid portion and status of such work or whether such materials have been delivered. In the event that Lender reasonably determines that any information provided to Lender is incomplete, Lender and its Consultants shall have the right, without either the obligation or the duty, to contact directly each Contractor and Subcontractor to verify the facts disclosed

by such list or any other information provided by Borrower or relating to the Project. In the event that Borrower or General Contractor shall fail to maintain the same in respect of the performance of any Contractor or Subcontractor, Lender may require that the performance of any such Contractor or Subcontractor be secured by a payment and performance bond in form, and issued by a surety company, reasonably acceptable to Lender; provided, however, that Lender shall not be entitled to require that the performance of any Subcontractor be bonded if the performance of another Person retaining such Subcontractor has been bonded as to the portion of the work to be performed by such Subcontractor.

Section 7.08. Permits and Warranties. Borrower shall

deliver to Lender from time to time originals or copies of: (a) all building and other permits, approvals, and authorizations required in connection with the construction of the Project or the operation or occupation of the Premises or any part thereof promptly upon issuance and receipt by Borrower thereof, and in any event before any act is done which requires the issuance of the respective permit, approval or authorization, and (b) upon request of Lender, all warranties and guaranties received from any person furnishing labor, materials, equipment, fixtures or furnishings in connection with the Project.

Section 7.09. Protection Against Liens and Claims.

(a) Borrower shall take all reasonable steps to forestall the assertion of claims of Lien against the Project or the Trust Estate or any part thereof.

(b) In the event that any claim is asserted against Lender or the Undisbursed Construction Funds by any Person furnishing labor, services, equipment or material to the Project and the claim is not being contested in accordance with the Deed of Trust, Lender may, in its sole discretion, file an interpleader action requiring all claimants to interplead and litigate their respective claims, and in any such action Lender shall be released and discharged from all obligations with respect to any funds deposited in court, and Lender's reasonable costs and expenses, including without limitation reasonable attorneys fees, shall be paid from such funds or from any undisbursed portion of the Loan. Any such funds deposited in court and all reasonable costs and expenses of Lender in connection therewith shall be deemed to be Disbursements under this Agreement and the Note.

Section 7.10. Removal of Personalty. Borrower shall not:

(a) Install in or otherwise use in connection with the Project any materials, equipment or fixtures under any

security agreement or similar agreement however denominated whereby the right is reserved or accrues to anyone to remove or repossess any such items or whereby any person other than Lender reserves or acquires a Lien upon such items;

(b) Remove or permit the removal of any Personal Property located on the Property or used in connection with the Project, except in compliance with the terms of the Deed of Trust; or

(c) Without the consent of Lender, permit the storage of any Personal Property at any location other than the Premises except for Personal Property stored in a bonded warehouse facility, segregated and separately identified to the Project, and insured to the reasonable satisfaction of Lender.

Section 7.11. Insurance. Borrower shall provide or cause to be

provided the policies of insurance required by Section 1.08 of the Deed of Trust.

Section 7.12. Title Reports. Borrower shall deliver or cause to be

delivered to Lender, in form and substance satisfactory to Lender: (a) such endorsements and binders to the Title Policies and (b) such preliminary title reports and other title searches as may be required by the terms of this Agreement or as Lender may from time to time reasonably require in connection with Disbursements hereunder.

Section 7.13. Entry and Inspection. Lender and its Consultants,

including the Inspecting Engineer, shall, during normal construction and business hours, upon notice to General Contractor (which may be telephonic) and subject to Space Tenants' rights under any Space Leases, have the right of entry and free access to the Premises and the right to inspect all work done, labor performed, and materials furnished in and about the Project and to examine all Plans, wherever located. Borrower will cooperate and will cause Architect, General Contractor and all Contractors and Subcontractors to cooperate with Lender and its Consultants to enable Lender and its Consultants to perform their functions. At the time of each inspection by the Inspecting Engineer, Borrower will make available to the Inspecting Engineer, on demand, daily log sheets covering the construction period showing the date, weather, Contractors and Subcontractors on the job, number of workers and status of construction.

Section 7.14. Physical Security of Project. Borrower shall provide

such watchmen and take such other measures to protect the physical security of the Project and the Trust Estate as Lender may from time to time reasonably require.

Section 7.15. Information Covenants.

(a) Borrower shall keep and maintain or will cause to be kept and maintained, on a fiscal year basis in accordance with consistently applied generally accepted accounting practices customarily used in the real estate industry, complete and accurate books, accounts and records reflecting all of the financial affairs of Borrower and all of the earnings and expenses in connection with the operation of the Trust Estate or in connection with any services, equipment or furnishings provided in connection with the operation of the Trust Estate, and, without expense to Lender, shall deliver to Lender annually, within ninety (90) days after the close of each of Borrower's fiscal years (i) an operating statement (including, without limitation, the amount of rent escalations under the Qualifying Space Leases for such fiscal year) and an annual budget certified by a general Partner of Borrower or The chief financial officer of the Person that directly or indirectly controls the day-to-day operations and management of the Trust Estate showing in reasonable detail the income and expenses of the operations of the Trust Estate, a statement of profit and loss, and a balance sheet for the immediately preceding fiscal year of Borrower, (ii) a complete copy of a financial statement of Borrower for the immediately preceding fiscal year of Borrower certified to Lender by a general partner or other principal of Borrower, containing a statement of surplus, and a balance sheet of Borrower, and (iii) a rent roll current to within thirty (30) days, showing the Space Tenants in occupancy, their square footage, their fixed and basic rents, and their tax and operating escalations. Lender or its designee will be permitted upon not less than ten (10) days prior notice to Borrower, to examine such books and records and all supporting vouchers and data at the office of Borrower with respect to the Trust Estate and make such copies or extracts at Borrower's expense thereof as Lender or its designee shall reasonably desire. Lender shall not have any duty to make any such inspection and shall not incur any liability or obligation as a result of not making such inspection. Lender agrees that any information obtained by Lender in its review or examination of Borrower's books and records pursuant to this Section 7.15 shall be confidential and solely for the benefit of Lender and any Loan Participant. Each participation agreement between Lender and any Loan Participant shall require such Loan Participant to maintain the confidentiality of any information obtained by Lender in its review of Borrower's books and records; however, Lender shall have no liability to Borrower by reason of any Loan Participant's breach of such covenant.

(b) Each annual statement shall be accompanied by a certificate of Borrower, dated as of the delivery of such statement to Lender, stating that Borrower, to the best of its knowledge, knows of no Event of Default that is continuing, or,

if any such Event of Default is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that to the best of its knowledge Borrower has fulfilled all its obligations under this Agreement and the other Loan Documents that are required to be fulfilled on or prior to the date of such certificate.

(c) Borrower shall deliver or cause to be delivered to Lender, not later than ninety (90) days after the end of each calendar year during the Loan Term a financial statement of each Guarantor, certified, respectively, by each Guarantor.

(d) Borrower shall furnish to Lender within thirty (30) days after request therefor such further detailed information covering the operation of the Trust Estate and the financial affairs of Borrower and each Guarantor as may be reasonably requested by Lender.

(e) Borrower shall deliver to Lender as soon as practicable and in any event within ten (10) days of Borrower's learning thereof, notice of:

(i) Any dispute raised by the General Contractor under the Construction Contract relating to an increase in the Contract Sum (as therein defined) and any material delay in the progress of the Project, whether or not constituting Force Majeure;

(ii) Any litigation affecting or relating to (A) Borrower, (B) any Guarantor which would materially, adversely affect such Guarantor's ability to perform its obligations under the Loan Documents, (C) the Trust Estate, (D) the Project or (E) the Government Leases;

(iii) Any dispute involving any Governmental Authority relating to the Trust Estate, the Project or the Government Leases, the adverse determination of which might materially adversely affect the Trust Estate or the Project;

(iv) Any threat or commencement of proceedings in condemnation or eminent domain relating to the Trust Estate;

(v) Any event which, with the giving of notice and/or the passage of time, could become an Event of Default, together with a written statement setting forth the nature of the event and the action Borrower proposes to take with respect thereto; and

(vi) Any event which is or could become a Termination Event under the terms of the Bid Protest Guaranty.

(f) Borrower shall deliver to Lender as soon as practicable and in any event within ten (10) days of Borrower's receipt or delivery thereof a copy of each report, statement, certification, claim, data or notice received, made or delivered by Borrower in connection with the Government Leases that relates to events that will materially affect Borrower's performance under the terms of the Government Leases, including, without limitation, notices relating to the progress of construction of the Improvements, the imposition by the government of any penalties or damages, the exercise by the government of any termination or cancellation rights, the exercise by the government of any right to audit the Government Leases, the filing of any dispute or litigation or the failure of Borrower to comply with any of the requirements of the Government Leases, including, without limitation, such notices as are required under the following sections of the Government Leases: (i) of the GSA Building Lease, Sections 5, 26, 28, 31, 32, 45, 78 and 105 of the Solicitation for Offers, Exhibit III (relating to the Parking Agreement), and all Sections of the General Clauses, and (ii) relevant sections of the Parking Agreement.

(g) Borrower shall deliver or cause to be delivered to Lender, as soon as available and in any event within thirty (30) days after the end of each calendar quarter, a report as to the status of construction and leasing of the Project including leasing schedules and reports, executed copies of any Space Leases entered into during such quarter, a list of all Space Leases then pending or the subject of negotiation by Borrower and such other leasing information as Lender shall reasonably request with respect to the Space Leases and the Trust Estate.

(h) Borrower shall deliver or cause to be delivered to Lender, on the date on which Borrower submits its final Request for Disbursement of Hard Costs under Section 5.08 and not later than sixty (60) days prior to the end of each calendar year thereafter, an annual operating budget (the "Annual Operating Budget") for the Project which shall be subject to approval by Lender in its reasonable judgment. Lender's failure to disapprove a proposed Annual Operating Budget within thirty (30) days after submission shall be deemed to be Lender's approval of such submission.

Section 7.16. Management of Property. Borrower shall not enter into

any agreement providing for the management, leasing or operation of all or any part of the Premises without the prior written consent of Lender, such consent not to be unreasonably withheld or delayed. Lender hereby approves Boston Properties, a Massachusetts business trust, as manager of the Premises provided that Boston Properties is and remains an Affiliate of Mortimer B. Zuckerman and/or Edward H. Linde.

Each manager of the Project shall execute and deliver to Lender a consent on Lender's standard form to the collateral assignment to Lender of the management contract for the Project.

Section 7.17. Project Documents.

(a) Except to the extent otherwise provided for herein, Borrower shall maintain in full force and effect, and shall comply with all of its obligations under, each of the Project Documents, including without limitation the Architect Contract and the Construction Contract.

(b) Unless Lender otherwise consents in writing Borrower shall not: (i) permit any of the Project Documents to be materially supplemented, modified, amended or terminated excluding any supplements, modifications or amendments in respect of Change Orders not requiring Lender's approval hereunder; (ii) waive, or consent to any departure from, any of the material provisions of any of the Project Documents; or (iii) transfer, convey, encumber, assign or release any interest in any of the Project Documents (except under the Loan Documents).

Section 7.18. Operation and Maintenance of Project. Borrower shall (i)

use its best efforts to keep the Project and the Improvements fully leased in a manner consistent with the highest commercial use thereof and at prevailing rates, (ii) enter into appropriate leases, service contracts and maintenance or operating agreements in accordance with the terms of this Agreement and the other Loan Documents, and (iii) make all necessary and customary capital improvements, repairs, replacements, additions, renovations or refurbishing of or to the Trust Estate. Borrower shall incur and pay or cause to be paid all costs, expenses and charges necessary or appropriate to comply with the requirements of this Section 7.18.

Section 7.19. Environmental. No Hazardous Material shall be used

during construction of the Project unless there exists no practical alternative thereto and then such Hazardous Material shall be used and stored in strict compliance with all Laws and shall be removed in its entirety from the Premises promptly upon completion of such use. Borrower shall establish and maintain a procedure to monitor the compliance of the Project with all applicable Laws relating to Hazardous Materials.

Section 7.20. Other Business. Borrower shall not engage in any

business other than the developing, constructing, operating, owning, managing, financing, and leasing of the Project and Phase I and the ownership of Lot 872. Without Lender's prior written approval Borrower will not change the height, bulk, location or use (a) of Lot 872 from that

heretofore presented to Lender so as to materially adversely affect the Premises or (b) of Phase I except as permitted under the documents providing for, evidencing, securing or otherwise relating to the loan made by Lender to Borrower in respect of Phase I.

Section 7.21. Further Encumbrance. Except as otherwise expressly

permitted by this Section 7.21, Borrower shall not further mortgage, encumber for debt or pledge the Project, Trust Estate, Revenues or any part thereof or any interest therein (including, without limitation, any air or development rights). Borrower shall be permitted to further encumber for debt, mortgage or pledge the Trust Estate or a part thereof as security for additional indebtedness ("Subordinate Financing") provided that all of the following conditions have been met by Borrower to Lender's reasonable satisfaction or Lender has waived the same in writing:

(a) Borrower has validly elected the Fixed Rate under the Note for an Interest Period ending on the Maturity Date.

(b) The Debt Service Coverage Ratio (calculated as if the Subordinate Financing had occurred and payments of principal and interest were payable with respect thereto) for the month preceding the month in which the Subordinate Financing is to occur, shall be equal to or greater than 1.15.

(c) After taking the Subordinate Financing into account, the Loan to Value Ratio as of the date of the Subordinate Financing shall be no greater than eighty percent (80%).

(d) Borrower shall give Lender telephonic notice, promptly confirmed in writing, of Borrower's intention to engage in any such Subordinate Financing at least twenty (20) days prior to Borrower's entering into such Subordinate Financing. Not later than ten (10) days prior to the closing of such Subordinate Financing, Borrower shall submit to Lender all documentation with respect to such Subordinate Financing. Lender shall have ten (10) days from receipt of such documentation to approve such documentation and if Lender shall not have responded to Borrower's request for approval within ten (10) days after receipt thereof, Lender shall be deemed to have approved the documentation with respect to such Subordinate Financing. All documentation with respect to any Subordinate Financing shall be approved by Lender if such documentation, in Lender's reasonable judgment, (i) expressly provides that the Subordinate Financing and all rights given to the lender under such Subordinate Financing ("Subordinate Lender") shall be subject and subordinate to the

Loan and all Loan Documents (as then in effect) in all respects, and (ii) provides for the following:

(A) The Subordinate Financing shall not contain any provisions which conflict with the Deed of Trust or the Assignment of Rents with regard to the collection and release and of insurance proceeds, distribution of condemnation awards and collection of rents following an Event of Default or shall expressly provide that the Deed of Trust and Assignment of Rents control with respect to the foregoing. The Subordinate Financing shall not assign to the Subordinate Lender any interest in the Rents payable under a Government Lease (as those terms are defined in the Assignment of Rents).

(B) Any debt service or other payment paid on the Subordinate Financing out of Revenues from the Trust Estate after an Event of Default has occurred, shall be held in trust by the Subordinate Lender for the benefit of Lender and shall be paid over to Lender upon request if Lender has given the Subordinate Lender notice of such Event of Default and the Subordinate Lender (i) has not cured such Event of Default within ten (10) days after receipt of notice thereof, or (ii) with respect to non-monetary defaults, (A) the Subordinate Lender has not commenced action to remedy such Event of Default within thirty (30) days after notice and (B) the Subordinate Lender is not pursuing such remedial action to completion with due diligence, provided in each case that at the time of such action by the Subordinate Lender the Borrower would be entitled to cure the applicable Event of Default.

(C) The Subordinate Lender shall enter into non-disturbance agreements with Space Tenants under Space Leases if Lender has entered into or, after the date of the Subordinate Financing, Lender enters into such agreements with such tenants.

(e) There shall exist at the time of such Subordinate Financing no Event of Default nor any fact or circumstance, which with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not then being cured in accordance with the terms of this Agreement and the other Loan Documents.

(f) The Subordinate Lender shall be an Institutional Lender at the time of entry into the Subordinate Financing.

