

BOSTON PROPERTIES INC  
Form S-3ASR  
August 09, 2011  
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As filed with the Securities and Exchange Commission on August 9, 2011

Registration Statement No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**BOSTON PROPERTIES, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction)

04-2473675  
(IRS Employer)

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of Incorporation)

Identification No.)

**The Prudential Center**

**800 Boylston Street, Suite 1900**

**Boston, Massachusetts 02199-8103**

**(617) 236-3300**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrants Principal Executive Offices)

**Mortimer B. Zuckerman,**

**Chairman of the Board of Directors and Chief Executive Officer**

**Boston Properties, Inc.**

**The Prudential Center**

**800 Boylston Street, Suite 1900**

**Boston, Massachusetts 02199-8103**

**(617) 236-3300**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

*With copies to:*

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**Senior Vice President,**

**Senior Corporate Counsel**

**Boston Properties, Inc.**

**The Prudential Center**

**800 Boylston Street, Suite 1900**

**Boston, Massachusetts 02199-8103**

**(617) 236-3300**

**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

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If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company

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Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed	Amount of Registration Fee
			Maximum Aggregate Offering Price	
Common stock, par value \$0.01 per share				
Preferred Stock Purchase Rights (2)				
<b>TOTAL</b>	1,320,000	\$ (1)	\$ (1)	\$ 0(1)

- (1) As discussed below, pursuant to Rule 415(a)(6) under the Securities Act, this Registration Statement only includes unsold securities that have been previously registered. Accordingly, there is no registration fee due in connection with this Registration Statement.
- (2) This Registration Statement also relates to the rights to purchase shares of Series E Junior Participating Cumulative Preferred Stock of the Registrant, which are attached to all shares of Common Stock issued, pursuant to the terms of the Registrant's Shareholder Rights Agreement dated June 18, 2007. Until the occurrence of prescribed events, the rights are not exercisable, are evidenced by the certificates for the Common Stock or in book-entry form along with the Common Stock and will be transferred with and only with such Common Stock.

Pursuant to Rule 415(a)(6) under the Securities Act, the securities registered pursuant to this Registration Statement consist of 1,320,000 unsold shares of common stock previously registered on the Registrant's Registration Statement on Form S-3 (Registration No. 333-155306), which we refer to as the Prior Registration Statement. Pursuant to Rule 415(a)(6) under the Securities Act, the securities registered pursuant to the Prior Registration Statement consisted of 1,320,000 unsold shares of common stock previously registered on the Registrant's Registration Statement on Form S-3 (Registration No. 333-81355), which we refer to as the 1999 Registration Statement. In connection with the registration of such unsold shares of common stock on the 1999 Registration Statement, the Registrant paid a registration fee of \$12,867, which will continue to be applied to such unsold securities. Pursuant to Rule 415(a)(6), the offering of the unsold securities registered under the Prior Registration Statement will be deemed terminated as of the date of effectiveness of this Registration Statement.

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## **Boston Properties, Inc.**

### **DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN**

#### **1,320,000 Shares of Common Stock**

We are offering shares of our common stock through our Dividend Reinvestment and Stock Purchase Plan. The Plan provides you with a convenient way to purchase shares of our common stock. Our common stock is traded on the New York Stock Exchange under the symbol BXP. On August 8, 2011, the last reported sale price of our common stock on the New York Stock Exchange was \$89.10 per share. Some of the significant features of the Plan are:

You may participate in the Plan if you own our stock or limited partnership interests in Boston Properties Limited Partnership, our operating partnership. If you do not own our stock or limited partnership interests in BPLP, you can participate in the Plan by making a minimum initial investment of \$250 in our common stock through the Plan.

You may purchase additional shares of our common stock by automatically reinvesting some or all of your cash dividends on our stock or cash distributions on limited partnership interests in BPLP.

You may also purchase shares of our common stock by making optional cash investments of \$25 to \$10,000 per calendar month. In some instances we may permit greater optional cash investments.

Participation in the Plan is voluntary, and you may withdraw from the Plan at any time.

**Investing in our securities involves various risks. See Risk Factors on page 6 as well as the risk factors contained in documents we file with the Securities and Exchange Commission and which are incorporated by reference in this prospectus.**

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is August 9, 2011.

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**Summary of the Plan**

The following summary of our Dividend Reinvestment and Stock Purchase Plan may omit information that may be important to you. You should carefully read the entire text of the Plan contained in this prospectus before you decide to participate in the Plan.

ENROLLMENT:	You may participate in the Plan if you currently own shares of our stock or units of limited partnership interest in Boston Properties Limited Partnership (BPLP) by submitting a completed Enrollment Form to the Plan administrator, Computershare Trust Company, N.A. To request a form, please call 1-888-485-2389. You may also enroll online at <a href="http://www.computershare.com/investor">www.computershare.com/investor</a> . You may participate directly in the Plan only if you hold our stock or units in your own name. If you hold shares through a brokerage or other account, you must arrange to have your broker or other custodian participate on your behalf.
INITIAL INVESTMENT:	If you do not own any shares of our stock or units, you may participate in the Plan by making a minimum initial investment of \$250 in common stock through the Plan by submitting an Initial Enrollment Form to the Plan administrator, a copy of which is available by calling 1-888-485-2389 or online at <a href="http://www.computershare.com/investor">www.computershare.com/investor</a> . You may also make an initial investment online at <a href="http://www.computershare.com/investor">www.computershare.com/investor</a> .
REINVESTMENT OF DIVIDENDS AND DISTRIBUTIONS:	You may reinvest your cash dividends on some or all of your shares of common stock or preferred stock (if we designate and issue any shares of preferred stock in the future). Similarly, you may reinvest some or all of your cash distributions on units of limited partnership interests in BPLP.
OPTIONAL CASH INVESTMENTS:	After you enroll in the Plan, you may buy additional shares of common stock with a minimum investment of \$25, up to a maximum of \$10,000 in any one calendar month. If we approve a request for a waiver, you may purchase more than \$10,000 in a calendar month.
SOURCE OF SHARES:	The Plan administrator will purchase shares of common stock in one of the following ways:  in the open market;  through privately negotiated transactions; or  directly from us as newly issued shares of common stock.  Historically, the Plan administrator has purchased all of the shares acquired for Plan participants in the open market.