(g) With respect to any Subordinate Financing permitted hereunder and approved by Lender pursuant hereto, Lender shall, upon request and at Borrower's sole cost, enter into an agreement with the Subordinate Lender pursuant to which Lender shall agree to provide the Subordinate Lender with (i) concurrent notices of any notice of default which could

become an Event of Default under any of the Loan Documents, and (ii) an opportunity to cure any such default within the applicable notice and grace periods, if any, given to Borrower under the applicable provisions of any of the Loan Documents.

Section 7.22. Transfers. Borrower will not cause, permit or suffer a

Transfer, other than to a Permitted Transferee, a Subordinate Lender or a party claiming by, through or under a Subordinate Lender (by virtue of foreclosure sale or by accepting a deed in lieu of foreclosure) without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 7.22, Lender shall consider, by way of illustration and not in limitation, the following factors in its determination of granting consent to any such Transfer: (i) the financial condition of the proposed transferee; (ii) the general reputation in the community of the proposed transferee; and (iii) the management and real estate experience of the proposed transferee. For purposes of this Section 7.22, if Lender has not responded to Borrower's request for approval or consent within ten (10) days following receipt thereof, Lender's rights regarding prior approval or consent shall be deemed waived; provided, however, Lender's right to consent or approve the proposed transferee shall not be deemed waived if Lender has requested further information concerning such proposed transferee as in its reasonable judgment is necessary to evaluate Borrower's request. Lender shall have an additional ten (10) day period following receipt of such additional information by Lender in which to approve or disapprove the proposed transferee. If Lender has not responded within the ten (10) day period referred to in the preceding sentence, Lender shall be deemed to have waived its right to so consent.

Section 7.23. Reimbursable Expenses. Borrower shall reimburse Lender

for all Out-of-Pocket Costs in connection with (a) the preparation, negotiation, execution and delivery of the Loan Documents and all certificates, agreements, instruments and opinions delivered in connection herewith and therewith, (b) any amendment, modification or supplement to any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (c) any waiver of any provision of this Agreement, any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (d) any restructuring of the terms of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, and (e) the administration and enforcement of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith from and after the occurrence of an Event of Default or following an acceleration of the Loan. All of the foregoing expenses shall be reimbursed by Borrower whether or not Lender gives notice to Borrower of such Event of Default under this Agreement or takes any other action to enforce the provisions of any of the Loan

Documents or any agreement or instrument delivered in connection herewith and therewith. Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, recording and enforcement of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith and shall save Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes and fees. All amounts payable pursuant to this Section 7.23 shall be due and payable not later than ten (10) Business Days following written demand by Lender, together with interest thereon (i) if Lender has actually paid such amount, at the Prime Rate (as defined in the Note) from the date of demand therefor through the date which is ten (10) Business Days after demand therefor (the "Due Date"), and (ii) whether or not Lender has actually paid such amount, at the Involuntary Rate from the Due Date through the date of payment by Borrower. The obligation to pay such amounts shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of any such liability, claims or losses pursuant to this Section 7.23 exists.

Section 7.24. Preservation of Existence. Borrower shall, as long as

any part of the Loan remains unpaid, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a partnership under the laws of the state of its formation and will comply with all regulations, rules, statutes, orders and decrees of all Governmental Authorities applicable to the Trust Estate or any part thereof, subject, however, to Borrower's right to contest such regulations, rules statutes, orders and decrees pursuant to Section 1.11 of the Deed of Trust.

Section 7.25. Future Tenant Estoppel Certificates.

(a) From time to time during the Loan Term upon Lender's request, but not more often than once each calendar year other than following the occurrence of an Event of Default, Borrower shall, within forty-five (45) days following request by Lender, deliver to Lender estoppel certificates in the form prepared by Lender with respect to all Qualifying Space Leases, which estoppel certificates shall be executed by Borrower and each other party to the appropriate Qualifying Space Lease, stating (i) that the Qualifying Space Lease is unmodified and in full force and effect or, if modified, stating the modification(s), if any, (ii) whether or not, to the best knowledge of each party to such Qualifying Space Lease, any other party to such Qualifying Space Lease is in default in any respect under such Qualifying Space Lease, and, if so, specifying such default, and (iii) any other matters that may be reasonably requested by Lender. If Borrower is unable to deliver any such estoppel certificate to Lender

because, despite Borrower's reasonable efforts, the Space Tenant from whom it has been requested has not delivered it to Borrower, Borrower shall deliver Borrower's certificate to Lender as to the matters set forth in Clauses (i)-(iii) and shall deliver the Space Tenant's estoppel certificate to Lender within two (2) Business Days after receiving it.

(b) At any time during the Loan Term, Borrower shall, within ten (10) days after request by Lender, execute and deliver Borrower's certificate stating (i) that the Qualifying Space Leases are unmodified and in full force and effect as modified, stating the modification(s), and (ii) that all rents due under Qualifying Space Leases have been paid when due, or if not, specifying the Qualifying Space Leases under which rents have not been paid when due.

Section 7.26. Use of Proceeds. Borrower will use the proceeds of the

Loan solely to pay Project Costs.

Section 7.27. Publicity. Promptly following the Initial Disbursement,

Borrower shall, at its sole expense, publish in a publication of its choice a "tombstone notice" of the Loan in form and substance mutually satisfactory to Lender and Borrower.

Section 7.28. Name. Borrower shall not change its name without

Lender's prior consent.

Section 7.29. Consultants' Fees. Borrower shall pay all fees and

expenses of Lender's Consultants which are reasonable and customary, such obligation on the part of Borrower to survive the repayment of the Loan. After a default by Borrower in the payment of any of the fees, costs and other expenses of Lender's Consultants or after any Event of Default, Lender, in its discretion, may pay such fees, costs and other expenses at any time by a Disbursement for Soft Costs under the Loan or from any Completion Deposit and Borrower hereby authorizes Lender to make such payments.

Section 7.30. Partnership Agreement; No Partnership Distributions.

Borrower shall not amend its agreement of limited partnership so as to limit the authority of the current general Partner of Borrower to control and act for Borrower, shorten the term of such agreement, modify the permitted purposes of Borrower, or adversely affect either the ability of Borrower to perform its obligations under the Loan Documents or the interests of Lender thereunder. Borrower will not, without the prior written consent of Lender, make any distribution of partnership assets or proceeds to any Partner of Borrower in such Person's capacity as a Partner other than for reimbursement of actual expenses incurred by a Partner of Borrower on behalf of Borrower, whether or not such a partnership distribution is permitted under the terms of

Borrower's partnership agreement; provided, however, that so long as no monetary default or Event of Default under the Loan Documents shall then exist or would exist after giving effect to the proposed distribution, then (a) at any point while the Loan is outstanding, Borrower, pursuant to Section 2.05 hereof, shall be permitted to make one or more distributions from the Item designated in the Project Budget as "Land Equity" in amounts totalling, in the aggregate, not more than Seven Million Dollars (\$7,000,000), (b) upon termination of the Bid Protest Guaranty in accordance with its terms, Borrower shall be permitted in accordance with Section 2.05 hereof to disburse the amount remaining under the Item designated in the Project Budget as "Land Equity" in accordance with the Project Budget and Construction Schedule provided to Lender in connection with the Loan, and (c) if Completion of Construction shall have occurred, then, to the extent of Net Cash Flow excluding cash from the Loan, Borrower, not more frequently than quarterly, may make distributions of partnership assets or proceeds (other than Loan proceeds) to any Partner of Borrower. Nothing in this Section 7.30 shall prohibit Borrower's paying a development fee to a Partner or Affiliate of Borrower, provided that such payment is pursuant to and in accordance with an agreement heretofore approved by Lender or hereafter entered into with Lender's approval, which approval shall not be withheld or delayed unreasonably provided that the fee to be paid thereunder is within the amount of the Item established therefor in the Project Budget.

Section 7.31. Space Leases. Borrower shall fully perform in a timely

fashion all of its obligations under all Space Leases, including the Government Leases.

Section 7.32. Tenant Improvements Schedule. Borrower shall provide to

Lender a Tenant Improvements Schedule immediately upon becoming available and in any event prior to commencing construction of any Tenant Improvements.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following specified

events shall constitute an "Event of Default" under this Agreement whether the occurrence of such event shall be voluntary or involuntary or come about or be affected by operation of law or otherwise:

(a) If any representation, warranty or statement made by (i) Borrower herein, in any other Loan Document or any Request for Disbursement, certificate, document, financial or other statement given by Borrower in connection with the Loan,

or (ii) Guarantors in any of the Guarantees or any certificate, document, financial or other statement given by Guarantors in connection with the Loan, shall prove to have been untrue or incorrect in any material respect when made and the existence of the facts constituting such untruth or incorrectness shall have a material and adverse effect upon the value of the Trust Estate or Lender's security for the Loan; or

(b) If any Lien or security interest created by any Loan Document, at any time after the execution and delivery thereof and for any reason, ceases or fails to constitute a valid, perfected and subsisting first lien or security interest in and to the property purported to be covered thereby, subject only to the Permitted Exceptions; or

(c) If the Project or any portion thereof is not completed in substantial conformity with the Plans in an orderly and expeditious manner substantially in accordance with the time references set forth in the Construction Schedule or before the Completion Date, subject to the provisions of Section 7.01, or is not, through Completion of Construction, free and clear of mechanics', materialmen's and other Liens asserted by suppliers of labor, services, equipment or material to the Project, subject to Borrower's rights under the Deed of Trust to contest Liens; or

(d) If all or a substantial or material portion of the Trust Estate is injured, damaged or destroyed by fire or other casualty or damaged thereby to an extent that would, in Lender's reasonable judgment, prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date; provided, however, that such damage shall not constitute an Event of Default if Borrower shall be entitled to restore the Trust Estate in accordance with the terms of the Deed of Trust; or

(e) If Borrower, in connection with the Bid Protest Litigation, is enjoined or prevented by issuance of a stop work order or suspension of work by any Governmental Authority or court of competent jurisdiction from constructing the Project or performing its obligations hereunder and such injunction, stop work order or suspension of work is not released or stayed (i) within sixty (60) days after the granting thereof, or (ii) within an additional period of time after such sixty (60) days, not to exceed an additional sixty (60) days, upon the prior consent of Lender, not to be unreasonably withheld if Borrower demonstrates to the reasonable satisfaction of Lender that such injunction, stop work order or suspension of work will be released or stayed and Lender in good faith determines that such injunction, stop work order or suspension of work will not prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date; or

(f) If all or a substantial or material portion of the Trust Estate is condemned, seized or appropriated by any Governmental Authority; provided, however, that if such a taking is a partial taking and Borrower shall be entitled to restore the Trust Estate in accordance with the Deed of Trust, such taking shall not be deemed to be an Event of Default; or

(g) If Completion of Construction shall not occur by the Completion Date; or

(h) If a default by Borrower shall occur under the Architect Contract, Construction Contract or any Space Lease (including the Government Leases), which default Lender reasonably determines is likely to affect Borrower's ability to complete construction of the Project before the Completion Date, and, if such default is subject to cure, shall remain uncured on the date that is the last day of the grace period applicable to such default; or

(i) If the General Contractor or any Architect shall fail to perform or observe any term, covenant or agreement contained in the Construction Contract or any Architect Contract, respectively, or in the consent signed by the General Contractor or such Architect for the benefit of Lender and (i) Lender has determined, in its reasonable judgment, that such failure would have a material adverse effect on the Project or would prevent or preclude Completion of Construction in an orderly and expeditious manner and in any event before the Completion Date, (ii) such failure shall continue for a period of twenty (20) calendar days from the date that notice of such determination is given to Borrower, (iii) Borrower shall fail to submit to Lender the name of a proposed successor General Contractor or Architect within twenty (20) calendar days thereafter, (iv) Lender shall disapprove such proposed successor General Contractor subsequent to such twenty (20) day period (provided that Lender's approval shall not be unreasonably withheld), and (v) Borrower shall fail to enter into a replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such replacement General Contractor or Architect and such replacement Architect or General Contractor shall fail to execute a consent in favor of Lender, in a form mutually acceptable to Lender and such replacement Architect or General Contractor, within such time period; provided, however, that if Lender fails to approve the first successor General Contractor or Architect submitted by Borrower, then Borrower shall have an additional ten (10) days between steps (iv) and (v) above to submit the name of a second proposed successor General Contractor or Architect and Lender shall have an additional ten (10) days after such subsequent submission to approve such proposed successor; or

(j) The General Contractor or the Architect shall cease to act as General Contractor or Architect for the Project, and (i) Borrower shall fail to submit to Lender the name of a proposed successor General Contractor or Architect within thirty (30) calendar days thereafter, or (ii) Lender shall disapprove such proposed successor General Contractor or Architect subsequent to such thirty-day period (provided that Lender's approval shall not be unreasonably withheld) or (iii) Borrower shall fail to enter into a replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such replacement General Contractor or Architect and such replacement Architect or General Contractor shall fail to execute a consent in favor of Lender, in a form mutually acceptable to Lender and such replacement Architect or General Contractor, within such time period; provided, however, that if Lender fails to approve the first successor General Contractor or Architect proposed by Borrower, Borrower shall have an additional twenty (20) days between steps (ii) and (iii) above to propose a second successor General Contractor or Architect, which Lender shall expeditiously approve or disapprove, and there shall be no Event of Default if Borrower enters into a replacement Construction Contract or Architect Contract within thirty (30) days after submission and approval of such second replacement General Contractor or Architect; or

(k) If the Loan is not in balance and the Contractor or Subcontractor for the Item or Items out of balance have not provided payment and performance bonds as provided in Section 2.14 within thirty (30) days after notice from Lender; or

(l) If Borrower shall fail to perform or observe any other covenant, term or agreement on its part contained in this Agreement and not otherwise provided for in this Section 8.01, which failure shall have continued unremedied for thirty (30) days after notice thereof has been given to Borrower by Lender, provided, however, that if in Lender's reasonable judgment the nature of the failure referred to in this clause (1) is such that it is curable by Borrower but cannot be cured within said thirty (30) days, then an Event of Default shall not be deemed to have occurred hereunder so long as (i) Borrower has commenced to cure said failure within said thirty (30) day period, and has notified Lender of such commencement within said thirty (30) days, (ii) Borrower thereafter proceeds with diligence to cure the same in Lender's reasonable judgment, and (iii) sufficient progress is being made in curing such default, in Lender's reasonable judgment; or

(m) If any Event of Default shall have occurred under any other Loan Document and shall remain uncured under the terms of any other Loan Document; or

(n) If a default shall occur under any guaranty now or hereafter provided in respect of the Loan, including without limitation the Guarantees, and such default shall remain uncured beyond the applicable notice and grace period thereunder, if any; or

(o) If any of the Guarantees is not in effect, unless it has lapsed pursuant to its terms, or the obligation to make payments of the guaranteed obligations under any such guaranty is determined by a court of competent jurisdiction to be unenforceable; or

(p) The termination, liquidation or dissolution or the commencement of proceedings towards the liquidation or dissolution of Borrower, or a general Partner of Borrower or a general partner of a general Partner of Borrower (unless immediately reconstituted pursuant to the provisions of its partnership agreement or applicable law or in connection with a Transfer to a Permitted Transferee); or

(q) The occurrence, prior to Completion of Construction, of a material and adverse change in the financial condition of Borrower or any Guarantor which, in the sole judgment of Lender, renders it unable to fulfill its financial obligations as they become due; or

(r) If Borrower is unable to satisfy or cause the satisfaction of any condition for the receipt of a Disbursement, or to resolve the situation to the reasonable satisfaction of Lender, for a period in excess of thirty (30) days after written notice from Lender; or

(s) If any certificate of occupancy or building permit for the Project or any portion thereof is revoked, cancelled or otherwise ceases to be effective; provided, however, that such revocation, cancellation or suspension shall not be an Event of Default if, prior to Completion of Construction, Borrower is diligently proceeding to cure such default, such cure may be effected within the Project Budget or with a Completion Deposit, and the time required to cure such default does not materially adversely affect Borrower's ability to meet the Construction Schedule or adversely affect any of Lender's collateral security for the Loan, and after Completion of Construction, such revocation, cancellation or suspension shall not permit the GSA or other contracting party to cease paying rent or making payments under the terms of the Government Leases; or

(t) The GSA Building Lease shall have been terminated or cancelled for any reason.

Section 8.02. Remedies.

(a) If any Event of Default shall occur, all obligations of Lender under this Agreement, including without limitation Lender's obligation to make any further Disbursements, at the option of Lender, shall cease and terminate, and Lender may declare the entire outstanding Loan, including interest thereon and any other fees, costs and charges then payable under any of the Loan Documents, immediately due and payable, whereupon the same shall become immediately due and payable, without presentment, protest or further demand or notice of any kind, all of which are hereby expressly waived by Borrower; and, upon such occurrence of an Event of Default or at any time following Lender's declaration that the Loan is due and payable as provided above, Lender, in addition to the foregoing, may immediately exercise any and all other rights, remedies and recourse available to it at law or in equity or under this or any of the other Loan Documents (including, without limitation, the right to sell the Trust Estate and/or foreclose any and all liens and security interests securing the repayment of the Loan under the Deed of Trust and the other Loan Documents).

(b) Borrower hereby irrevocably constitutes and appoints Lender, the Inspecting Engineer and/or any other independent contractor selected by Lender as its true and lawful attorney-in-fact, with full power, of substitution, for the purpose of performing Borrower's obligations in the name of Borrower under the Loan Documents and completing construction of the Project, whether or not substantially in accordance with the Plans (with such additions, changes and corrections in the Plans as shall be necessary or desirable in Lender's opinion to complete the Project), but Lender may act pursuant to this power-of-attorney only after an Event of Default occurs. The foregoing power-of-attorney shall be deemed coupled with an interest and shall be irrevocable until payment in full of the Loans and all other sums due and owing to Lender under any of the Loan Documents. Without limiting the generality of the foregoing, said attorney-in-fact is hereby empowered by Borrower to do any one or more of the following:

(i) To use any funds of Borrower in Lender's possession and any Disbursements not yet approved or disbursed hereunder, for the purpose of completing the Project in the manner called for by the Plans or as provided in clause (ii) below and all sums advanced hereunder and any other amounts expended by Lender to complete the Project shall be deemed to have been advanced to or for the account of Borrower pursuant hereto;

(ii) To make such additions, changes and correction in the Plans as shall be necessary or desirable in

Lender's opinion to complete the Project as contemplated by the Plans;

(iii) To employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(iv) To employ attorneys to defend against attempts to interfere with the exercise of the powers granted hereby;

(v) To pay, settle or compromise all bills and claims which are or may be liens against the Premises or Project or may be necessary or desirable for the completion of the Project or the clearance of title;

(vi) To execute all applications and certificates in the name of Borrower which may be required by any construction contract;

(vii) To prosecute and defend all actions or proceedings in connection with the construction of the Project on the Premises and to take such action, require such performance and do any and every other act as is deemed reasonably necessary by Lender to complete the Project;

(viii) To let new or additional contracts with the same contractor(s) or others to the extent not prohibited by their existing contracts;

(ix) To employ watchmen and erect security fences to protect the Project from injury; and/or

(x) To take such action and require such performance as it deems necessary under any of the bonds which may be, or insurance policies to be or which have been, furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder and, in connection therewith, to execute instruments of release and satisfaction.

(c) Without limiting any other similar rights herein granted, from and after the occurrence of an Event of Default, Borrower does irrevocably permit and authorize Lender to advance any Disbursement directly to General Contractor, Contractors, Subcontractors, materialmen, suppliers and other persons to pay for the completion of the Project, but Lender is not under any obligation so to do. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and all such advances shall satisfy pro tanto the obligations of Lender hereunder as fully as if made to or for the

account of Borrower regardless of the disposition thereof by any contractors, materialmen, suppliers or such other persons. Lender may impose any condition for such direct

payment including, but not limited to, receipt of estoppel certificates, waivers of lien, releases and the like.

(d) Any and all costs and expenses (including attorneys' fees and disbursements) incurred by Lender in pursuing its remedies hereunder and exercising such power-of-attorney shall be additional indebtedness of Borrower to Lender hereunder, and shall be secured by the Deed of Trust.

(e) Other than as may result from the negligence or willful misconduct of Lender or its agents, servants or employees, Borrower does hereby indemnify and hold Lender harmless from and against any and all liability, claims, cost, damage, and Out-of-Pocket Costs which may be imposed upon or incurred by Lender by reason of action taken by Lender hereunder, and from and against any and all claims or 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 and conditions of any obligation of Borrower, to the extent same (i) arise during or relate to the period prior to Lender's taking possession of the Trust Estate following the occurrence of an Event of Default or (ii) arise during or relate to the period following Lender's taking possession of the Trust Estate and involve the acts or failures to act of Borrower or its agents, servants or employees. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, as a condition of Borrower's indemnity obligation under this Section 8.02(e), (i) Lender shall give prompt notice to Borrower of any such action, suit or proceeding, and (ii) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender and (iii) if Borrower elects to defend such action, suit, or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower unless Borrower waives its right to the foregoing indemnification. Lender may, however, engage its own counsel, at its expense, to participate in said defense and in such case, the respective counsel for Borrower and Lender shall cooperate with each other with respect thereto (it being understood that at all times counsel for Borrower shall control such defense) and shall provide each other with copies of all papers filed in such case which, when practical, shall be delivered prior to filing thereof, or otherwise contemporaneously with filing thereof, and with such other papers as shall be reasonably requested by the other counsel which shall be delivered promptly upon request therefor. All sums determined to be payable by Borrower to Lender by reason of the foregoing indemnity pursuant to a non-appealable order of a court of competent jurisdiction, shall be due and payable

by Borrower to Lender within ten (10) Business Days after demand therefor or on such later date as specifically set forth in such demand, and if such sums are not timely paid, said sums shall bear interest at the Involuntary Rate from the date such payment was due through the date of payment.

(f) Notwithstanding anything to the contrary contained herein, Lender is not and shall not be obligated to attempt to use, operate, occupy or manage the Trust Estate or any part thereof or perform any of the terms conditions and agreements herein or in any of the other Loan Documents or in any other documents on the part of Borrower to be performed, and Lender shall have no liability whatsoever to Borrower or, unless and until Lender takes possession of the Trust Estate following the occurrence of an Event of Default, any other person or entity (other than by reason of its gross negligence or wilful misconduct) for failing, attempting or ceasing to perform the same, or for the manner of performing or attempting to perform the same, or any part thereof.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Expenses. Borrower shall pay all Out-of-Pocket Costs

and all costs and expenses incurred by Borrower in connection with the Loan and any advance thereunder including, without limitation, the fees and expenses set forth in Section 7.29 hereof, recording fees for any documents that Lender reasonably deems it appropriate to record, recording taxes when required by the terms of this Agreement to be paid by Borrower (including any such costs associated with recording tax audits or investigations demanded or conducted by a state or local tax authority with respect to the Deed of Trust) transfer taxes, license and permit fees, appraisal fees, costs of environmental inspections, filing fees, title premiums and other fees of the Title Company, as and when appropriate.

Section 9.02. Entire Agreement. This Agreement, taken together with

all of the other Loan Documents and all certificates and other documents delivered by Borrower to Lender, embodies the entire agreement with respect to the subject matter hereof, and supercedes or incorporates all prior negotiations or agreements written and oral.

Section 9.03. Counterparts. This Agreement may be executed in any

number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

Section 9.04. Governing Law/Venue/Jurisdiction. This Agreement and

the other Loan Documents are to be governed by and construed in accordance with the laws of the District of Columbia. By its execution and delivery of the Note and this Agreement, Borrower shall be deemed to have agreed that the appropriate venue and jurisdiction for any litigation pertaining to the Loan, the Note or the Loan Documents shall be in the District of Columbia and that the appropriate location for any foreclosure sale pertaining to the collateral described in the Loan Documents shall be in the District of Columbia.

Section 9.05. Severability. If any of the terms and provisions

specified herein is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such term or provision to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the terms and provisions herein shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable term or provision was not contained herein, and that the rights, obligations and interest of Borrower and Lender under the remainder of this Agreement shall continue in full force and effect .

Section 9.06. Successors and Assigns. All covenants and agreements

herein shall bind the respective successors and assigns of Borrower and Lender (but this provision is not intended nor shall it be construed to permit Borrower to transfer or assign its rights and obligations hereunder or under the Loan Documents except as permitted by the provisions of the Loan Documents), whether so expressed or not, and all such covenants shall inure to the benefit of Lender and Borrower and their respective nominees, successors and assigns, whether so expressed or not. All successors and assigns of Borrower, including all Persons succeeding to Borrower's interest in the Trust Estate as permitted by the Loan Documents or otherwise consented to by Lender, shall, prior to such succession or assignment, expressly assume in writing all of Borrower's obligations under the Loan Documents.

Section 9.07. Setoff. Borrower hereby waives any and all rights of

setoff with respect to principal and interest due on the Note and any other payments due Lender under the Loan Documents, including rights of setoff with respect to the Note and the Loan Documents which may arise from claims, transactions or occurrences heretofore unknown to Borrower.

Section 9.08. Time of the Essence. Time is of the essence with regard

to Borrower's performance under the terms amid provisions of this Agreement, the other Loan Documents and any amendment, modification or revision hereof or thereof, subject, however, to the applicable grace periods, if any, set forth in the Loan Documents. No extension of time for the payment of the Loan or any installment thereof made by agreement with any person now or hereafter liable for payment of the Loan shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Agreement, either in whole or in part.

Section 9.09. Headings. The Table of Contents, and the titles and

headings of Articles and Sections of this Agreement are intended for convenience only, and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 9.10. Notices. Each notice, request, demand, instruction or

other communication required by the Note, this Agreement or the Loan Documents to be given to Borrower or Lender shall be in writing and shall be either (a) personally delivered to the parties named below by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by a reputable air courier service such as Federal Express, Express Mail, Airborne or Emery Air, shall be effective upon delivery thereof to the addressees, and shall be addressed to the parties as set forth below:

To Borrower: Southwest Market Limited Partnership
c/o Boston Properties
8 Arlington Street
Boston, Massachusetts 02116
Attention: Vice President-Treasurer

and Boston Properties
599 Lexington Street, Suite 1300
New York, New York 10022
Attention: Senior Vice President

and Boston Properties
500 E Street S.W.
Washington, D.C. 20024
Attention: Regional General Counsel

To Lender: The Sumitomo Bank Limited,
New York Branch
One World Trade Center
Suite 9651
New York, New York 10048
Attn: Real Estate Finance
Department

With a Copy to: Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attn: Michael A. Barrett, Esq.
(Matter No: 88291-00041)

If Lender or Borrower desires to change its address for the purpose of receipt of notice, or to change the other party to receive a copy of notice, such notice or change of address or recipient shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Any notice given in accordance with the terms hereof, the delivery of which is refused by the addressee, shall be effective at the time of such attempted delivery.

Section 9.11. Successive Remedies. No power or remedy herein

conferred is exclusive of or shall prejudice any other power or remedy of Lender given by law or by the terms of any of the Loan Documents. Each such power or remedy may be exercised by Lender from time to time as often as it deems necessary.

Section 9.12. No Waiver. No failure by Lender to insist, or election

by Lender not to insist, upon the strict performance of any of the terms, provisions or conditions of this Agreement or any of the Loan Documents shall be deemed to be a waiver of the same or any other term, provision or condition thereof and Lender shall have the right at any time thereafter to insist upon strict performance of any and all of the same. If Lender advances any portion of the Loan in the absence of strict compliance with any or all of the conditions of Lender's obligations to make such advance, the same shall be deemed to have been made in pursuance of this Agreement and not to be a modification hereof.

Section 9.13. Estoppel Certificates/Non-disturbance/Other Agreements.

Within ten (10) Business Days after request by Borrower, (a) Lender shall deliver to Borrower an estoppel certificate, duly executed and acknowledged by Lender, stating the outstanding principal amount of the Loan and whether there exists any Event of Default under any of the Loan Documents, and (b) Lender shall execute and deliver a subordination, non-disturbance and attornment agreement in substantially the form attached to the Deed of Trust as Schedule C, for any Qualifying Space Lease entered into subsequent to the date hereof. If Borrower shall pay, in full, the principal of and premium, if any, and interest in the Note in accordance with the terms thereof and hereof and all other sums payable hereunder and under the other Loan Documents by Borrower and shall fully repay the Loan and shall comply with all the terms, conditions and requirements hereof and the other Loan Documents, then upon prior notice to Lender, Lender shall on such date of payment execute and deliver to Borrower such discharges, assignments and/or satisfactions as Borrower may reasonably request and shall accommodate Borrower by appearing at the closing of such assignment, discharge or satisfaction or make such other arrangement with respect thereto mutually satisfactory to Lender and Borrower, provided that Borrower shall pay all Out-of-Pocket Costs with respect thereto.

Section 9.14. Cross-Default. Any Event of Default under this

Agreement shall be deemed to be an Event of Default under each of the Loan Documents, entitling Lender to exercise any or all remedies available to Lender under the terms of any or all Loan Documents.

Section 9.15. Purpose of Loans. Borrower hereby represents and

warrants that the indebtedness evidenced by the Note is being obtained solely for the purpose of carrying on a business or commercial enterprise. Nothing contained in the preceding sentence shall be deemed to be a limitation of Borrower's use of the proceeds of the Loan.

Section 9.16. Inconsistencies with Loan . In the event of any conflict

between this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement shall control; provided, however, that any provision of any other Loan Documents which imposes additional burdens on Borrower or restricts the rights of Borrower or gives Lender additional rights or remedies shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

Section 9.17. Survival. All of the representations, warranties,

terms, covenants, agreements and conditions contained in this Agreement shall specifically survive the execution and delivery of this Agreement and the other Loan Documents and the advance of the Loan and shall, unless

otherwise expressly provided, continue in full force and effect until the Loan or the portion thereof which has been advanced, together with interest thereon, and all other costs, charges and other sums payable hereunder or thereunder, are paid in full.

Section 9.18. Indemnification. Borrower shall indemnify Lender for -----

and hold Lender harmless from and against any and all claims, damages, losses, liabilities, Out-of-Pocket Costs of any kind whatsoever (other than such Out-of-Pocket Costs which are the responsibility of Lender pursuant to the terms of this Agreement) which Lender may incur (or which may be claimed against Lender) by reason of, or in connection with (a) the destruction of the Trust Estate (or any part thereof) in a casualty for which insurance was required under the Loan Documents and was not obtained and kept in full force and effect by Borrower, (b) all obligations, covenants, representations and warranties of Borrower under the Trust Estate relating to Hazardous Material to the full extent of any losses or damages, including those resulting from diminution in the value of the Trust Estate incurred by Lender as a result of the existence of Hazardous Material to the extent such Hazardous Material existed prior to the date Lender has taken possession and has assumed control of the Trust Estate pursuant to the Deed of Trust, and (c) any action or proceeding to which Lender is made a party by reason of Lender's holding of an interest in the Trust Estate; provided, however, Borrower shall have no obligation to indemnify Lender for any such claims, damages, losses, liabilities, costs or expenses arising by reason of the negligence or willful misconduct of Lender or Lender's agents, servants or employees. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, as a condition to Borrower's indemnity obligation under this Section 9.18 (i) Lender shall give prompt notice to Borrower of any such action, suit or proceeding, (ii) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (iii), if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower, unless Lender waives its right to the foregoing indemnification. Lender may, however, engage its own counsel, at its expense, to participate in said defense and in such case, the respective counsel for Borrower and Lender shall cooperate with each other with respect thereto (it being understood that at all times counsel for Borrower shall control such defense) and shall provide each other with copies of all papers filed in such case which, when practical, shall be delivered prior to filing thereof, or otherwise contemporaneously with filing thereof, and with such other papers as shall be reasonably requested by the other counsel which shall be delivered promptly upon request therefor. All sums determined to be payable by Borrower to Lender by reason

of the foregoing indemnity pursuant to a non-appealable order of a court of competent jurisdiction shall be due and payable by Borrower to Lender within ten (10) Business Days after demand therefor or on such later date as specifically set forth in such demand, and if such sums are not timely paid, said sums shall bear interest at the Involuntary Rate from the date such payment was due through the date of payment. This Section 9.18 shall survive the payment in full of the Indebtedness.