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PURCHASE PRICE:	The purchase price of shares of common stock acquired under the Plan depends on how you purchase the shares and on whether the Plan administrator purchases them for Plan participants (1) in the open market or through privately negotiated transactions or (2) directly from us.
Open Market/Private Negotiated Transactions	The purchase price for any shares purchased by the Plan administrator from parties other than Boston Properties, either in the open market or through privately negotiated transactions, rather than directly from us, will be the weighted average of the actual prices paid by the Plan administrator for those shares, including any per share processing fees. Per share processing fees include any brokerage commissions incurred by the Plan administrator and that the Plan administrator is required to pay.
Newly Issued Shares	<p><i>Reinvested Dividends and Distributions and Optional Cash Investments:</i> The purchase price for newly issued shares of common stock that the Plan administrator purchases directly from us will be the average of the daily high and low sales prices for a share of our common stock reported by the NYSE on the applicable investment date. If our common stock does not trade on the investment date, the price will be the average of the daily high and low sales prices for the first trading day immediately before the investment date and the first trading day immediately following the investment date.</p> <p><i>Requests for Waiver:</i> The purchase price for newly issued shares purchased directly from us with optional cash investments made through an approved Request for Waiver Form will be the average of the daily high and low sales prices of our common stock on the NYSE for the ten trading days on which our common stock trades immediately before the investment date. Although we have no current plans to do so, in the future we may sell newly issued shares to Plan participants using optional cash investments with an approved Request for Waiver Form at a discount of not more than 3%.</p>
TRACKING YOUR INVESTMENT:	You will receive periodic statements of the transactions made in your Plan account. These statements will provide you with details of your transactions and will indicate the share balance in your Plan account. You may also review your Plan account online at <a href="http://www.computershare.com/investor">www.computershare.com/investor</a> .



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**Risk Factors**

*You should carefully consider the risks described in the documents incorporated by reference in this prospectus before making an investment decision. These risks are not the only ones facing our company. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Our business, financial condition or results of operations could be materially adversely affected by the materialization of any of these risks. The trading price of our securities could decline due to the materialization of any of these risks, and you may lose all or part of your investment. This prospectus and the documents incorporated herein by reference also contain forward-looking statements that involve risks and uncertainties. Actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks described in the documents incorporated herein by reference, including (i) our Annual Report on Form 10-K, (ii) our Quarterly Reports on Form 10-Q and (iii) documents we file with the SEC after the date of this prospectus and which are deemed incorporated by reference in this prospectus.*

**Where You Can Find More Information**

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission (SEC). You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Our SEC filings are also available to the public from the SEC's web site at <http://www.sec.gov>. In addition, you may read our SEC filings at the offices of the New York Stock Exchange (NYSE), which is located at 20 Broad Street, New York, New York 10005. Our SEC filings are available at the NYSE because our common stock is listed and traded on the NYSE under the symbol BXP.

We have a website located at <http://www.bostonproperties.com>. The information on this website is not a part of this prospectus.

**Information Incorporated By Reference**

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede the information already incorporated by reference. We are incorporating by reference the documents listed below, which we have already filed with the SEC.

our Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 25, 2011;

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011 and June 30, 2011 filed on May 9, 2011 and August 8, 2011, respectively;

the description of our common stock contained in our Registration Statement on Form 8-A filed on June 12, 1997, including any amendments and reports filed for the purpose of updating such description;

the description of the rights to purchase shares of Series E Junior Participating Cumulative Preferred Stock contained in our Registration Statement on Form 8-A filed on June 18, 2007, including any amendments and reports filed for the purpose of updating such description;

our Current Reports on Forms 8-K filed on January 21, 2011, April 1, 2011, May 19, 2011, June 2, 2011 and June 27, 2011 and Item 8.01 of our Current Report on Form 8-K filed on January 26, 2011;

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the statements of revenue over certain expenses of the General Motors Building for period from January 1, 2008 through June 8, 2008 (unaudited) and for the year ended December 31, 2007, including the report of independent registered public accounting firm and notes thereto as applicable, contained in Boston Properties, Inc.'s and Boston Properties Limited Partnership's amendments to their current reports on Form 8-K filed on August 12, 2008; and

the combined statements of revenue over certain expenses of 540 Madison Avenue, Two Grand Central Tower and 125 West 55th Street in New York City for the six months ended June 30, 2008 (unaudited) and for the year ended December 31, 2007, including the report of independent registered public accounting firm and notes thereto as applicable, contained in Boston Properties, Inc.'s and Boston Properties Limited Partnership's amendments to their current reports on Form 8-K filed on October 24, 2008.

All documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act after the date of this prospectus and prior to the termination of this offering shall be deemed incorporated by reference in this prospectus and to be a part of this prospectus from the date of filing of those documents. Upon request, we will provide, without charge, to each person, including any beneficial owner, to whom a copy of this prospectus is delivered a copy of the documents incorporated by reference in this prospectus. You may request a copy of these filings, and any exhibits we have specifically incorporated by reference as an exhibit in this prospectus, by writing or telephoning us at the following:

Boston Properties, Inc.

The Prudential Center

800 Boylston Street, Suite 1900

Boston, Massachusetts 02199-8103

Attention: Investor Relations

(617) 236-3300

This prospectus is part of a registration statement we filed with the SEC. You should rely only on the information provided in this prospectus or incorporated by reference. We have not authorized anyone to provide you with different or additional information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or the documents incorporated by reference is accurate as of any date other than the date on the front of this prospectus or the date of the applicable documents.

**Terms and Conditions of the Dividend Reinvestment and Stock Purchase Plan**

The following questions and answers state the terms of our Dividend Reinvestment and Stock Purchase Plan and explain how it works. If you are a stockholder or unitholder and do not participate in this Plan, you will receive cash dividends and distributions in the usual manner, as and when we declare and pay them. In the Plan, we refer to our current stockholders, holders of units of limited partnership interests in BPLP and new investors who participate in this Plan as participants. Unless the context otherwise requires, all references to our stock and similar expressions in this prospectus refer collectively to our common stock, units of limited partnership interest in BPLP and any classes or series of preferred stock that we may designate and issue in the future.

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### *General Information*

#### **1. What is the purpose of the Plan?**

The purpose of this Plan is to provide current owners of our stock and holders of units of limited partnership interest in BPLP, as well as interested new investors, with a convenient way to invest in our common stock.

However, this Plan is primarily intended to benefit long-term investors, and not individuals or institutions who engage in short-term trading activities. We may modify, suspend or terminate participation in this Plan by otherwise eligible persons in order to eliminate practices which we believe are inconsistent with the purposes of this Plan.

#### **2. What investment choices are available under the Plan?**

First, you may automatically reinvest some or all of your cash dividends paid on shares of our stock that you own.

Second, you may make optional cash investments ranging from a minimum of \$25 up to a maximum of \$10,000 per calendar month (or more, if we waive this limit) to purchase common stock.