Section 9.19. No Agency, Partnership or Joint Venture; Nonliability of

Lender.

(a) Lender is not the agent or representative of Borrower, and Borrower is not the agent or representative of Lender. Borrower and Lender intend and agree that the relationship between them shall be solely that of creditor and debtor. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Borrower and Lender.

(b) All inspections of the construction of the Project made by or through Lender are for purposes of administration of the Loan only and Borrower is not entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans, state of completion or otherwise. Borrower shall make its own inspections of such construction to determine that the quality of the work and all other requirements of such construction are being performed in a manner satisfactory to Borrower and in conformity with the Plans and all other requirements.

(c) By accepting or approving anything required to be observed, performed, fulfilled or given to Lender pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, survey, appraisal, lease or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Lender.

(d) Lender neither undertakes nor assumes any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, including without limitation matters relating to the quality, adequacy or suitability of: (i) the Plans (ii) Architects, Contractors, Subcontractors and other Persons employed or utilized in connection with the construction of the Improvements, or the workmanship of or the materials used by any of them, or (iii) the progress or course

of construction and its conformity or nonconformity with the Plans.

(e) Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction.

Section 9.20. Negotiated Document. Lender and Borrower acknowledge

that the provisions and the language of this Agreement and the other Loan Documents have been negotiated, and agree that no provision of this Agreement or any other Loan Document shall be construed against either Lender or Borrower by reason of either Lender or Borrower having drafted such provision, this Agreement or any other Loan Document.

Section 9.21. Limitation on Recourse. Except for certain limited

personal liability as specified below, it is expressly understood and agreed that the extent of liability for payment by the Borrower of any sums due under this Agreement, the Note, the Deed of Trust or any of the other Loan Documents is limited to (a) the Trust Estate, and all Revenues therefrom received by the Borrower after the occurrence of an Event of Default which are not applied to the Loan or to Expenses of the Trust Estate, and (b) proceeds of insurance on said Trust Estate or proceeds on account of condemnation thereof (to the extent such proceeds are not applied by the Lender in restoration or repair of the Trust Estate pursuant to the terms of the Deed of Trust), the Lender agreeing not to look personally to the Borrower, the general partners of the Borrower (a "P-1"), the partners or shareholders of any general partner of the Borrower (a "P-2"), or the owners of partnership or shareholder interests, whether owned or held directly or indirectly, in partners of the general partners of the Borrower (a "P-3"), for payment of any such sums. The Lender, for itself and its successors, endorsees, participants and assigns, hereby waives any right to enforce collection of any money judgment against any assets of the Borrower, any P-1, P-2, or P-3, other than as set forth in clauses (a) and (b) above, whether by reason of a judgment pursuant to an action brought under the Note or any action in foreclosure or otherwise for a deficiency judgment against the Borrower, and P-1, P-2, P-3, other than as set forth in clauses (a) and (b) above. However, notwithstanding the foregoing, the Borrower and each P-1, P-2 and P-3 shall be fully subject to personal liability (i) for fraud, respectively, by Borrower or such P-1, P-2 or P-3 and (ii) to the extent that the proceeds of insurance on the Trust Estate, the proceeds on account of condemnation thereof, or Revenues of the Trust Estate are received by the Borrower or such P-1, P-2 or P-3 after the occurrence of an Event of Default and are not applied to the Loan, the Expenses of the Trust Estate or, in respect of insurance or condemnation proceeds, in restoration or repair of the Trust Estate pursuant

to the terms of the Deed of Trust. The foregoing provisions shall not in any way be deemed to release, affect or impair the indebtedness and obligations evidenced by the Note or the security therefor, or the Lender's right to enforce its remedies under the Deed of Trust or any other of the Loan Documents by any action, including, without limitation, an action brought under the Note or any sale or foreclosure under the Deed of Trust. The foregoing provisions shall not in any way be deemed to release, affect or impair the indebtedness and obligations evidenced by the Note or the security therefor, or the Lender's right to enforce its remedies under the Deed of Trust or any other of the Loan Documents by any action, including, without limitation, an action brought under the Note or any sale or foreclosure under the Deed of Trust. Furthermore, none of the foregoing provisions shall in any way derogate from the liability which any person has assumed by a separate instrument in the nature of a guaranty of any obligation undertaken in connection with the Loan.

Section 9.22. Actions on Behalf of Lender. Any consent, review,

approval or other similar act required of Lender under the terms of this Agreement or any other Loan Document may, at Lender's option, be done by or in consultation with any Consultant or Consultants to Lender. At Lender's direction, Borrower shall provide such information to Consultants as may be required to be provided to Lender hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

SOUTHWEST MARKET LIMITED PARTNERSHIP,
a District of Columbia limited
partnership

By: Boston Southwest Associates Limited
Partnership, a Massachusetts limited
partnership, General Partner

ATTEST:

By: Independence Square, Inc.,
a Delaware corporation,
its Managing General
Partner

/s/ Edward C. Wallace

Name: Edward C. Wallace

By: /s/ Motimer B. Zuckerman

Motimer B. Zuckerman
President

THE SUMITOMO BANK, LIMITED, a
Japanese banking institution, acting
through its NEW YORK BRANCH

ATTEST:

Name: -----

By: -----
Name: -----
Title: -----

AMENDED AND RESTATED

LOAN AGREEMENT

by and between

SQUARE 36 OFFICE JOINT VENTURE,
a District of Columbia General Partnership,

and

THE SANWA BANK LIMITED,
a Japanese banking corporation acting
through its NEW YORK BRANCH

Dated as of June __, 1997

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AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (the "AGREEMENT") made as of the ___ day of June, 1997, by and between SQUARE 36 OFFICE JOINT VENTURE, a general partnership organized and existing under the laws of the District of Columbia, having an office c/o Boston Properties, Inc., 8 Arlington Street, Boston, Massachusetts 02116 ("BORROWER"), and THE SANWA BANK LIMITED, a Japanese banking corporation acting through its NEW YORK BRANCH, having an office at 55 East 52nd Street, New York, New York 10166 ("LENDER");

W I T N E S S E T H :

- - - - -

WHEREAS:

A. Borrower and Lender are parties to a Loan Agreement dated as of August 3, 1988 (the "ORIGINAL LOAN AGREEMENT"), pursuant to which Lender made a loan to Borrower in the principal amount of One Hundred Million (\$100,000,000) Dollars (the "LOAN");

B. Borrower has requested that Lender amend and restate the Original Loan Agreement to permit and reflect, inter alia (i) the amendment and

restatement of Borrower's constituent partnership documents, the admission of new partners to Borrower, and the withdrawal of Borrower's prior general partners, (ii) the indirect ownership of a portion of Borrower by a real estate investment trust, (iii) the reduction of the principal amount of the Loan to Sixty-Six Million (\$66,000,000) Dollars, (iv) the reduction of the interest rate applicable to the Loan, (v) the extension of the term of the Loan, and (vi) certain other changes; and

C. Lender is willing to amend and restate the Original Loan Agreement and consent to the related transactions as provided above subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and upon the terms and conditions herein set forth, the parties hereto hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

SECTION 1.1 Certain Definitions.

As used in this Agreement, the capitalized terms set forth below shall have the meanings given them in this Article I.

Affiliate - any Entity that, directly or indirectly, controls, is

controlled by or is under common control with, Borrower, or any other Entity which is controlled by BP LLC, the Operating Partnership or the REIT. For purposes of this definition of Affiliate, "control" shall mean the right to make or veto significant economic and management decisions without the need for the vote, approval or consent of any other Entity.

Amended and Restated Assignment of Rents - the Amended and Restated

Assignment of Leases, Rents, Profits and Other Income dated as of the date hereof (as it may hereafter be amended, modified, supplemented or restated) made by Borrower for the benefit of Lender securing certain Obligations (for purposes of this definition, as defined therein) including the indebtedness evidenced by the Replacement Note, which Amended and Restated Assignment of Rents amends and restates the Original Assignment of Rents.

Amended and Restated Deed of Trust - the Amended and Restated Deed of

Trust and Security Agreement dated as of the date hereof (as it may hereafter be amended, modified, supplemented, consolidated or restated) made by Borrower in favor of certain individuals for the benefit of Lender, securing certain Indebtedness (for purposes of this definition, as defined therein) including the indebtedness evidenced by the Replacement Note, which Amended and Restated Deed of Trust amends and restates the Original Deed of Trust.

Amended and Restated Interest Guaranty - the Amended and Restated

Interest Guaranty dated as of the date hereof (as it may hereafter be amended, modified, supplemented or restated), made by Guarantors in favor of Lender, guaranteeing payment, in certain circumstances, of interest when due and payable under the Original Note and the Replacement Note, which Amended and Restated Interest Guaranty amends and restates the Original Interest Guaranty.

BP LLC - Boston Properties LLC, a limited liability company formed and

existing under the laws of the State of Delaware and a general partner of Borrower having a 1% ownership interest therein.

Business Day - a day other than a Saturday or Sunday, or a day on

which banking institutions located in New York, New York are required or authorized by law or other government action to be closed.

Closing Date - June __, 1997.

Debt Service - in any period, the aggregate of all regularly scheduled

principal, interest or other amounts required to be paid by Borrower in respect of the Replacement Note (including, but not limited to any mandatory prepayments of principal and interest), the Amended and Restated Deed of Trust, and any other Loan Documents.

Debt Service Coverage Ratio - the ratio obtained by dividing (a) Net

Cash Flow for any given month by (b) Debt Service for such month.

Due Date - as defined in Section 5.5 hereof.

Entity - any natural person, corporation, limited liability company,

firm, trust, partnership, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary, or other capacity.

Event of Default - as defined in Section 6.1 hereof.

Expenses - with respect to a given period, operating costs actually

incurred by Borrower with respect to or allocable to such period in connection with the operation or ownership of the Trust Estate calculated in accordance with generally accepted accounting principles applicable to real estate. Expenses shall not include: (a) Debt Service, (b) depreciation and amortization of the Trust Estate and (c) capitalized expenditures. Expenses shall include, without limitation: (a) real property taxes; (b) utility charges; (c) premiums on insurance policies; (d) non-capital maintenance and cleaning expenses; and (e) legal, accounting, brokerage, and other professional fees attributable to the operation of the Trust Estate.

Funding Costs - all out-of-pocket fees, costs and expenses incurred by

Lender or any Loan Participant arising from or relating to the payment or prepayment by Borrower (whether or not after the occurrence of an Event of Default) of any principal amount of the

Original Note on the Closing Date or the Replacement Note at any time other than on the Maturity Date.

Governmental Authority - as defined in the Amended and Restated Deed

of Trust.

Guarantors - Mortimer B. Zuckerman and Edward H. Linde, together;

"GUARANTOR" shall mean either one of the Guarantors, individually.

Hazardous Material - as defined in the Amended and Restated Deed of

Trust.

Improvements - as defined in the Amended and Restated Deed of Trust.

Involuntary Rate - as defined in the Amended and Restated Deed of

Trust.

Lead Lender - as defined in Section 7.4 hereof.

Loan - as defined in the preamble hereto.

Loan Amount - the aggregate of (a) all principal amounts advanced to

Borrower pursuant to the Original Loan Agreement, this Agreement and the other Loan Documents; (b) all interest required by the Original Loan Agreement, this Agreement, the Original Note, the Replacement Note and the other Loan Documents to be paid by Borrower to Lender; (c) all Out-of-Pocket Costs, to the extent not reimbursed to Lender; (d) all Funding Costs, and (e) any and all additional amounts required to be paid by Borrower to Lender under the Original Loan Agreement, this Agreement or any other Loan Document including, without limitation, advances made by Lender to protect or preserve the Trust Estate or the security interests created by the Loan Documents.

Loan Documents - this Agreement, the Supplemental Guaranty, the

Amended and Restated Interest Guaranty, the Amended and Restated Deed of Trust, the Amended and Restated Assignment of Rents, the Replacement Note, and any and all other documents given from time to time as security for, or in evidence of, the Loan and the Loan Amount. References to the Loan Documents or to any particular Loan Document shall be deemed references to such document as the same may be renewed, modified, consolidated, replaced and/or restated from time to time in accordance with the provisions of the Loan Documents; provided, however,

that this sentence shall not be construed to permit any renewal, modification, consolidation, replacement and/or restatement that is prohibited by or inconsistent with the provisions of this Loan Agreement or any other document to which Lender is a party.

Loan Participant - any assignee of or participant in any portion of

Lender's interest in the Loan.

Loan Term - the period commencing on the Closing Date through and

including the Maturity Date.

Maturity Date - August 3, 2003.

Net Cash Flow - for any given month, an amount equal to Revenues for

such month minus the Expenses for such month.

Obligations - except as specified herein, as defined in the Amended

and Restated Interest Guaranty.

Offering - the public offering of shares of common stock of the REIT

pursuant to a registration statement on Form S-11 filed with and declared effective by the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended, and the regulations issued in accordance therewith.

Offering Documents - the registration statement on form S-11 filed by

the REIT with the Securities and Exchange Commission in connection with the Offering and all Exhibits, supplements and amendments thereto.

Operating Partnership - Boston Properties Limited Partnership, a

limited partnership formed under the laws of the State of Delaware which owns a 99% general partner interest in Borrower and a 99% managing member interest in BP LLC.

Original Assignment of Rents - the Collateral Assignment of Leases,

Rents, Profits and Other Income dated as of the Original Closing Date, between Borrower and Lender.

Original Closing Date - August 3, 1988.

Original Deed of Trust - the Deed of Trust, Consolidation,

Modification and Security Agreement dated as of the Original Closing Date, made by Borrower in favor of Edward C. Berkowitz and Bruce E. Parmley for the benefit of Lender.

Original Interest Guaranty - the Interest Guaranty dated as of the

Original Closing Date made by Guarantors in favor of Lender guaranteeing payment, in certain circumstances, of interest when due and payable under the Original Note.

Original Loan Agreement - as defined in the preamble hereto.

Original Note - that certain Consolidated and Restated Note dated the

Original Closing Date made by Borrower in favor of Lender in the original principal amount of One Hundred Million (\$100,000,000) Dollars evidencing the Loan, which Original Note has been superseded, reduced and replaced by the Replacement Note.

Out-of-Pocket Costs - all reasonable costs, fees and expenses

(including, without limitation, reasonable attorneys' fees) actually paid or payable by Lender to unaffiliated third parties under any of the Loan Documents, including without limitation, judgments, settlements or compromises (to the extent such settlements or compromises have been consented to by Borrower where such consent is required under the Loan Documents) and reasonable attorneys' fees incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is a party or appears as a party, plaintiff or defendant, arising from or related to the Loan, the Loan Documents or the Premises, but not including Lender's overhead.

Permitted Exceptions - as defined in the Amended and Restated Deed of

Trust.

Permitted Transferee - an Affiliate of Borrower or any of its

constituent partners or partnerships or any other transferee reasonably satisfactory to Lender.

Premises - as defined in the Amended and Restated Deed of Trust.

Prime Rate - as defined in the Replacement Note.

Projected Debt Service Coverage Ratio - the ratio obtained by dividing

(a) Net Cash Flow as set forth in a Projection by (b) Debt Service as set forth in the same Projection.

Projection - a pro forma statement, prepared by Borrower and in form

and substance reasonably satisfactory to Lender, setting forth in reasonable detail Borrower's projections of Expenses, Revenues, Net Cash Flow and Debt Service for the twelve (12) month period following the date of the Projection, and accompanied by all such supporting materials, including without limitation, a schedule of Qualifying Space Leases, current as of the date of such statement, and by such certifications relating to such supporting materials as Lender may reasonably require.