Third, you may reinvest your cash dividends and make optional cash investments. You may reinvest 100% of your dividends under the Plan because the Plan permits you to purchase fractional shares as well as whole shares of common stock. In addition, we will credit your Plan account for dividends on both full shares and any fractional shares according to the investment option you select.

Unitholders of BPLP can also automatically reinvest some or all of their distributions from BPLP in shares of common stock in Boston Properties. Except as otherwise noted, the discussion in this prospectus relating to the reinvestment of dividends on our stock also applies to the investment choices available to unitholders and to the mechanics and timing of the reinvestment of distributions from BPLP.

#### **3. What are the benefits of the Plan?**

You may reinvest cash dividends or distributions paid on some or all shares of our stock and units of limited partnership that you own. You will not pay any fees or service charges on these purchases. Also, if the Plan administrator purchases shares directly from us, you will not pay any processing fees, including brokerage commissions on these purchases. However, you will pay your proportionate share of any processing fees that the Plan administrator pays if the shares are purchased from parties other than Boston Properties, including in the open market. Historically, the Plan administrator has purchased all of the shares acquired for Plan participants from parties other than Boston Properties, and as a result, the purchase price for shares purchased under the Plan has included the weighted average cost of processing fees incurred by the Plan administrator.

In addition to shares you purchase by reinvesting dividends or distributions, you may buy additional shares with optional cash investments, subject to minimum and maximum monthly amounts, and you will not pay any processing fees or service charges if we decide to sell newly issued shares to the Plan administrator. You will pay your proportionate share of any processing fees that the Plan administrator pays when the Plan administrator purchases shares from parties other than Boston Properties. You may, of course, also reinvest some or all of the dividends or distributions on these shares.

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You may be able to purchase additional shares having an aggregate value that exceeds the maximum monthly amount if we approve your properly completed Request for Waiver Form. In the future, we may sell newly issued shares of common stock that you acquire using optional cash investments with an approved Request for Waiver Form at a discount of not more than 3%, at our sole discretion. At this time, we have no plans to offer such a discount.

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You may reinvest all cash dividends or distributions because the Plan allows you to purchase fractional shares of common stock. Dividends on fractional shares, as well as on whole shares, can also be reinvested in additional shares which will be credited to your Plan account.

If you request, the Plan administrator will send you certificates for shares purchased, or provide for the safekeeping of certificates for shares credited to your Plan account. You pay no fee for this safekeeping service.

You may also deposit certificates for any other shares of our stock registered in your name for safekeeping with the Plan administrator. You pay no fee for this service. Because you bear the risk of loss in sending certificates to the Plan administrator, certificates should be sent, unendorsed, by registered mail, return receipt requested and properly insured.

The Plan administrator will send you periodic statements showing current account information, including purchases of common stock held in your Plan account and your most recent Plan account balance. This simplifies your record keeping. You may also review your Plan account information online at [www.computershare.com/investor](http://www.computershare.com/investor) or by calling the Plan administrator at 1-888-485-2389.

#### **4. What are the disadvantages of the Plan?**

We will not pay you any interest on dividends, distributions or optional cash investments held by the Plan administrator before the investment date. In addition, optional cash investments of less than the allowable monthly minimum amount of \$25 and that portion of any optional cash investment that exceeds the allowable monthly maximum amount of \$10,000 will be returned to you without interest.

The purchase price of shares that you purchase under the Plan will not be determined until the applicable investment date. As a result, you will not know the actual price per share or number of shares you will purchase until that date.

Historically, the Plan administrator has purchased shares for Plan participants in the open market or through privately negotiated transactions from parties other than Boston Properties. When it does so, you will pay your proportionate share of any processing fees that the Plan administrator pays.

If you decide to make optional cash investments in our common stock under the Plan, your cash payment may be exposed to changes in market conditions for a longer period of time than if you had arranged to buy shares through a broker.

If you request the Plan administrator to sell stock credited to your Plan account, the Plan administrator will deduct an administrative fee, any brokerage commissions and any applicable taxes from the proceeds of the sale.

If you request the Plan administrator to sell stock credited to your Plan account, the price of our common stock may decline during the period between your request for sale, the Plan administrator's receipt of your request and the date of the sale in the open market. You bear a similar risk between the time that you request a certificate and the time the certificate is actually delivered to you if you elect to sell your stock through a broker that you have selected.

You cannot pledge shares of stock deposited in your Plan account until you withdraw the shares you wish to pledge from the Plan.





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### **5. Who is eligible to participate in the Plan?**

*Record Owners:* If you own our stock in your own name as a record owner, then you are eligible to participate directly in this Plan.

*Beneficial Owners:* You are a beneficial owner if your stock is held in a brokerage account or in the name of a bank, broker or other nominee. If you are a beneficial owner, then you may participate in the Plan in one of two ways.

You may participate directly in the dividend reinvestment feature of the Plan by becoming a record owner. You may do this by having one or more shares of our stock transferred into your own name from that of your bank, broker or other nominee.

You may also ask the bank, broker or other nominee who is the record owner to participate on your behalf. Except for instructions received from brokers, banks or other nominees who participate in the Plan on behalf of their customers, we cannot recognize instructions received from anyone acting as an agent on behalf of other participants in this Plan or beneficial owners who do not participate directly in the Plan.

*Non-stockholders:* If you do not currently own any of our stock, then you may participate in this Plan by making an initial purchase of at least \$250 of common stock through the optional cash investment feature of this Plan.

### **6. Are there limitations on participation in the Plan other than those described above?**

We may, for any reason or no reason, decide not to allow you to participate in the Plan even if you qualify for participation in this Plan. For example, some stockholders may be residents of jurisdictions in which we determine that it may not be legally or economically practical to offer our stock under this Plan. We may preclude residents of those jurisdictions from participating in this Plan.

We may also limit participation by some stockholders in order to maintain our status as a REIT. In order for us to maintain our qualification as a REIT, not more than 50% in value of our outstanding stock may be owned, directly or indirectly, by or for five or fewer individuals, as determined under the Internal Revenue Code. We may terminate your participation in this Plan at any time by sending you written notice of the termination. We would do this if we believe that your participation could violate restrictions contained in our charter that are designed to assure compliance with the restrictions of the Internal Revenue Code. Our charter generally prohibits any stockholder, directly or indirectly, from beneficially owning more than 6.6% of any class or series of our outstanding stock. There is an exception for certain pension plans and mutual funds in cases where the Internal Revenue Code will look through beneficial ownership for purposes of REIT qualification. These stockholders may not beneficially own, directly or indirectly, more than 15% of our outstanding stock.

If you attempt to transfer or acquire any shares of our stock that would result in direct or indirect ownership of our stock in excess of these ownership limits, or if the transfer or acquisition would for any other reason result in disqualification of Boston Properties as a REIT, the transfer or acquisition will be null and void. Our charter provides that our stock subject to this limitation is subject to various rights of Boston Properties to enforce this limitation, including transfer of the shares to a trust. We may invalidate any purchases made under this Plan that, in our sole discretion, may violate the applicable ownership limit.

You cannot transfer your right to participate in this Plan except by transferring your ownership of any our stock to another person.

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### **7. Who administers the Plan?**

Computershare Trust Company, N.A., the transfer agent for our common stock, administers the Plan for participants, maintains records, provides regular account statements to participants and performs other duties relating to this Plan. You can write to the Plan administrator at:

Boston Properties, Inc.

c/o Computershare Trust Company, N.A.

Dividend Reinvestment Department

P.O. Box: 43078

Providence, RI 02940-3078

You may also contact the Plan administrator at 1-888-485-2389. You may obtain information about your Plan account and perform a variety of transactions online at [www.computershare.com/investor](http://www.computershare.com/investor). You should contact the Plan administrator as soon as possible if any changes need to be made to your account information, such as any change of address.

### ***Participating in the Plan***

### **8. How can I participate?**

#### ***Record Owners***

If you are a record owner of our stock, then you may join the Plan by completing and signing an Enrollment Form, a copy of which is available by contacting the Plan administrator at 1-888-485-2389. You may also join the Plan by enrolling online at [www.computershare.com/investor](http://www.computershare.com/investor).

#### ***Beneficial Owners***

If you are a beneficial owner and wish to join the Plan, then you must contact your bank, broker or other nominee to arrange to participate in the Plan on your behalf. If you wish to participate in the optional cash investment feature of this Plan, then the bank, broker or other nominee must participate in the optional cash investment feature of this Plan on your behalf each time you wish to make an optional cash investment. To facilitate participation by beneficial owners, we have made arrangements with the Plan administrator to reinvest dividends and accept optional cash investments from record owners, such as brokers, banks and other nominees, on behalf of beneficial owners upon submission of proper Plan forms.

Alternatively, if you are a beneficial owner of our stock you may simply request that the number of shares of our stock you wish to be enrolled in this Plan be reregistered by the bank, broker or other nominee in your own name as record owner. You can then participate in the Plan directly.

#### ***Non-Stockholders***

If you do not currently own shares of our stock, you may join the Plan as a record owner of our common stock by completing and signing an Initial Enrollment Form and returning it to the Plan administrator with a check payable to Computershare-Boston Properties in U.S. dollars of at least \$250 but not more than \$10,000. You may obtain an Initial Enrollment Form by contacting the Plan administrator at 1-888-485-2389 or online at [www.computershare.com/investor](http://www.computershare.com/investor). You may also visit [www.computershare.com/investor](http://www.computershare.com/investor) and follow the instructions provided for opening an account online. You will be asked to complete an online enrollment form and to submit an initial investment of not less than \$250 but not more than \$10,000. To make an initial investment online, you may authorize a one-time deduction from your U.S. bank account. At the same time, you may designate all, a portion, or none of the common stock you purchased to be enrolled in the dividend reinvestment feature of the Plan.

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### **9. What are my investment options?**

The Enrollment Form and the Initial Enrollment Form allow you to decide the extent of your participation in this Plan. By checking the appropriate box on the Enrollment Form or the Initial Enrollment Form, you indicate which features of the Plan you will use.

(a) ***Full Reinvestment of Dividends/Distributions***: Select this option if you wish to reinvest the cash dividends and distributions on all of our stock and units registered in your name, as well as on all stock credited to your Plan account. *Selecting this alternative also permits you to make monthly optional cash investments.*

(b) ***Partial Reinvestment of Dividends/Distributions***: Select this option if you wish to reinvest the cash dividends or distributions on a specified number of shares of our stock or units registered in your name, as well as stock credited to your Plan account. You will continue to receive cash dividends and distributions on the other shares of our stock or units registered in your name or credited to your Plan account. *Selecting this alternative also permits you to make monthly optional cash investments.*

(c) ***Optional Cash Investment Only (No Dividend Reinvestment)***: Select this option if you wish to participate in the Plan by making *only* optional cash investments, which can be made monthly. You will receive cash dividends and distributions, when and if declared by our Board of Directors, on all of our stock and units registered in your name, as well as on any whole shares and fractional shares credited to your Plan account.

### **IMPORTANT:**

***If you return a signed Enrollment Form or Initial Enrollment Form to the Plan administrator without any of the boxes checked, the Plan administrator will automatically enroll you in the full dividend/distribution reinvestment alternative (alternative (a)).***

***The Plan administrator will not process your Enrollment Form or Initial Enrollment Form if the form does not have the proper signature(s).***

### **10. How can I change my investment option?**

You can change your investment option at any time by completing an Enrollment Form and returning it to the Plan administrator or by submitting a request to the Plan administrator. You can also change your investment option online at [www.computershare.com/investor](http://www.computershare.com/investor) or over the telephone by calling the Plan administrator at 1-888-485-2389.

### **11. When does my participation in the dividend reinvestment option begin?**

If your Enrollment Form or Initial Enrollment Form is received by the Plan administrator prior to the next record date for determining shareholders entitled to receive a dividend, then your dividend or distribution reinvestment will begin on the dividend payment date corresponding to such record date. If it is not received in time, it will begin with the next dividend payment date.

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We pay cash dividends and distributions as and when declared by our Board of Directors. In the past, the record dates for dividend and distribution payments on our common stock and common units of limited partnership interests have preceded the corresponding payment dates by approximately one month. Payment dates for dividends and distributions on our common stock and common units of limited partnership interests have historically been the last business days of January, April, July and October. Record and payment dates for other series of our stock or units that currently exist or may be issued in the future may not have the same schedule. The dates for our common stock are publicly announced in press releases available on our web site at [www.bostonproperties.com](http://www.bostonproperties.com). We cannot assure you that we will continue to pay dividends or distributions according to this schedule in the future, or that we will not reduce the amount of any dividends or distributions that we do declare and pay and nothing contained in the Plan obligates us to do so. The Plan does not represent a guarantee of future dividends or distributions.

### **12. How does the optional cash investment feature work?**

Optional cash investments allow you, on a monthly basis, to purchase more shares than you could purchase just by reinvesting dividends or distributions when they are paid to you. You can make optional cash investments even if you have not chosen to reinvest your cash dividends or distributions. If you choose to make only optional cash investments, you will receive cash dividends and distributions when and as declared and paid on any shares of our stock registered in your name, as well as on full and fractional shares held in your Plan account. There is no requirement that you make an optional cash investment in any month.