Qualifying Space Lease - a bona fide lease agreement pursuant to which

all or a portion of the Improvements is or is intended to be occupied; provided,

however, (a) such

lease is then in full force and effect; (b) such lease, if entered into after the Closing Date, has been created substantially in accordance with all requirements applicable to leases as set forth in the Amended and Restated Deed of Trust and all other Loan Documents; and (c) either (i) the tenant under such lease is paying all the rent and other charges due thereunder or (ii) as to a tenant not yet paying rent, such tenant is obligated to pay all of such rent, costs, and other charges thereunder, subject only to satisfaction of conditions precedent to such obligation set forth in such lease and evidenced by an estoppel certificate in form and substance reasonably satisfactory to Lender. Lender hereby acknowledges and agrees that, subject to their remaining in full force and effect, the leases of the Improvements set forth in Exhibit A hereto shall be deemed to be Qualifying Space Leases.

Reconstitution - the amendment and restatement of Borrower's

partnership agreement.

Reconstitution Documents - the Borrower's amended and restated

partnership agreement.

REIT - Boston Properties, Inc., a Delaware corporation and a publicly

traded real estate investment trust (as defined by Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, and applicable Treasury regulations), which owns a 1% interest in BP LLC and a majority interest (as both a limited partner and the general partner) in the Operating Partnership.

Replacement Note - that certain Replacement Note dated the Closing

Date made by Borrower in favor of Lender in the original principal amount of Sixty-Six Million (\$66,000,000) Dollars, in replacement of and substitution for, and evidencing the same indebtedness as, the Original Note and secured by the Loan Documents, as the same may be amended, modified, supplemented or restated from time to time.

Requirements of Law - as defined in the Amended and Restated Deed of

Trust.

Revenues - with respect to a given period, the cash revenues actually

received by Borrower under Qualifying Space Leases with respect to or allocable to such period, provided, however, with respect to percentage rent received

under any Qualifying Space Lease, "Revenues" shall mean the monthly average of percentage rent received by Borrower for the previous twelve months and to the extent Borrower has not received percentage rent under any Qualifying Space Leases for the previous twelve-month period, the percentage rent for such Qualifying Space Lease shall not be included in the calculation of Revenues.

Sanwa - The Sanwa Bank Limited, New York Branch, and its legal

successors.

Service Contracts - as defined in Section 4.10 hereof.

Shaw Pittman Lease - the Amended and Restated Lease dated September

29, 1986, between Borrower, as landlord, and Shaw, Pittman, Potts and Trowbridge, as tenant, covering space in the Improvements.

Significant Entity - as defined in Section 6.1(e) hereof.

Space Leases - as defined in the Amended and Restated Deed of Trust.

Supplemental Guaranty - one or more guaranty agreements dated as of

the date hereof (as it may hereafter be amended, modified, supplemented or restated) made by each of the Guarantors and certain other Entities in favor of Lender guaranteeing payment, in certain circumstances, of a portion of the Loan Amount.

Transfer of Borrower - any sale, assignment or other transfer, whether

by operation of law or otherwise, voluntarily or involuntarily, by BP LLC or the Operating Partnership of any direct ownership interest in Borrower.

Transfer of Premises - any (a) assignment, sale or other transfer by

Borrower of the Trust Estate or any part thereof or any interest therein (including, without limitation, any air or development rights) either voluntarily or involuntarily, by operation of law or otherwise, or (b) lease or sublease of all or substantially all of the space in the Premises, in a single or successive transactions to any single lessee or related lessees.

Trust Estate - as defined in the Amended and Restated Deed of Trust.

SECTION 1.2 ACCOUNTING TERMS.

Any accounting terms used in this Agreement that are not specifically defined herein shall have the meanings customarily given to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement, except that references in Section 5.4 to such principles shall be deemed to refer to generally accepted accounting principles as in effect on the date of the financial statements delivered pursuant thereto.

SECTION 1.3 CERTAIN INTERPRETATIONS.

The definitions set forth in Section 1.1 shall be equally applicable to both the singular and plural forms of the defined terms. The words "herein", "hereof" and words of similar import as used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Unless specifically stated to the contrary, all references to "Sections," "subsections," "paragraphs," "Exhibits" and "Schedules" in this Agreement shall refer to Sections, subsections, paragraphs, Exhibits and Schedules of this Agreement unless otherwise expressly provided; references to Entities include their respective permitted successors and assigns or, in the case of governmental Entities, Entities succeeding to the relevant functions of such persons; and all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

ARTICLE II

THE LOAN

SECTION 2.1 AGREEMENT TO LEND.

Pursuant to the Original Loan Agreement, Lender made the Loan to Borrower on the Original Closing Date in the original principal amount of One Hundred Million (\$100,000,000) Dollars as evidenced by the Original Note. Subject to the terms and conditions of this Agreement, (a) on the Closing Date, Borrower shall repay a portion of the outstanding principal amount of such Loan equal to Thirty Four Million (\$34,000,000) Dollars, together with accrued interest thereon and such other amounts (including but not limited to Funding Costs) as may be due in connection therewith, and (b) Lender shall continue to make the Loan to Borrower in the principal amount, as of the Closing Date, of Sixty-Six Million (\$66,000,000) Dollars. Borrower's obligation to pay the principal of and interest on the Loan shall be evidenced by the Replacement Note, duly executed and delivered by Borrower, which Replacement Note shall replace and supersede the Original Note (which Original Note shall be marked "Replaced by Replacement Note" and returned to Borrower on the Closing Date) and shall mature on the Maturity Date.

SECTION 2.2 REPAYMENT.

On the Maturity Date Borrower shall (a) fully repay the then-outstanding principal amount of the Loan to Lender, and (b) pay any other portion of the Loan Amount (including, but not limited to accrued interest, fees, Funding Costs, and Out-of-Pocket Costs) then due and payable.

SECTION 2.3 PAYMENT OF PRINCIPAL AND INTEREST.

The Loan shall bear interest at the rate of interest set forth in the Replacement Note, which interest shall be payable in the place, time and manner as provided in the Replacement Note.

SECTION 2.4 SECURITY.

The Loan and the Loan Amount is and shall continue to be secured by the Loan Documents.

SECTION 2.5 INTEREST GUARANTY.

(a) If, as of the Closing Date, the Projected Debt Service Coverage Ratio for the twelve (12) month period immediately following the Closing Date, is:

(i) equal to or greater than 1.05:1, then Guarantors shall not be liable for the Obligations unless and until the circumstances described in Section 2.5(b) occur; or

(ii) less than 1.05:1, then Guarantors shall be liable for the Obligations, and the Amended and Restated Interest Guaranty shall continue in full force and effect, until such time as the Debt Service Coverage Ratio shall be equal to or greater than 1.05:1 for three (3) consecutive calendar months, in which event Guarantors shall not be liable for the Obligations from and after the expiration of such three-month period unless and until the circumstances described in Section 2.5(b) occur.

(b) If for any reason at any time when any part of the Loan Amount remains outstanding or unpaid, the Shaw Pittman Lease shall terminate, then Guarantors' liability with respect to the Obligations shall continue or shall be reinstated, as applicable, until such time as a lease or leases demising the same space as is demised under the Shaw Pittman Lease and upon terms and conditions reasonably satisfactory to Lender shall have been executed and shall be in effect.

ARTICLE III

CONDITIONS PRECEDENT

SECTION 3.1 CONDITIONS PRECEDENT.

The effectiveness of this Amended and Restated Loan Agreement shall be subject to the fulfillment by Borrower on the Closing Date, in a manner satisfactory to Lender, of all the conditions precedent set forth in this Article III.

(a) Borrower shall repay the Loan, together with all accrued interest thereon and all other fees and costs then due and payable with respect thereto (which fees and expenses may include, but shall not be limited to, Out-of-Pocket Costs, if any, and such Funding Costs as may be incurred by Lender as a result of such repayment), in such principal amount as shall cause the outstanding principal amount of the Loan, as of the Closing Date, to be not more than Sixty-Six Million (\$66,000,000) Dollars.

(b) For and in consideration of Lender's entering into this Amended and Restated Loan Agreement, Borrower shall pay to Lender on the Closing Date a fee as set forth in the letter dated May 22, 1997 from Lender to Borrower.

(c) Borrower and each other party thereto shall have duly executed and Lender shall have received each of the following, each of which shall be satisfactory to Lender in form and substance:

- (i) the Replacement Note;
- (ii) the Amended and Restated Deed of Trust; and
- (iii) the Amended and Restated Assignment of Rents.

(d) (i) Each Guarantor shall have executed and delivered to Lender the Amended and Restated Interest Guaranty and (ii) each Guarantor and each other party thereto shall have executed and delivered to Lender the Supplemental Guaranty, each of which shall be satisfactory to Lender in form and substance.

(e) The Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents shall have been delivered to Lender's title insurance company for

recording, and any other documents required in connection with the recording of the Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents, including, but not limited to, form UCC-1 financing statements or amendment filings on form UCC-3 to all filed UCC-1 financing statements, shall have been executed and delivered and/or filed, as appropriate, and all taxes, fees and other charges payable in connection therewith shall have been paid in full by Borrower.

(f) Lender shall have received UCC search results (which results shall be satisfactory to Lender) with respect to Borrower, BP LLC and the Operating Partnership.

(g) Lender shall have received, at Borrower's sole cost and expense and in form and substance satisfactory to Lender, a "down-dated" title insurance policy or endorsement to the existing title insurance policy, which shall show, inter alia, (i) that the lien of the Amended and Restated Deed of Trust shall be -----
a first priority lien subject to no superior or equal lien on the Premises or the Revenues derived therefrom other than the Permitted Exceptions, (ii) that the Trust Estate is subject only to the Permitted Exceptions, and (iii) consummation of the Reconstitution.

(h) Lender shall have received a FIRREA-compliant appraisal prepared by such appraisers as Lender shall find reasonably acceptable which appraisal shall be satisfactory to Lender in form and substance.

(i) There shall have been delivered to Lender evidence of insurance covering the Trust Estate as required by the Amended and Restated Deed of Trust, accompanied by evidence of the payment of the premiums therefor.

(j) On the Closing Date there shall exist (i) no Event of Default and (ii) no fact or circumstance, which, with the passage of time, giving of notice or action of third parties, could become an Event of Default that is not then being cured, in a manner satisfactory to Lender, in accordance with this Agreement and the other Loan Documents.

(k) All representations and warranties contained herein and in the other Loan Documents and in any document delivered to Lender by Borrower in connection with the Loan shall be true and correct in all material respects.

(l) There shall be no litigation or other proceedings pending or to Borrower's knowledge threatened with respect to the Trust Estate which, if determined adversely to Borrower, would materially and adversely affect the Trust Estate or the priority of Lender's lien

thereon or the financial condition of Borrower or Guarantors, and no condemnation or similar proceeding pending or threatened with respect to all or any part of the Trust Estate.

(m) Lender shall have received a certificate dated the Closing Date signed by a general partner of Borrower stating that the conditions set forth in the foregoing paragraphs (j), (k) and (l) shall have been satisfied as of the Closing Date.

(n) Lender shall have received final copies of each of the Reconstitution Documents, together with copies of all consents and approvals, if any, required thereby, certified by a general partner of Borrower as being true and correct.

(o) The Reconstitution shall have been consummated substantially in accordance with the Reconstitution Documents and there shall be no litigation or governmental action or other proceeding pending or threatened with respect thereto, and Lender shall have received a certificate executed by a general partner of Borrower attesting to the foregoing.

(p) There shall have been delivered to Lender a full and complete copy of each of the following:

(i) the partnership agreement and all amendments thereto of Borrower and of the Operating Partnership, certified as being true and correct by a general partner of Borrower and the general partner of the Operating Partnership, respectively;

(ii) such consents of Borrower's partners to the execution and delivery of this Amended and Restated Loan Agreement and the transactions contemplated hereby, including the Reconstitution, as may be required by Lender and/or Lender's title insurance company;

(iii) the constituent limited liability company documents of BP LLC (of which the certificate of formation shall be certified by the Secretary of State of the State of Delaware), together with all action taken by BP LLC as general partner of Borrower to authorize the Reconstitution and the execution and delivery of each of the Loan Documents being executed and delivered by Borrower on the Closing Date, certified as being true and correct by the secretary of such general partner; and

(iv) long form good standing certificates as of dates not more than thirty (30) days prior to the Closing Date, with respect to Borrower and each of

the partners of Borrower, from the Secretary of State of each such Entity's state of incorporation or formation, as the case may be.

(q) Lender shall have received copies of each of the following, each certified as true and correct by an officer of the REIT:

(i) the constituent corporate documents of the REIT (of which the charter shall be certified by the Secretary of State of its state of incorporation), together with all corporate action taken by its board of directors to authorize the execution and delivery and/or filing of the Offering Documents and the consummation of the transactions contemplated thereby; and

(ii) a long form good standing certificate as of a date not more than thirty (30) days prior to the Closing Date with respect to the REIT from the Secretary of State of its state of incorporation.

(r) reserved.

(s) Lender shall have received final copies of each of the Offering Documents as filed with the Securities and Exchange Commission, together with copies of all consents and approvals, if any, required thereby, certified by the secretary of the REIT as being true and correct.

(t) The Offering shall have been consummated substantially in accordance with the terms of the Offering Documents as delivered to Lender, and there shall be no material litigation, or governmental action or other proceeding pending or threatened with respect thereto.

(u) Lender shall have received and approved all financial information reasonably requested by Lender concerning Borrower, the partners of Borrower, the REIT, the Offering and the Guarantors.

(v) Lender shall have received an opinion from Borrower's counsel, addressed to Lender and dated the Closing Date, in form and substance satisfactory to Lender and Lender's counsel, together with such local counsel opinions as Lender may reasonably request.

(w) Lender shall have received an opinion from counsel to the REIT, addressed to Lender and dated the Closing Date, in form and substance satisfactory to Lender and Lender's counsel.

(x) All legal proceedings and all instruments and agreements in connection with the transactions contemplated by this Agreement, the other Loan Documents, the Reconstitution Documents and the Offering Documents shall be reasonably satisfactory in form and substance to Lender and its counsel, and Lender shall have received all information and copies of all documents and papers, including records of governmental approvals, if any, that Lender may have reasonably requested in connection therewith, each of such documents and papers to be certified by proper governmental authorities, where appropriate.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce Lender to enter into this Agreement, Borrower makes the following representations, warranties and agreements, which shall survive the execution and delivery of this Agreement.

SECTION 4.1 EXISTENCE AND OWNERSHIP.

(a) Each of Borrower, a general partnership, BP LLC, a general partner of Borrower and a limited liability company, the Operating Partnership, a general partner of Borrower and a limited partnership, and the REIT, a corporation and a member of BP LLC and a partner of the Operating Partnership: (i) has been duly formed or organized and is validly existing under the laws of the District of Columbia, with respect to the Borrower, and the State of Delaware with respect to such other Entities, (ii) has adequate authority, rights and franchises to own its properties, to carry on its business as now conducted and to perform its obligations hereunder and under the other Loan Documents, and (iii) has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business.

(b) Borrower has no subsidiaries and no ownership interests in any Entities. Borrower has no material assets or other material properties other than the Premises and properties and assets directly related thereto. Borrower conducts no business, directly or indirectly, except as contemplated by Section 5.3 of this Agreement.

(c) As of the Closing Date, BP LLC is a general partner of Borrower having a 1% ownership interest therein, and the Operating Partnership is the only other general partner of Borrower having a 99% ownership interest therein. BP LLC is owned 1% by the REIT and 99% by the Operating Partnership. As of the Closing Date, the Operating Partnership is

majority owned by the REIT (which has a general and limited partnership interest therein), and by certain other limited partners.

(d) The REIT is a publicly traded real estate investment trust duly formed and existing under the corporate laws of the State of Delaware and Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, in which, as of the Closing Date, Mortimer B. Zuckerman and Edward H. Linde and their respective Affiliates have an aggregate ownership interest of not less than 7%.

SECTION 4.2 AUTHORIZATION, ENFORCEABLE OBLIGATION.

(a) Borrower and the general partners of Borrower have the authority and legal right to execute, deliver and perform each of this Agreement and the Replacement Note, and each of the other Loan Documents and each of the Reconstitution Documents to which they are parties, to borrow under the Loan Documents and to grant the liens and security interests contemplated thereby, and to have taken all necessary action to authorize the borrowings on the terms and conditions hereof and the execution, delivery and performance of the Loan Documents to which they are parties.