Once you have enrolled in the Plan by submitting an Enrollment Form or by making an initial investment, you may make optional cash investments in U.S. dollars at any time in two ways.

You can send a check to the Plan administrator, payable to Computershare-Boston Properties, using the tear-off form on your Plan statement or by sending a letter noting your account information and requested optional cash investment amount. Please include your account number on your check. You may invest \$25 or more at any one time, up to a maximum of \$10,000 per calendar month, unless we approve your properly completed Request for Waiver Form as described in Question 15. The Plan administrator will not accept cash, traveler's checks, money orders or third-party checks for optional cash investments.

You can also access your Plan account online at [www.computershare.com/investor](http://www.computershare.com/investor) and authorize one-time optional cash investments for a minimum of \$25 per calendar month from your U.S. bank account. If you authorize a one-time investment online at [www.computershare.com/investor](http://www.computershare.com/investor), the estimated debit date and investment date are provided on the confirmation page at the conclusion of the online purchase process. You should review this information carefully prior to confirming an online purchase request.

If any check or electronic funds payment you deliver to the Plan administrator is returned unpaid, the Plan administrator may consider the request for the investment of these funds null and void and may immediately remove from your Plan account shares of common stock purchased with that check or electronic funds payment. The Plan administrator may sell those shares to satisfy any uncollected amount and a \$25 returned check or returned electronic funds payment fee. If the proceeds from the sale of the common stock do not satisfy the brokerage fees, uncollected balance and returned check or returned electronic funds payment fee, the Plan administrator may sell additional shares from your Plan account to satisfy the brokerage fees, uncollected balance and returned check fee, and may take any other action permitted to collect any remaining deficit.

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### **13. When must funds for optional cash investments be received by the Plan administrator?**

The Plan administrator must receive funds for optional cash investments of a minimum of \$25 but not more than \$10,000 at least two business days prior to the next monthly investment date. The Plan administrator must receive funds for optional cash investments of more than \$10,000 pursuant to an approved request for waiver at least 14 trading days prior to the next investment date. If funds for optional cash investments are received by these deadlines, they will be invested on the next investment date. If you change your mind, the Plan administrator will return your optional cash investment of less than \$10,000 to you if the Plan administrator receives a request from you at least two business days before the next investment date. The Plan administrator will return to you any funds you send for optional cash investments if your optional cash investment is less than \$25. The Plan administrator will also return funds for your optional cash investment that exceed the maximum allowable investment of \$10,000 per month unless we granted your prior request for waiver. Funds for optional cash investments received less than two business days before the next investment date will be invested on the investment date in the next month. In addition, the Plan administrator will return to you all funds for optional cash investments of more than \$10,000 pursuant to an approved request for waiver that are received less than 14 trading days prior to the next investment date.

*Neither we nor the Plan administrator will pay you interest on funds you send for optional cash investments.*

### **14. May I make automatic monthly investments?**

You may make optional cash investments by means of an automatic monthly investment of at least \$25 but not more than a total of \$10,000 each calendar month by electronic funds transfer from a predesignated U.S. account.

If you wish to begin making automatic monthly investments, you must complete and sign a Direct Debit Authorization Form and return it to the Plan administrator together with a voided blank check or deposit slip for the account from which funds are to be drawn. You may obtain a Direct Debit Authorization Form from the Plan administrator by calling 1-888-485-2389. The Plan administrator will process the forms as promptly as practicable. However, you should allow four to six weeks for the first investment to be initiated using this automatic deduction feature. You may also visit [www.computershare.com/investor](http://www.computershare.com/investor) to authorize automatic monthly investments.

Once you begin making automatic monthly investments, the Plan administrator will draw funds from your designated account on the 25<sup>th</sup> day of each month, or if the 25<sup>th</sup> is not a business day, then on the next business day, and will purchase shares of common stock beginning on the next investment date. You may change the amount of your automatic monthly investment online at [www.computershare.com/investor](http://www.computershare.com/investor) or by completing and submitting a new Direct Debit Authorization Form to the Plan administrator. You may discontinue automatic monthly investments online at [www.computershare.com/investor](http://www.computershare.com/investor) or by notifying the Plan administrator in writing at the address provided in Question 7. If the Plan administrator receives your new instructions at least ten business days before the next debit date, the change will be effective for that month. A fee of \$25 will be charged on any returned unpaid electronic funds transfers. The Plan administrator may sell shares from your Plan account to satisfy this \$25 fee and any processing fees incurred as a result of this sale, and may take any other action permitted to collect any remaining deficit.

### **15. How can I invest more than \$10,000 per month in Boston Properties stock?**

If you submit a Request for Waiver Form and we approve your request, then you may invest more than the \$10,000 maximum per month in our common stock. You must send the Request for Waiver Form by regular or overnight mail to Boston Properties, Inc., 800 Boylston St., Suite 1900, Boston, Massachusetts 02199, Attention: Investor Relations or by facsimile at (617) 236-3311, and we must receive it at least 21 business days before the next investment date. If your request

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is approved, you must send funds for your optional cash investment and our form of approval to the Plan administrator at least 14 trading days before the next investment date for optional cash investments. We will promptly notify you whether we approved your request and the amount of your request that we approved. To receive a Request for Waiver Form, you must submit a request for the Form to us either by email to investorrelations@bostonproperties.com or by facsimile at (617) 236-3311. To confirm receipt of your request, you may contact Investor Relations at (617) 236-3322.

**We may approve or deny any request for waiver for any reason or no reason.** If you and other participants request to invest amounts that are, in total, more than what we decide to accept, we may partially accept your request and the requests of other participants, pro rata or by any other method we choose. Any amounts that are not invested will be returned to you without interest. Our approval of requests for waivers for any investment date or dates does not affect our absolute discretion to approve or deny waiver requests for subsequent investment dates.

### **16. Are there any special terms relating to investments I may make with requests for waiver?**

*Purchase Price:* The purchase price for newly issued shares purchased directly from us with requests for waiver will be the average of the daily high and low sales prices of our common stock on the NYSE for the ten days on which our common stock trades immediately preceding the next investment date. We will compute the purchase price to the fourth decimal place. Although we currently have no plans to do so, in the future we may sell newly issued shares purchased with a request for a waiver at a discount of not more than 3%. The purchase price for any shares purchased by the Plan administrator from parties other than Boston Properties, either in the open market or through privately negotiated transactions, rather than directly from us, will be the weighted average of the actual prices paid by the Plan administrator for those shares, including any processing fees incurred by the Plan administrator.

*Minimum Price:* We may establish a minimum price for optional cash investments made with requests for waiver for any investment date.

### ***Purchasing Stock Under the Plan***

### **17. What is the investment date and when will purchases be made?**

*Reinvested Dividends and Distributions:* The investment date for reinvested dividends and reinvested distributions will be the payment date declared by our Board of Directors.

*Optional Cash Investments, Initial Investments and Automatic Monthly Investments of \$10,000 or less.* The investment date for optional cash investments, initial investments and automatic monthly investments of \$10,000 or less will be the last trading day of the month.

If the Plan administrator purchases the shares directly from us, purchases will be made on the investment date. If the Plan administrator acquires shares from parties other than us either in open market or through privately negotiated transactions, such purchases will begin on the investment date and will be completed no later than ten business days following such date except where completion at a later date is necessary or advisable under any applicable federal or state securities laws or regulations.

We pay dividends and distributions as and when declared by our Board of Directors. Payment dates for our common stock and common units of limited partnership interest have historically been the last business days of January, April, July and October. Payment dates for other series of our stock or units that currently exist or may be issued in the future may not

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have the same schedule. The dates for our common stock are publicly announced in press releases available on our web site at [www.bostonproperties.com](http://www.bostonproperties.com). We cannot assure you that we will continue to pay dividends or distributions according to this schedule in the future, or that we will not reduce the amount of any dividends or distributions that we do declare and pay and nothing contained in the Plan obligates us to do so. The Plan does not represent a guarantee of future dividends or distributions.

### **18. What is the source of common stock purchased under the Plan?**

The Plan administrator will purchase shares of common stock:

in the open market;

through privately negotiated transactions; or

directly from us as newly issued shares of common stock.

Historically, the Plan administrator has purchased all of the shares acquired for participants under the Plan in the open market and we intend to continue doing so in the future. We will make a public announcement if the Plan administrator acquires shares directly from us as newly issued shares of common stock.

### **19. What will be the price of common stock that I purchase under the Plan?**

If the Plan administrator purchases common stock from parties other than Boston Properties, either in the open market or through privately negotiated transactions, then the price per share will be the weighted average of the actual prices that the Plan administrator pays for all of the shares of common stock purchased by the Plan administrator for that investment. Any processing fee will be deducted from the investment amount.

If the Plan administrator purchases newly issued shares of common stock directly from us, then the price per share will be the average of the high and low sales prices for our common stock as reported on the NYSE on the applicable investment date. If our common stock does not trade on the investment date, the price will be the average of the daily high and low sales prices for the first trading day immediately before the investment date and the first trading day immediately following the investment date.

The purchase price for newly issued shares of common stock that the Plan administrator purchases directly from us with optional cash investments made through an approved Request for Waiver Form will be the average of the daily high and low sales prices for a share of our common stock reported by the NYSE for the ten trading days on which our stock trades immediately before the applicable investment date. Although we have no current plans to do so, in the future we may sell newly issued shares using optional cash investments with an approved request for waiver to the Plan participants at a discount of not more than 3%. Any decision to offer a discount will be at our sole discretion, and may be withdrawn at any time without notice.

### **20. Are there any expenses in connection with purchases under the Plan?**

If the Plan administrator pays processing fees (including any brokerage commissions the Plan administrator is required to pay) when making purchases of common stock from parties other than Boston Properties, you will pay your proportionate share of those fees, which will be deducted from the investment amount. Historically, the Plan administrator has purchased all of the shares acquired for participants under the Plan in the open market. If the Plan administrator purchases newly issued shares from us, you will not pay any processing fees, service charges or fees on those shares. Except for processing fees incurred when the Plan administrator purchases shares for Plan participants from parties other than Boston Properties, we pay all costs of administration of this Plan.





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### **21. How many shares of common stock will I be purchasing through the Plan?**

The number of shares of common stock that you purchase depends on several factors including:

the amount of dividends or distributions you reinvest, including dividends on stock credited to your Plan account;

the amount of any optional cash investments you make; and

the purchase price (including any processing fees) of the common stock as provided in Question 19.

The Plan administrator will credit your account with the number of shares equal to the total amount to be invested divided by the applicable purchase price.

### **22. How will I be notified of my purchases of common stock?**

The Plan administrator will send you an account statement after each transaction you make showing the activity and balance in your Plan account. Your account statement will show the number of shares purchased in that transaction and their purchase price. Your account statement will also show the total number of shares you purchased through the Plan to date during the calendar year, as well as the total number of shares held in your Plan account as of the investment date. For shares acquired in the Plan after January 1, 2011, specific cost basis information will be included in your statement in accordance with applicable law.

You will also receive an annual account statement that will show all pertinent information for that calendar year. You should keep this statement for tax purposes. The Plan administrator may charge you a fee if you request additional copies of your prior account statements.

You may also review your Plan account and transactions online at [www.computershare.com/investor](http://www.computershare.com/investor).

We will also send you copies of each prospectus and any amendments or supplements to prospectuses describing the Plan, and we will send you the same information that we send to other stockholders, including annual reports, notices of stockholders meetings, proxy statements and income tax information for reporting dividends paid. You may also review these documents (except for income tax information) on our web site, [www.bostonproperties.com](http://www.bostonproperties.com), or the web site of the SEC, [www.sec.gov](http://www.sec.gov).

### **23. In whose name will Plan accounts be maintained?**

The Plan administrator will maintain your Plan account in your name as shown on our records at the time you enroll in the Plan. When issued, certificates for full shares of common stock will be registered in your name as it appears on your Plan account.

### **24. Is a safekeeping service available to hold my shares?**

Yes. You may deposit any shares of our common stock that are registered in your name for credit to your Plan account at no cost. This eliminates the worry about certificates being lost or stolen. Certificates should be **unendorsed** and sent to the Plan administrator by registered or certified mail with return receipt requested and properly insured because you will bear the risk if the certificates are lost or stolen in transit. Certificates should be mailed to the following address:

Boston Properties, Inc.

c/o Computershare Trust Company, N.A.

Dividend Reinvestment Department

Edgar Filing: BOSTON PROPERTIES INC - Form S-3ASR

P.O. Box: 43078

Providence, RI 02940-3078

1-888-485-2389

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### **25. Will stock certificates be issued for common stock purchased under the Plan?**

Unless requested, certificates for shares that you purchase under the Plan will not be issued. Your account statement will show the number of book-entry shares held in your Plan account. In addition to minimizing the costs of this Plan, this additional service protects against loss, theft or destruction of stock certificates.