(b) Each of this Agreement, the Replacement Note, the other Loan Documents and Reconstitution Documents executed or to be executed by Borrower has been or will be executed and delivered by an officer or partner of Borrower duly authorized to execute and deliver such documents on behalf of Borrower, and constitutes or will constitute the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.

(c) To the Borrower's knowledge, no consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any Governmental Authority or any other Entity which has not been obtained is required for the execution, delivery and performance by Borrower of this Agreement and the Replacement Note, and the other Loan Documents and the Reconstitution Documents to which it is a party, or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Offering).

SECTION 4.3 CONFLICTING AGREEMENTS.

The execution and delivery by Borrower of this Agreement and the Replacement Note, and the other Loan Documents and the Reconstitution Documents to which it is a party, and performance by it hereunder and thereunder, will not violate any provision of law and will not conflict with or result in a breach of any order, writ, injunction, ordinance, resolution,

decree, or other similar document or instrument of any court or governmental authority, bureau or agency, domestic or foreign, or any certificate of limited partnership, partnership agreement, certificate of formation or limited liability company agreement of Borrower or any other Affiliate of Borrower party to any of the foregoing agreements, or create (with or without the giving of notice or lapse of time, or both) a default under or breach of any agreement, bond, note or indenture to which Borrower is a party, or by which it is bound or any of its properties or assets, including the Trust Estate, is affected, or result in the imposition of any lien of any nature whatsoever upon any of the properties or assets owned by or used in connection with the business of Borrower including the Trust Estate, except for the liens and security interests created and granted pursuant to the Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents.

SECTION 4.4 COPIES OF DOCUMENTS;

CONSUMMATION OF TRANSACTIONS.

(a) Borrower and each of BP LLC, the Operating Partnership and the REIT has furnished Lender with true, correct and complete certified copies of its organizational agreements, together with all amendments thereto, if any, as in effect at the Closing Date.

(b) Borrower has delivered or caused to be delivered to Lender true and correct copies of each of the Reconstitution Documents and Offering Documents.

(c) Each of the Reconstitution and the Offering was consummated substantially in accordance with the Reconstitution Documents and the Offering Documents, respectively, previously delivered to Lender.

SECTION 4.5 NO MATERIAL LITIGATION.

No litigation, investigation or administrative proceeding of or before any court, arbitrator or Governmental Authority is pending or, to Borrower's knowledge or the knowledge of any general partner of Borrower, threatened against Borrower, any partner thereof, against the REIT, or any of Borrower's or any such other Entities' assets, or with respect to the Reconstitution or the Offering, that would, if determined adversely, be likely to have a material adverse effect on (a) Borrower's ability to perform its obligations under the Loan Documents in accordance with the terms thereof, (b) the validity of this Agreement or any other Loan Document, or (c) Lender's security under this Agreement or any other Loan Document. No notice has been received by Borrower of any proceeding to condemn, purchase or otherwise acquire the Trust Estate or any part thereof or interest therein, and, to the best of Borrower's knowledge, no such proceeding is contemplated.

SECTION 4.6 MARGIN REGULATIONS.

Borrower is not 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.

SECTION 4.7 COMPLIANCE WITH APPLICABLE LAWS.

(a) To the best of Borrower's knowledge and belief, except as otherwise specifically disclosed in writing by Borrower to Lender, each of Borrower, BP LLC, the Operating Partnership and the REIT is in compliance with the requirements of all applicable laws, rules, regulations, ordinances and orders, including those applicable to the Trust Estate and the use thereof, the failure to comply with which would materially and adversely affect Borrower's ability to perform its obligations under this Agreement and/or any of the other Loan Documents, and no written notice of noncompliance with any of the foregoing has been received by Borrower, BP LLC, the Operating Partnership, or the REIT from any Governmental Authority.

(b) Each of the Reconstitution and the Offering was consummated in accordance with all applicable law and regulations, and no consent, approval or authorization, or registration, declaration or filing with any Governmental Authority or any other Entity by Borrower or any Affiliate of Borrower is or was required for the valid execution, delivery and performance by the parties thereto of the Reconstitution Documents, and the Offering Documents or the carrying out of the transactions contemplated thereby which was not properly obtained and maintained in effect by Borrower or an Affiliate of Borrower.

SECTION 4.8 SPACE LEASES.

The Qualifying Space Leases described in Exhibit A hereto are in full force and effect according to the terms and conditions thereof as contained in the copies thereof previously furnished to Lender. Except as may be set forth in estoppel certificates of Borrower or the tenants under such Qualifying Space Leases delivered concurrently herewith, to the best of Borrower's knowledge, (a) no notice of default has been given by any party to any such Qualifying Space Lease which remains uncured, (b) there are no material defaults under any of the provisions thereof and (c) all conditions to the effectiveness and continuing effectiveness thereof required to be satisfied as of the Closing Date have been satisfied. As of the Closing Date, Borrower is the holder of the Landlord's interest under all such Qualifying Space Leases, which are the only Space Leases in effect to which Borrower is a party. Whenever, pursuant to Section 1.12(b) or otherwise under the Amended and Restated Deed of Trust, a

subordination, nondisturbance and attornment agreement is required with respect to a Space Lease, such agreement shall be in substantially the form of Exhibit C hereto.

SECTION 4.9 NO BROKERS.

Borrower has not dealt with any mortgage or other broker or finder in connection with the Loan. Borrower agrees to indemnify, defend and hold Lender harmless from and against any claim for brokerage fees or commissions or other compensation in connection with the Loan by reason of an alleged misrepresentation of the statement made by it in the immediately preceding sentence. In case any action, suit or proceeding is brought against Lender by reason of an alleged misrepresentation by Borrower set forth in this Section 4.9, (a) Lender shall give prompt notice thereof to Borrower, (b) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (c) if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower unless Lender waives its right to indemnification under this Section. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

SECTION 4.10 SERVICE CONTRACTS.

All management, leasing, service or maintenance contracts (collectively "SERVICE CONTRACTS") relating to or affecting the Trust Estate and/or the Premises are listed in Exhibit B annexed hereto and made a part hereof, and true and complete copies of all Service Contracts, including all agreements, amendments, and other documents relating thereto have been made available to Lender. To the best of Borrower's knowledge, all Service Contracts are in full force and effect in accordance with their respective terms, and no party to any Service Contract has asserted any claim of default or offset against Borrower with respect thereto.

SECTION 4.11 LIENS.

(a) No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement, except those in favor of Lender, which has not been satisfied or terminated as of the Original Closing Date has been executed with respect to any materials, fixtures, machinery, equipment, or articles of personal property of Borrower used in connection with the construction, renovation, operation or maintenance of the Premises.

(b) Without the taking of any further action (other than as may be specifically described herein), including, without limitation, the filing of any Uniform

Commercial Code financing statements or any such similar filing by or on behalf of any Person, including, without limitation, Lender or Borrower, the liens confirmed, created and granted by the Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents shall, after giving effect to this Agreement, continue, uninterrupted and unimpaired, to constitute valid first perfected liens on the properties and assets covered by the Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents, subject to no prior or equal lien except the Permitted Exceptions.

(c) The liens and security interests confirmed, created and granted pursuant to the Amended and Restated Deed of Trust and the Amended and Restated Assignment of Rents secure, without limitation, the indebtedness, liabilities and obligations of Borrower to Lender hereunder, under the Replacement Note, and under the other Loan Documents, whether or not so stated in such documents.

SECTION 4.12 CONDITION OF PREMISES

To the best of Borrower's knowledge, there are no structural defects in the Improvements or violations of any Requirements of Law which materially and adversely affect the Premises. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and there have been no material structural exterior modifications to the Premises since the date of the survey delivered by Borrower to Lender in connection with the Original Loan Agreement. To the best of Borrower's knowledge, the Premises comply with all private easements and restrictions affecting the Premises. To the best of Borrower's knowledge, there are no restrictions, easements, limitations or conditions of any sort whatsoever affecting the use of the Premises not set forth as Permitted Exceptions. Borrower has received no written notice from any insurance company of any defects or inadequacies in connection with the Premises or the operation thereof that, if not corrected, would result in the cancellation of the relevant policy or an increase in the premium payable with respect to the relevant policy.

SECTION 4.13 FINANCIAL INFORMATION.

The financial information delivered to Lender in accordance with Section 3.1(u) hereof is true and correct in all material respects and fairly presents Borrower's assets and liabilities as of March 31, 1997; and no materially adverse change has occurred in the financial condition reflected therein since the date thereof and no additional borrowings have been made by Borrower since such date.

SECTION 4.14 PERMITS.

All material permits (including, without limitation, occupancy and other permits and licenses) required for the ownership, use, occupancy, possession, operation or maintenance of the Improvements as a first-class office building have been obtained and are in full force and effect.

SECTION 4.15 TRUE STATEMENTS.

Neither this Agreement, any other Loan Document, nor to the best of Borrower's knowledge, any other document delivered to Lender in connection with the Loan contains, or will contain when made, any untrue statement of a material fact.

SECTION 4.16 REPRESENTATIONS IN LOAN DOCUMENTS.

The representations and warranties of Borrower contained in the Loan Documents to which it is a party are true and correct, and by this reference all such representations and warranties are hereby made a part of this Agreement to the same extent as if fully set forth herein.

ARTICLE V

COVENANTS OF BORROWER

During the period the Loan remains in effect and any part of the Loan Amount remains outstanding or unpaid, or any other amount or obligation is owing to Lender hereunder or under any of the Loan Documents, Borrower shall keep and perform fully each and all of the following covenants:

SECTION 5.1 COVENANTS IN LOAN DOCUMENTS.

Borrower shall observe and perform or shall cause to be observed and performed all of the covenants contained in the Amended and Restated Deed of Trust and the other Loan Documents, and by this reference all of such covenants are hereby made a part of this Agreement to the same extent as if fully set forth herein.

SECTION 5.2 NO FURTHER ENCUMBRANCE.

Borrower shall not further mortgage, encumber for debt, or pledge the Trust Estate or any part thereof or any interest therein (including, without limitation, any air or development rights).

SECTION 5.3 SINGLE PURPOSE.

Borrower shall not engage in any business other than the designing, operating, owning, managing, developing, financing and leasing of the Trust Estate.

SECTION 5.4 INFORMATION COVENANTS.

(a) Borrower shall maintain, on a fiscal year basis in accordance with consistently applied generally accepted accounting practices customarily used in the real estate industry, complete and accurate books, accounts and records reflecting all of the financial affairs of Borrower and all of the earnings and expenses in connection with the operation of the Trust Estate or in connection with any services, equipment or furnishings provided in connection with the operation of the Trust Estate.

(b) Without expense to Lender, Borrower shall deliver to Lender annually, within ninety (90) days after the close of each of Borrower's fiscal years:

(i) an operating statement (including, without limitation, the amount of rent escalations under the Qualifying Space Leases for such fiscal year) and annual budget certified by a general partner, the chief financial officer of the REIT or such other principal of the REIT familiar with the Trust Estate and acceptable to Lender showing in reasonable detail the income and expenses of the operations of the Trust Estate;

(ii) a statement of profit and loss for the immediately preceding fiscal year of Borrower;

(iii) a complete copy of Borrower's financial statements containing a balance sheet together with the related statement of surplus and income statement for the immediately preceding fiscal year (A) certified to Lender by a general partner or other principal of Borrower acceptable to Lender and (B) reviewed by a firm of independent certified public accountants satisfactory to Lender;

(iv) a complete copy of the REIT's financial statements containing a balance sheet together with the related statement of surplus and income statement for the immediately preceding fiscal year certified to Lender by (A) the chief financial officer of the REIT and (B) a firm of independent certified public accountants satisfactory to Lender; and

(v) a rent roll current to within thirty (30) days, showing the tenants in occupancy, their square footage, their fixed and basic rents, and their tax and operating escalations.

(c) Borrower's annual financial statements shall be accompanied by a certificate of Borrower, dated as of the delivery of such statements to Lender, stating that Borrower, to the best of its knowledge, knows of no Event of Default that is continuing, or, if any such Event of Default is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that Borrower has fulfilled all its obligations under this Agreement and the other Loan Documents that are required to be fulfilled on or prior to the date of such certificate.

(d) Borrower shall deliver or cause to be delivered to Lender, no later than ninety (90) days after the end of (i) Borrower's first three fiscal quarters, a balance sheet as of the last day of such quarter and a statement of profit and loss for such quarter, in each case reviewed by a firm of independent certified public accountants acceptable to Lender, and (ii) the REIT's first three fiscal quarters, a balance sheet as of the last day of such quarter and a statement of profit and loss for such quarter.

(e) Lender or its designee will be permitted (but shall in no event be required) upon not less than ten (10) days' prior notice to Borrower (but in no event more often than once each calendar quarter unless an Event of Default shall have occurred, in which event the foregoing limitation shall not apply) to examine such books and records and all supporting vouchers and data at the office of Borrower with respect to the Trust Estate and make such copies or extracts thereof at Borrower's expense as Lender or its designee shall reasonably desire. All information obtained by Lender in its review or examination of Borrower's books and records pursuant to this Section 5.4 shall be confidential and solely for the benefit of Lender and any Loan Participant.

(f) Borrower shall furnish to Lender (i) within thirty (30) days after request therefor such further detailed information covering the operation of the Trust Estate and the financial affairs of Borrower, its partners and the REIT as may be reasonably requested by

Lender, and (ii) promptly upon their becoming available, copies of any registration statements and any amendments and supplements thereto, and any regular and periodic reports, if any, filed by the REIT with any securities exchange or with the Securities and Exchange Commission or any governmental authority succeeding to any or all of the functions of the said Commission.

SECTION 5.5 REIMBURSABLE EXPENSES.

(a) Borrower shall reimburse Lender for all Out-of-Pocket Costs in connection with (i) any amendment, modification or supplement to any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (ii) any waiver of any provision of this Agreement, any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (iii) any restructuring of the terms of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith, (iv) any nondisturbance agreements or other documents delivered by Borrower to Lender for review and approval, and (v) the enforcement of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith from and after the occurrence and during the continuance of an Event of Default or following an acceleration of the Loan. All of the foregoing expenses shall be reimbursed by Borrower whether or not Lender gives notice to Borrower of any Event of Default under this Agreement or takes any other action to enforce the provisions of any of the Loan Documents or any agreement or instrument delivered in connection herewith and therewith.

(b) Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, recording and enforcement of any of the Loan Documents or any agreement or instrument delivered in connection herewith or therewith and shall save Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes and fees.

(c) All amounts payable pursuant to this Section 5.5 shall be due and payable not later than ten (10) Business Days following written demand by Lender, together with interest thereon (i) if Lender has actually paid such amount, at the Prime Rate from the date of demand therefor through the date which is ten (10) Business Days after demand therefor (the "DUE DATE"), and (ii) whether or not Lender has actually paid such amount, at the Involuntary Rate from the Due Date through the date of payment by Borrower. The obligation to pay such amounts shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of any such liability, claims or losses pursuant to this Section 5.5 exists.

SECTION 5.6 PRESERVATION OF EXISTENCE.

(a) Each of Borrower, BP LLC and the Operating Partnership shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or partnership under the laws of the District of Columbia or the State of Delaware, as applicable, and will comply with all regulations, rules, statutes, orders and decrees of any Governmental Authority or court applicable to the Trust Estate or any part thereof, subject, however, to Borrower's right to contest such regulations, rules, statutes, orders and decrees pursuant to Section 1.11 of the Amended and Restated Deed of Trust.

(b) Borrower shall maintain in good repair, working order and condition, subject to normal wear and tear, the Trust Estate and all material properties and assets from time to time owned by it and used in or necessary for the operation of its business, and make all reasonable repairs, replacements, additions and improvements thereto.

SECTION 5.7 FUTURE TENANT ESTOPPEL CERTIFICATES.