However, you may at any time request the Plan administrator to issue a certificate for any whole number of shares of stock, up to the number of full shares credited to your Plan account. The Plan administrator will generally issue certificates approximately three business days after your request is received. To request a certificate, you may access your account online at [www.computershare.com/investor](http://www.computershare.com/investor), call the Plan administrator at 1-888-485-2389 or write to:

Boston Properties, Inc.

c/o Computershare Trust Company, N.A.

Dividend Reinvestment Department

P.O. Box: 43078

Providence, RI 02940-3078

1-888-485-2389

Your Plan statement will reflect the number of shares held by you in certificated form and any remaining shares held in book-entry form. Future dividends and distributions on both the certificated and book-entry shares will continue to be treated according to your instructions indicated on your Enrollment Form or Initial Enrollment Form.

*We will not issue certificates for fractional shares of common stock under any circumstances.*

### **26. In whose name will certificates be registered when issued?**

We will issue stock certificates registered in your name as it appears on your Plan account.

You may ask the Plan administrator to issue certificates in names other than the Plan account name, but you must comply with any applicable laws and you must pay any applicable taxes. You must make this request in writing, and your signature must be Medallion Guaranteed by a financial institution participating in the Medallion Guarantee Program. A Medallion Signature Guarantee is a signature guarantee by an institution such as a commercial bank, trust company, securities broker/dealer, credit union, or a savings institution participating in a Medallion Program approved by The Securities Transfer Association, Inc. No other form of signature verification can be accepted.

### **27. How do I withdraw from or re-enroll in the Plan?**

The Plan is entirely voluntary, and you may request to withdraw at any time. In order to withdraw from the Plan, you must contact the Plan administrator. You can make a request to withdraw online at [www.computershare.com/investor](http://www.computershare.com/investor), over the telephone at 1-888-485-2389 or in writing by completing the transaction form attached to each Plan statement and returning it to the address provided in Question 25.

If you withdraw from the Plan, you may request the Plan administrator to sell the stock credited to your Plan account on your behalf, as provided in Question 28. If you do not request the Plan administrator to sell your shares, you may request the Plan administrator to deliver a certificate for whole shares of stock in your Plan account. The Plan administrator will generally not issue certificates until approximately three business days after your request is received. Alternatively, you may request the Plan administrator to move your shares to the Direct Registration System (DRS), which would allow you to maintain your ownership of those shares in book-entry form in your name in an account at Computershare. Shares held in



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DRS have the same rights and privileges as shares of our stock that are represented by a certificate. A cash payment for any fractional shares, less any service fees, processing fees and any other costs of sale, will be sent to you. If the Plan administrator receives your request to withdraw from the Plan at least four business days before a dividend record date, the cash dividends or distributions on whole shares you own will not be reinvested. If the Plan administrator receives your request to withdraw from the Plan less than four business days before the applicable dividend record date, your request will be processed but may not be effective before additional shares are purchased with reinvested dividends on the next investment date. The Plan administrator will refund optional cash investments that have not been invested if the Plan administrator receives your request for refund either prior to or at the same time your request for withdrawal is made and your request is made at least two business days before the next investment date. Otherwise, the Plan administrator will invest your optional cash investment on the next investment date.

Generally, you may elect to re-enroll in this Plan at any time, simply by following the same procedures used to enroll initially. However, the Plan administrator may reject your Enrollment Form if we believe that you have enrolled in the Plan and withdrawn too often. In addition, we may withdraw you from the Plan if your Plan account is less than one whole share as a result of withdrawals or sales of stock and you are not reinvesting dividends or distributions from any stock registered in your name. We would take these actions because we intend to minimize unnecessary administrative expense and to encourage use of this Plan as a long-term stockholder investment service.

### ***Selling Shares of Stock Held in the Plan***

#### **28. How can I sell stock held in my Plan account?**

You may sell some or all of your stock held in your Plan account, even if you are not withdrawing from this Plan. You may sell your shares either through your broker or through the Plan administrator.

If you elect to sell through a broker that you have selected, you must first request the Plan administrator to move your shares to the Direct Registration System and then have your broker request the Plan administrator to electronically transfer the number of whole shares you want to sell through the DRS Profile System. Alternatively, you may request the Plan administrator to send you a certificate representing the number of shares you want to sell. The Plan administrator will generally move your shares to DRS or issue certificates for your shares approximately three business days after your request is received.

Alternatively, you may send the Plan administrator a request to sell some or all of the shares held in your Plan account. You have two choices when making a sale:

*Batch Order:* A batch order is an accumulation of all sale requests by any security holder for a security submitted together as a collective request. Batch orders are submitted on each trading day, to the extent that there are sale requests. Sale instructions for batch orders received by the Plan administrator will be processed no later than five business days after the date on which the order is received (except where deferral is required under applicable federal or state laws or regulations), assuming the applicable market is open for trading and sufficient market liquidity exists. You may request a batch order sale online at [www.computershare.com/investor](http://www.computershare.com/investor), by calling the Plan administrator directly at 1-888-485-2389 or by writing to the Plan administrator at the address provided in Question 25. All sales requests received in writing will be submitted as batch order sales. The Plan administrator will cause your shares to be sold in the open market within five business days of its receipt of your request. To maximize cost savings for batch order sale requests, the Plan administrator will seek to sell shares in round lot transactions. For this purpose the Plan administrator may combine each selling Plan participant's shares with those

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of other selling Plan participants. In every case of a batch order sale, the price to each selling Plan participant will be the weighted average sale price obtained by the Plan administrator's broker for each aggregate order placed by the Plan administrator and executed by the broker, less a service fee of \$15 and a processing fee of \$0.12 per share sold.

*Market Order:* A market order is a request to sell shares promptly at the then current market price. You may request a market order sale only online at [www.computershare.com/investor](http://www.computershare.com/investor) or by calling the Plan administrator directly at 1-888-485-2389. Market order sale requests made in writing will be submitted as batch order sales. Market order sale requests received online or by telephone will be placed promptly upon receipt during normal market hours (9:30 a.m. to 4:00 p.m. Eastern Time). Any orders received after 4:00 p.m. Eastern Time will be placed promptly on the next trading day. The price will be the market price for shares obtained by the Plan administrator's broker, less a service fee of \$25 and a processing fee of \$0.12 per share sold.

All sale requests submitted online or by telephone will be treated as batch order requests unless you specifically request a market order.