(a) Once during the Loan Term, Borrower shall, within forty-five (45) days following request by Lender, deliver to Lender estoppel certificates prepared by Lender with respect to any Major Lease (as defined in the Amended and Restated Deed of Trust) and shall use all reasonable efforts to deliver to Lender such estoppel certificates with respect to any or all of the Qualifying Space Leases, which estoppel certificates shall be executed by Borrower and each other party to the appropriate Qualifying Space Lease, stating (i) that the Qualifying Space Lease is unmodified (or stating the modification(s), if any) and in full force and effect, (ii) whether or not, to the best knowledge of each party to such Qualifying Space Lease, any party to such Qualifying Space Lease is in default in any respect under such Qualifying Space Lease, and, if so, specifying such default, and (iii) any other matters that may be reasonably requested by Lender. If, after reasonable efforts, Borrower is unable to obtain an estoppel certificate from any of its tenants, Borrower shall deliver Borrower's certificate to Lender as to the matters set forth in clauses (i), (ii) and (iii) and shall deliver such tenant's estoppel certificate to Lender within two (2) Business Days after receiving it.

(b) On not more than three (3) occasions during the Loan Term, Borrower shall, within ten (10) days after receipt in writing of a request by Lender, execute and deliver Borrower's certificate stating that (i) the Qualifying Space Leases are unmodified (or stating the modification(s) if any) and in full force and effect, and (ii) all rents due under Qualifying Space Leases have been paid when due, or if not, specifying the Qualifying Space Leases under which rents have not been paid when due.

SECTION 5.8 TRANSFERS OF PREMISES.

Borrower will not cause, permit or suffer a Transfer of Premises, other than to a Permitted Transferee, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 5.8, Lender shall consider, by way of illustration and not in limitation, the following factors in its determination of granting consent to any such Transfer of Premises: (a) the financial condition of the proposed transferee; (b) the general reputation in the community of the proposed transferee; and (c) the management and real estate experience of the proposed transferee. For purposes of this Section 5.8, if Lender has not responded to Borrower's request for consent within fifteen (15) Business Days following receipt thereof, Lender's rights regarding prior consent shall be deemed waived unless, prior to the expiration of such fifteen (15) day period, Lender has requested further information concerning such proposed transferee as in its reasonable judgment is necessary to evaluate Borrower's request, in which event Lender shall have an additional fifteen (15) day period following receipt of such additional information by Lender in which to approve or disapprove the proposed transferee. If Lender has not responded within the first fifteen (15) Business Day period or the additional fifteen (15) day period referred to in the preceding sentence, Lender shall be deemed to have waived its right to so consent.

SECTION 5.9 AMENDMENTS TO LEASES.

Borrower will not, without the prior written consent of Lender, enter into, or agree to enter into, any material amendments, modifications or supplements, or any agreement which would have the effect of a material amendment, modification or supplement, to any Qualifying Space Lease.

ARTICLE VI

EVENTS OF DEFAULT; REMEDIES

SECTION 6.1 EVENTS OF DEFAULT.

Each of the following specified events shall constitute an "EVENT OF DEFAULT" under this Agreement whether the occurrence of such event shall be voluntary or involuntary or come about or be affected by operation of law or otherwise:

(a) Any representation, warranty or statement made by Borrower in any Loan Document or any certificate, document, financial or other statement given in connection with the Loan, shall prove to have been untrue or incorrect in any material respect when made and the existence of the facts constituting such untruth or incorrectness shall have a material and adverse effect upon the value of the Trust Estate or Lender's security for the Loan or the Loan Amount; or

(b) Borrower shall fail (i) to make any payment of principal of the Replacement Note when due, or (ii) to make any payment of interest or any other sum required to be paid by Borrower under the Replacement Note within five (5) Business Days following written notice from Lender to Borrower, or (iii) to make any other payment to Lender required to be made hereunder or under any other Loan Document within ten (10) days following written notice from Lender to Borrower; or

(c) Borrower shall mortgage, encumber for debt or pledge the Trust Estate in violation of Section 5.2 hereof, the Amended and Restated Deed of Trust or any other Loan Document; or

(d) Except as otherwise specified in this Section 6.1, Borrower shall fail to perform or observe any other covenant, term or agreement on its part contained in this Agreement, which failure shall have continued unremedied for thirty (30) days after notice thereof shall have been given to Borrower by Lender, provided, however, that if, in Lender's reasonable judgment, the failure

referred to in this paragraph (d) is curable by Borrower but not within said thirty (30) day period, then an Event of Default shall not be deemed to have occurred hereunder so long as (i) Borrower commences remedial action promptly after notice and (ii) Borrower pursues such remedial action to completion with due diligence and dispatch in Lender's reasonable judgment; or

(e) Any of Borrower, BP LLC or the Operating Partnership or any such Entity's successors or assigns, or the REIT (collectively, a "SIGNIFICANT ENTITY") shall file a voluntary petition seeking an order for relief under Title 11 of the United States Code, or any Significant Entity shall be adjudicated a debtor, bankrupt or insolvent, or shall file any petition or answer seeking, consenting to or acquiescing in any order for relief, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), or shall file an answer admitting or failing to deny the material allegations of a petition against it for any such relief or shall admit in writing its inability to pay its debts as they mature, or shall make an assignment for the benefit of creditors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver,

examiner, sequestrator, custodian or liquidator or similar official of any Significant Person; or if, within sixty (60) days after the commencement of any such proceeding, whether by the filing of a petition or otherwise, seeking any order for relief, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment (without the consent or acquiescence of such Significant Entity) of any trustee, receiver or liquidator of any Significant Entity, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment issued against such Significant Entity shall not have been discharged or removed within sixty (60) days of its issuance; or

(f) The termination, liquidation or dissolution or the commencement of proceedings for the liquidation or dissolution of any Significant Entity (unless immediately reconstituted pursuant to the provisions of its partnership agreement or applicable law or in connection with a Transfer of Borrower to a Permitted Transferee) shall occur; or

(g) Borrower shall, in violation of this Agreement, the Amended and Restated Deed of Trust or any other Loan Document, cause or permit any Transfer of Premises to occur or shall enter into any agreement to effect the same; or

(h) (i) Either of BP LLC or the Operating Partnership shall cease to be general partners of Borrower, or (ii) Borrower shall admit any partners in addition to BP LLC and the Operating Partnership as general partners, or (iii) the Operating Partnership and the REIT shall together own less than 100% of the membership interests in BP LLC, or (iv) the REIT directly or indirectly shall cease to be the sole general partner of the Operating Partnership.

SECTION 6.2 REMEDIES.

(a) If any Event of Default shall occur and be continuing, all obligations of Lender under this Agreement, at the option of Lender, shall cease and terminate, and Lender may declare the entire outstanding principal amount of the Loan, including interest thereon and any other fees, costs and charges then payable under any of the Loan Documents, immediately due and payable, whereupon the same shall become immediately due and payable, without presentment, protest or further demand or notice of any kind, all of which are hereby expressly waived by Borrower; and, upon the occurrence and continuance of an Event of Default or at any time following Lender's acceleration of the Loan, Lender may immediately exercise any and all other rights, remedies and recourse available to it at law or in equity or under any of the other Loan Documents including, without limitation, the right to foreclose on any and

all liens and security interests securing repayment of the Loan Amount under the Amended and Restated Deed of Trust and the other Loan Documents.

(b) Notwithstanding anything to the contrary contained herein, if Borrower shall fail, refuse or neglect to make any payment or perform any act required under the Loan Documents, Lender may, at its option and without any obligation, at any time (including prior to the expiration of any grace period related thereto), and without waiving or releasing any other right, remedy or recourse Lender may have in connection therewith, make such payments or perform such acts for the account of and at the expense of Borrower, and shall have the right (to the extent Borrower has the power to grant such right), to enter upon the Trust Estate and to take all action with respect to the Trust Estate as Lender may deem desirable.

(c) Borrower hereby indemnifies Lender against all liability incurred or accruing by reason of any acts performed by Lender pursuant to the Loan Documents, except to the extent that the same shall have been caused by the wilful misconduct or gross negligence of Lender or its employees and agents and shall not be covered by the insurance required to be carried by Borrower under the Loan Documents. Lender shall give Borrower reasonably prompt notice of any threatened or actual liability giving rise to the right of indemnification set forth herein and upon the receipt of such notice, Borrower shall diligently defend Lender against such liability by counsel reasonably satisfactory to Lender, at Borrower's sole cost and expense, provided, however, that Lender may

engage its own counsel, at its expense, to participate in said defense, and in such event, the respective counsel for Borrower and Lender shall cooperate with each other with respect thereto (it being understood that Borrower's counsel shall control such defense) and shall promptly provide each other with copies of all papers filed in such case or otherwise requested. Lender shall not compromise or settle any action, suit or proceeding against which Lender is indemnified hereunder without the consent of Borrower unless Lender waives its right to indemnification under this Section. All sums determined to be payable by Borrower to Lender by reason of the foregoing indemnity pursuant to a final non-appealable order of a court of competent jurisdiction or otherwise shall be due and payable by Borrower to Lender within five (5) Business Days after demand therefor or on such later date as may be specifically set forth in such demand, and if such sums are not timely paid, said sums shall bear interest at the Involuntary Rate from the date such payment was due through the date of payment.

(d) Notwithstanding anything to the contrary contained herein, in no event shall Lender be obligated to attempt to use, operate, occupy or manage the Trust Estate or any part thereof or to perform any of the terms, conditions and agreements herein or in any of the other Loan Documents or in any other documents on the part of Borrower to be

performed, and Lender shall have no liability whatsoever to Borrower or any other person or Entity (other than by reason of its gross negligence or wilful misconduct) for failing, attempting or ceasing to perform the same, or for the manner of performing or attempting to perform the same, or any part thereof.

SECTION 6.3 INTEREST GUARANTY.

Notwithstanding any other provision of this Amended and Restated Loan Agreement or any other Loan Document, in no event shall any default or event of default under the Amended and Restated Interest Guaranty or the Supplemental Guaranty, or any other breach thereof by any party thereto, be a default or Event of Default under this Agreement or any of the other Loan Documents (other than the Amended and Restated Interest Guaranty or the Supplemental Guaranty).

ARTICLE VII
MISCELLANEOUS

SECTION 7.1 EXPENSES.

Borrower shall pay, as and when due, all Out-of-Pocket Costs and all costs and expenses incurred by Borrower or Lender in connection with the Loan and the preparation, amendment, administration and enforcement of the Loan Documents including, without limitation, the fees and expenses set forth in Section 5.5 hereof, document recording fees, mortgage recording taxes (including any such costs associated with recording tax audits or investigations demanded or conducted by a state or local tax authority with respect to the Amended and Restated Deed of Trust) transfer taxes, license and permit fees, appraisal fees, costs of environmental inspections, filing fees, title premiums and other fees of Lender's title insurance company.

SECTION 7.2 ENTIRE AGREEMENT.

This Agreement, taken together with all of the other Loan Documents and all certificates and other documents delivered by Borrower to Lender, embodies the entire agreement with respect to the subject matter hereof, and supersedes or incorporates all prior negotiations or agreements written and oral.

SECTION 7.3 COUNTERPARTS.

This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

SECTION 7.4 ASSIGNABILITY AND PARTICIPATION.

Lender may assign the Replacement Note, this Agreement, and/or the other Loan Documents, in whole or in part, and Lender may grant to others such participatory rights and interests herein and therein as Lender, in its sole discretion, may elect, provided that (a) Sanwa shall, at all times, administer

the Loan and retain the authority, either as agent or otherwise, to exercise or direct the exercise of Lender's rights under the Loan Documents (as such, Sanwa shall be defined as the "LEAD LENDER"), and (b) Borrower shall not be required to obtain consents or approvals or otherwise deal directly with any party other than Sanwa with respect to the Loan or the provisions of any of the Loan Documents. Lender shall give notice to Borrower of any such assignment or grant, and Borrower shall pay to Lender increased costs actually incurred by any such participating institution subject to the provisions and limitations more particularly set forth in the Replacement Note.

SECTION 7.5 GOVERNING LAW; VENUE; JURISDICTION.

The Replacement Note, this Agreement and the other Loan Documents are to be governed by and construed in accordance with the laws of the District of Columbia, but without consideration of the conflicts of law provisions thereof. By its execution and delivery of the Replacement Note and this Agreement, Borrower shall be deemed to have agreed that the appropriate venue and jurisdiction for any litigation pertaining to the Loan, the Replacement Note or the Loan Documents shall be in the District of Columbia, and that the appropriate location for any foreclosure sale pertaining to the collateral described in the Loan Documents shall be in the District of Columbia.

SECTION 7.6 SEVERABILITY.

If any of the terms and provisions specified herein is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such term or provision to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the terms and provisions herein, shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable term or provision was not

contained therein, and that the rights, obligations and interests of Borrower and Lender under the remainder of this Agreement, shall continue in full force and effect.

SECTION 7.7 SUCCESSORS AND ASSIGNS.

All covenants and agreements herein shall bind the respective successors and assigns of Borrower and Lender (provided, that Borrower shall not

be permitted to transfer or assign its rights and obligations hereunder or under the other Loan Documents except as expressly permitted by the provisions of the Loan Documents), and all such covenants shall inure to the benefit of Lender and Borrower and their respective nominees, successors and assigns.

SECTION 7.8 SETOFF.

Borrower hereby waives any and all rights of setoff with respect to principal and interest due on the Replacement Note and any other payments due Lender under the Loan Documents, including rights of setoff with respect to the Replacement Note and the Loan Documents which may arise from claims, transactions or occurrences heretofore unknown to Borrower.

SECTION 7.9 TIME OF THE ESSENCE.

Time is of the essence with regard to Borrower's performance under the terms and provisions of this Agreement, the other Loan Documents and any amendment, modification or revision hereof or thereof, subject, however, to the applicable grace periods, if any, set forth in the Loan Documents. No extension of time for the payment of the Loan made by agreement with any person now or hereafter liable for payment of the Loan Amount shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Agreement, either in whole or in part.

SECTION 7.10 HEADINGS.

The Table of Contents, and the titles and headings of Articles and Sections of this Agreement are intended for convenience only, and shall not in any way affect the meaning or construction of any provision of this Agreement.

SECTION 7.11 NOTICES.

Except as may otherwise be provided herein, any notice, request, demand, instruction or other communication required by the Loan Documents to be given to Borrower or Lender shall be in writing and shall be either (a) personally delivered to the parties named below by A messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by a reputable air courier service such as Federal Express, Express Mail, Airborne or Emery Air, shall be effective upon delivery thereof to the addressees and shall be addressed to the parties as set forth below:

To Borrower:

c/o Boston Properties, Inc.
500 E Street, S.W.
Washington, D.C. 20024
Attn: Office of Regional Counsel
Telecopier No.: (202) 488-8644

With a copy to:

Boston Properties, Inc.
8 Arlington Street
Boston Massachusetts, 02116
Attn: General Counsel
Telecopier No.: (617) 536-5087

And:

Goodwin, Procter & Hoar, LLP
Exchange Place
Boston, Massachusetts 02109
Attn: Ross D. Gillman, Esq.
Telecopier No.: (617) 227-8591

To Lender:

The Sanwa Bank Limited,
New York Branch
Park Avenue Plaza
55 East 52nd Street

New York, NY 10055
Attn: Mr. Tony S. Choi
Telecopier No.: (212) 754-2360

With a copy to:

Winston & Strawn
200 Park Avenue
New York, NY 10166
Attn: Marc C. Lewis, Esq.
Telecopier No.: (212) 294-4700

If Lender or Borrower desires to change its address for the purpose of receipt of notice, or to change the other party to receive a copy of notice, such notice or change of address or recipient shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Any notice given in accordance with the terms hereof, the delivery of which is refused by the addressee, shall be effective at the time of such attempted delivery.

SECTION 7.12 SUCCESSIVE REMEDIES.

No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy of Lender given by law or by the terms of any of the other Loan Documents. Each such power or remedy may be exercised by Lender from time to time as often as it deems necessary.

SECTION 7.13 NO-WAIVER.

Any waiver by Lender of any of the terms, provisions or conditions of this Agreement or any of the other Loan Documents shall not be deemed to be a waiver of the same or any other term, provision or condition thereof and Lender shall have the right at any time thereafter to insist upon strict performance of any and all of the same.

SECTION 7.14 ESTOPPEL CERTIFICATES/NONDISTURBANCE/OTHER AGREEMENTS.

Within ten (10) Business Days after request by Borrower, Lender shall execute and deliver to Borrower (a) an estoppel certificate stating the outstanding principal amount of the Loan and whether there exists any Event of Default under any of the Loan Documents, and (b) a subordination, nondisturbance and attornment agreement in substantially the form attached to the Amended and Restated Deed of Trust as Schedule B, for any Qualifying Space Lease entered into subsequent to the Closing Date. Upon repayment of the Loan Amount in full and payment of all interest accrued thereon and any other fees, expenses, and Out-of-Pocket Costs, incurred hereunder or under the other Loan Documents, then upon Borrower's request, Lender shall execute and deliver to Borrower such discharges, assignments and/or satisfactions as Borrower may reasonably request and shall, upon reasonable notice, appear at the closing of such assignment, discharge or satisfaction or make such other arrangements with respect thereto as may be mutually satisfactory, provided that Borrower shall pay all Out-of-Pocket Costs with respect thereto.

SECTION 7.15 CROSS-DEFAULT.

Any Event of Default under this Agreement shall be deemed to be an Event of Default under each of the Loan Documents, entitling Lender to exercise any or all remedies available to Lender under the terms of any or all Loan Documents.

SECTION 7.16 PURPOSE OF LOANS.

Borrower represents and warrants that the indebtedness evidenced by the Replacement Note was obtained solely for the purpose of carrying on a business or commercial activity. Nothing contained in the preceding sentence shall be deemed to be a limitation of Borrower's use of the proceeds of the Loan.

SECTION 7.17 INCONSISTENCIES WITH LOAN DOCUMENTS.

In the event of any conflict between this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement shall control; provided, however, that any provision of any other Loan Documents which imposes additional burdens on Borrower or restricts the rights of Borrower or gives Lender additional rights or remedies shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

SECTION 7.18 SURVIVAL.

All of the representations, warranties, terms, covenants, agreements and conditions contained in this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall, unless otherwise expressly provided, continue in full force and effect until the Loan, together with interest thereon, and all other costs, charges and other sums payable hereunder or thereunder, are paid in full.

SECTION 7.19 INDEMNIFICATION.

Borrower shall indemnify Lender for and hold Lender harmless from and against, any and all claims, damages, losses, liabilities, Out-of-Pocket Costs of any kind whatsoever (other than such Out-of-Pocket Costs which are the responsibility of Lender pursuant to the terms of this Agreement) which Lender may incur (or which may be claimed against Lender) by reason of, or in connection with (a) the destruction of the Trust Estate (or any part thereof) in a casualty for which insurance was required under the Loan Documents and was not obtained and kept in full force and effect by Borrower, (b) all obligations, covenants, representations and warranties of Borrower under the Amended and Restated Deed of Trust relating to Hazardous Material to the full extent of any losses or damages (including those resulting from diminution in the value of the Trust Estate) incurred by Lender as a result of the existence of Hazardous Material to the extent such Hazardous Material existed prior to the date Lender has taken possession and has assumed control of the Trust Estate pursuant to the Amended and Restated Deed of Trust, and (c) any action or proceeding to which Lender is made a party by reason of Lender's holding of an interest in the Trust Estate; provided, however, Borrower shall have no obligation to indemnify Lender

for any such claims, damages, losses, liabilities, costs or expenses arising by reason of the gross negligence or willful misconduct of Lender. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, as a condition to Borrower's indemnity obligation under this Section 7.19, (a) Lender shall give prompt notice to Borrower of any such action, suit or proceeding, (b) Borrower may, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding by counsel reasonably satisfactory to Lender, and (c) if Borrower elects to defend such action, suit or proceeding, Lender shall not compromise or settle any such action, suit or proceeding without the consent of Borrower, unless Lender waives its right to the foregoing indemnification.

SECTION 7.20 NO AGENCY, PARTNERSHIP OR JOINT VENTURE.

Lender is not the agent or representative of Borrower, and Borrower is not the agent or representative of Lender. Borrower and Lender intend and agree that the relationship

between them shall be solely that of creditor and debtor. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between Borrower and Lender.

SECTION 7.21 NEGOTIATED DOCUMENT.

Lender and Borrower acknowledge that the provisions and the language of this Agreement and the other Loan Documents have been negotiated and are reasonable in light of all circumstances attendant to the execution and delivery of this Agreement, and agree that no provision of this Agreement or any other Loan Document shall be construed against either Lender or Borrower by reason of either Lender or Borrower having drafted such provision, this Agreement or any other Loan Document.

SECTION 7.22 LIMITATION ON RECOURSE.

Except for certain limited personal liability as specified below, it is expressly understood and agreed that the extent of liability for payment by Borrower of any sums due under this Agreement, the Replacement Note, the Amended and Restated Deed of Trust or any of the other Loan Documents is limited to (a) the Trust Estate, and all Revenues therefrom received by Borrower after the occurrence of an Event of Default which are not applied to the Loan Amount or to Expenses of the Trust Estate, and (b) proceeds of insurance on said Trust Estate or proceeds on account of condemnation thereof (to the extent such proceeds are not applied by Lender in restoration or repair of the Trust Estate pursuant to the terms of the Amended and Restated Deed of Trust), Lender agreeing not to look personally to Borrower, the general partners of Borrower (a "P-1"), the partners, members, or shareholders of any general partner of Borrower (a "P-2"), or the owners of partnership or membership interests, whether owned or held directly or indirectly, as general or limited partners or members of a limited liability company, in partners or members of the general partners of Borrower (a "P-3"), for payment of any of such sums. Lender, for itself and its successors, endorsees, participants and assigns, hereby waives any right to enforce collection of any money judgment against any assets of Borrower, any P-1, P-2 or P-3, other than as set forth in clauses (a) and (b) above, whether by reason of a judgment pursuant to an action brought under the Replacement Note or any action in foreclosure or otherwise for a deficiency judgment against Borrower, any P-1, P-2 or P-3, other than as set forth in clauses (a) and (b) above. However, notwithstanding the foregoing, Borrower and the general partners of Borrower shall be fully subject to personal liability (a) for fraud and (b) to the extent that the proceeds of insurance on the Trust Estate, the proceeds on account of condemnation thereof, or Revenues of the Trust Estate are received by Borrower or its partners after the occurrence of an Event of Default and are not applied to the Loan Amount, the Expenses of the Trust Estate or, in respect of insurance or

condemnation proceeds, in restoration or repair of the Trust Estate pursuant to the terms of the Amended and Restated Deed of Trust. The foregoing provisions shall not in any way be deemed to release, affect or impair the indebtedness and obligations evidenced by the Replacement Note or the security therefor, or Lender's right to enforce its remedies under the Amended and Restated Deed of Trust or any other of the Loan Documents by any action, including, without limitation, an action brought under the Replacement Note or any foreclosure under the Amended and Restated Deed of Trust. Furthermore, none of the foregoing provisions shall in any way limit the liability of the Guarantors under the Amended and Restated Interest Guaranty or which any person has assumed by a separate instrument in the nature of a guarantee of any obligation undertaken in connection with the Loan.

SECTION 7.23 CONSTRUCTION.

Except as Lender may otherwise agree in writing or as may otherwise be provided under applicable law, any default or other condition upon which the existence of an Event of Default shall be predicated (and, thus, the Event of Default predicated thereon) shall be deemed to be "continuing" for all purposes of this Loan Agreement as provided in Section 4.20(b) of the Amended and Restated Deed of Trust.

SECTION 7.24 SURVIVAL OF ACCRUED AMOUNTS.

Any and all Out-of-Pocket Costs, costs, expenses, fees or other amounts, including without limitation any principal or accrued interest with respect to the Loan and all accrued Funding Costs, which shall be due and payable under the terms of the Original Loan Agreement, the Original Note, or any of the other Loan Documents which shall not be paid in full on the Closing Date, shall survive and continue to be due and payable by Borrower under and in respect of this Agreement, the Replacement Note or such of the other Loan Documents as may be applicable.

SECTION 7.25 CONFIDENTIALITY.

The Projections supplied to Lender by Borrower are solely for the use of Lender and Lender agrees to keep the Projections confidential and shall not supply the Projections or any part thereof to any person not employed or affiliated with Lender; provided, however, that Lender and the Loan Participants

may supply the Projections to any bank or financial institution which has purchased or is considering purchasing a participation in the Loan. Notwithstanding anything to the contrary set forth herein, the confidentiality obligations referred to in this Section 7.25 shall not apply to (i) information publicly known through no

wrongful act of Lender and (ii) information required to be disclosed by applicable law, regulation or judicial or regulatory process.

[End of Text]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

SQUARE 36 OFFICE JOINT VENTURE,
a District of Columbia General Partnership

By: Boston Properties LLC

By: _____

THE SANWA BANK LIMITED,
NEW YORK BRANCH, a Japanese
banking institution

By: _____

Name:
Title:

INDEMNIFICATION AGREEMENT

This Agreement is made as of June __, 1997 by and among Mortimer B. Zuckerman of New York, New York ("Zuckerman"), Edward H. Linde of Weston, Massachusetts ("Linde") and Boston Properties Limited Partnership, a Delaware limited partnership ("BPLP").

WHEREAS, Zuckerman and Linde and their affiliates intend to cause an initial public offering (the "Offering") of the common stock of Boston Properties, Inc. ("Boston Properties"), the sole general partner of BPLP, and thereafter to conduct its business as a publicly traded real estate investment trust employing the so-called "UPREIT" structure through BPLP as the operating partnership (the "Business");

WHEREAS, in connection with the Offering, Zuckerman and Linde intend to transfer or cause to be transferred to BPLP certain real property interests (the "Properties") currently owned or held by Zuckerman, Linde or certain of their affiliates, as described in the Registration Statement on Form S-11 (No. 333-25279) filed with the Securities and Exchange Commission relating to the Offering (the "Registration Statement");

WHEREAS, in connection with the Offering, Zuckerman and Linde also intend to transfer or cause to be transferred to BPLP various assets, rights and interests, including without limitation, obligations and benefits under various contracts and other agreements, all of which relate to the Properties or the Business; and

WHEREAS, the parties hereto desire that, following the consummation of the Offering (the "IPO Closing Date"), Zuckerman and Linde shall no longer be responsible for any liabilities or obligations arising out of or resulting from events or occurrences relating to the Properties or the Business that accrue or occur (a) after the IPO Closing Date or (b) prior to the IPO Closing Date but which occurred in the ordinary course of the Business or the operation of the Properties.

NOW, THEREFORE, in consideration of and in order to fulfill the foregoing, the parties hereby agree as follows:

1. Indemnification. From and after the IPO Closing Date, BPLP shall

indemnify and hold harmless Zuckerman and Linde from and against any and all claims, losses, obligations, liabilities, damages, penalties, fines, costs and expenses of any kind or nature whatsoever (including but not limited to interest which may be imposed in connection therewith) and reasonable fees and disbursements of counsel and other experts incurred in connection with any of the foregoing, or in connection with enforcing any rights to

indemnification under this Agreement with respect to any of the foregoing (collectively, "Losses," but which term shall specifically not include the incurrence of personal federal and state income taxes or the loss of any deduction against taxable income) which may be sustained or suffered by Zuckerman or Linde arising out of or resulting from (x) the ownership of any of the Properties after the IPO Closing Date, (y) the failure of BPLP after the IPO Closing Date to perform any obligation required to be performed pursuant to any contract or obligation assigned to and assumed by BPLP, or (z) the operation of the Business subsequent to the IPO Closing Date, including in any such case and without limitation any and all Losses arising from undertakings given by Zuckerman and Linde (i) pursuant to the Development Agreement between the Cambridge Redevelopment Authority (the "Authority") and Cambridge Center Associates ("CCA") dated June 11, 1979, as amended by the amendments referenced in Schedule A attached hereto, as assigned by CCA to BPLP, and as further amended by Amendment No. 11 to Parcel 3 and 4 Development Agreement dated as of even date herewith between the Authority and BPLP (as so amended and assigned, the "Parcel 3 and 4 Development Agreement"), (ii) pursuant to the Development Agreement dated April 14, 1982 by and between the Authority and CCA, as amended by amendments referenced in Schedule B attached hereto, as assigned by CCA to BPLP, and as further amended by Amendment No. 7 to Parcel 2 Development Agreement of even date herewith by and between the Authority and BPLP (as so amended and assigned, the "Parcel 2 Development Agreement"), (iii) pursuant to any Supplemental Land Disposition Contract entered into under the Parcel 3 and 4 Development Agreement or the Parcel 2 Development Agreement, as such Development Agreements were constituted at any time, and (iv) pursuant to any other documentation under any such Supplemental Land Disposition Contract, including but not limited to the undertakings referred to on Schedule C attached hereto, to the extent in force and effect.

2. Gross Negligence, Willful Misconduct. Notwithstanding anything in

this Agreement to the contrary, BPLP shall have no obligation under this Agreement to indemnify or hold harmless Zuckerman or Linde from (i) any Losses arising as a direct result of his gross negligence or willful misconduct or (ii) any Losses arising as a result of the operation of the Business or the ownership and operation of the Properties, in each case out of the ordinary course of business and prior to the IPO Closing Date.

3. Further Assurances.

(a) In the event that any property, right, interest or other asset owned or held by any of Zuckerman, Linde or any of their affiliates prior to the IPO Closing Date was contemplated in the Registration Statement to be transferred to BPLP but was not, in fact, so transferred or such transfer was not perfected for any reason whatsoever, then each of Zuckerman and Linde hereby covenants and agrees to use commercially reasonable efforts to effectuate or perfect such transfer as soon as reasonably practicable following BPLP's request for the same.

(b) In the event that Zuckerman and Linde are not explicitly released from liability

under any contract which is part of the Business and which is assigned to BPLP in connection with the Offering (or of which arrangements are made for the benefits to be transferred to BPLP) (including, without limitation, the contracts specified in Section 1) then, at Zuckerman or Linde's request, BPLP will use reasonable efforts to cooperate with Zuckerman and Linde to have Zuckerman and Linde released as obligors thereunder and have BPLP substituted as sole obligor thereunder.

4. Governing Law. This Agreement shall be governed by and interpreted

in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its principles of conflicts of laws.

5. Counterparts. This Agreement may be executed in one or more

counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first set forth above.

Mortimer B. Zuckerman

Edward H. Linde

BOSTON PROPERTIES LIMITED PARTNERSHIP

By: Boston Properties, Inc., its General Partner

By: _____
Edward H. Linde
President

SUBSIDIARIES OF BOSTON PROPERTIES, INC.

| Name ----- | Jurisdiction of Formation/Incorporation ----- |
|--|--|
| Boston Properties Limited Partnership | Delaware |
| Boston Properties Management, Inc. | Delaware |
| Boston Properties LLC | Delaware |
| BP Lex LLC | Delaware |
| Ocean View Development Company Limited Partnership | District of Columbia |
| School Street Associates Limited Partnership | District of Columbia |
| Square 36 Office Joint Venture | District of Columbia |
| Southwest Market Limited Partnership | District of Columbia |
| Montgomery Village Avenue Joint Venture Limited Partnership | Maryland |
| Democracy Associates Limited Partnership | Maryland |
| Maryland 50 Building I Associates Limited Partnership | Massachusetts |
| Maryland 50 Building II Associates Limited Partnership | Massachusetts |
| Maryland 50 Building III Associates Limited Partnership | Massachusetts |
| Maryland 50 Associates Limited Partnership | Maryland |
| The Double B Partnership | Massachusetts |
| Lexreal Associates Limited Partnership | New York |
| 90 Church Street Limited Partnership | Delaware |
| Cambridge Center West Associates Limited Partnership | Massachusetts |

| Name ----- | Jurisdiction or Formation/Incorporation ----- |
|-----------------------|--|
| Reston VA 939, L.L.C. | Delaware |