The Plan administrator reserves the right to decline to process a sale if it determines, in its sole discretion, that supporting legal documentation is required. Instructions sent to the Plan administrator to sell shares are binding and may not be rescinded. In addition, no one will have any authority or power to direct the time or price at which shares for the Plan are sold, and no one, other than the Plan administrator, will select the broker(s) or dealer(s) through or from whom sales are to be made.

*Please remember that if you elect to sell your stock through the Plan administrator, the price of our common stock may decline during the period between your request for sale, the Plan administrator's receipt of your request and the date of the sale in the open market. You should carefully evaluate this risk, which you bear. You bear a similar risk between the time that you request a certificate or electronic transfer and the time the certificate or the shares are actually delivered to you or your broker.*

### **29. What happens when I sell or transfer shares of stock held outside my Plan account?**

If you sell or transfer all shares of our stock registered in your name outside your Plan account, then, until you give further instructions, the Plan administrator will continue to reinvest the dividends or distributions on your stock in your Plan account according to your instructions on the Enrollment Form or Initial Enrollment Form. You may also continue to participate in the optional cash investment feature of this Plan as long as there is at least one whole share of stock remaining in your Plan account.

If you sell or transfer all whole shares of stock held in your Plan account, the Plan administrator may treat your sale as a withdrawal from the Plan and mail you a cash payment representing any fractional shares in your Plan account upon your request or at the request of Boston Properties.

### **30. What happens to a fractional share of stock when I withdraw from the Plan or the Plan is terminated?**

When you withdraw from this Plan or this Plan is terminated by Boston Properties, the Plan administrator will mail you a cash payment representing any fractional share of stock upon your request or at the request of Boston Properties. The cash payment will be the market price for the fractional share obtained by the Plan administrator's broker, less any service fees, processing fees and any other costs of sale.

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*Owning Stock in the Plan*

**31. How will I be credited with dividends or distributions on stock held in my Plan account?**

We pay dividends or distributions to all holders of record of our stock, when and as declared by our Board of Directors. The Plan administrator will receive and credit Plan participants with cash dividends or distributions for all the shares of stock you hold in the Plan, including fractional shares. If you have enrolled the shares in the dividend reinvestment feature, the Plan administrator will reinvest dividends or distributions in additional shares of our common stock or distribute them, according to your instructions.

**32. What happens if Boston Properties declares a stock split or stock dividend?**

Any shares resulting from a stock split or stock dividend on shares held in your Plan account or on shares held outside your Plan account will be credited to your Plan account. You will receive a statement indicating the number of shares or dividends earned as a result of the transaction.

**33. If Boston Properties issues rights to purchase securities to the holders of common stock, how will the rights on Plan shares be handled?**

If we issue transferable rights to purchase additional shares of our common stock or any other securities to holders of our common stock, the Plan administrator will sell those rights relating to shares of common stock held by the Plan administrator for participants and invest the proceeds in additional shares of common stock on the next investment date. In the event that those rights are not saleable or detachable, the Plan administrator will hold those rights for your benefit. If you wish to receive any rights directly, you may do so by sending to the Plan administrator, at least five business days before the record date for the rights offering, a written request that certificates for shares in your Plan account be sent to you.

**34. How will the stock held under this Plan be voted at meetings of stockholders?**

If you own shares of stock registered in your name and return a properly completed and signed proxy card, the Plan administrator will vote any stock held in your Plan account in accordance with the instructions on your proxy card. If you return a properly signed proxy card but no instructions are set forth thereon with respect to an item, then all of your stock, both registered in your name and credited to your Plan account, will be voted in the same manner as for non-participating stockholders who return proxies and do not provide instructions with respect to that item that is, in accordance with the recommendation of Boston Properties' Board of Directors. If the proxy card is not returned or if it is returned unsigned, none of the stock held in your Plan account will be voted unless you vote in person.

**35. May I pledge shares in my Plan account?**

You may not pledge any shares of our stock that you hold in your Plan account. Any pledge of shares in a Plan account is null and void. If you wish to pledge shares, you must first withdraw those shares from the Plan and request the Plan administrator to send you certificates for those shares.

**Important Tax Consequences**

**36. What are the federal income tax consequences of participation in the Plan?**

The following is a summary of certain material federal income tax consequences of participation in the Plan. This summary is for general information only and does not constitute tax advice. This summary does not reflect every possible tax outcome or consequence that could result from participation in the Plan. Also, this summary does not discuss your tax





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consequences if you are not a United States citizen or a resident alien. We advise you to consult your own tax advisors to determine the tax consequences particular to your situation, including any applicable state, local or foreign income and other tax consequences that may result from your participation in the Plan and your subsequent sale of shares acquired pursuant to the Plan. Any state tax consequences will vary from state to state, and any tax consequences to you if you reside outside of the United States will vary from jurisdiction to jurisdiction.

In general, if you enroll in the Plan, as of the date of this prospectus, you will have the same federal income tax obligations with respect to reinvested dividends or distributions as you would with dividends or distributions not reinvested under this Plan.

You will be treated for federal income tax purposes as having received, on each investment date, a cash distribution equal to the full amount of the cash dividend payable on that date on the shares of common stock held in your account and all other Boston Properties, Inc. stock that you own. The Internal Revenue Code requires this treatment even though you never actually receive the reinvested dividends in cash because your dividends are used instead to purchase shares of common stock. Your tax basis in common stock acquired through dividend reinvestment will equal the amount treated as a distribution for federal income tax purposes.

All costs of administering the Plan, except for processing fees when shares are purchased in the open market and costs related to your voluntary selling of shares and/or withdrawal from the Plan, will be paid by us. Consistent with the conclusion reached by the Internal Revenue Service in a private letter ruling issued to another real estate investment trust, we intend to take the position that these administrative costs do not constitute a distribution which is either taxable to you or which would reduce your basis in your shares of common stock. However, because the private letter ruling was not issued to us, we have no legal right to rely on its conclusions. Thus, it is possible that the Internal Revenue Service might view your share of the costs as constituting a taxable distribution to you and/or a distribution which reduces the basis in your common shares. For this or other reasons, we may in the future take a different position with respect to these costs. With respect to shares of common stock purchased in open market transactions or in negotiated transactions with third parties, the Internal Revenue Service has indicated that the amount of the distribution received by you would include a pro rata share of any brokerage commission or other related charges paid by us in connection with the administrator's purchase of shares on our behalf.

This treatment may vary in the case of participants who are holders of units of limited partnership interests in BPLP and whose operating partnership distributions are being reinvested. Therefore, we recommend that you consult with your tax advisor regarding any tax consequences associated with the reinvestment of these distributions.

If you make optional cash investments, without any discount, you will not recognize income for federal income tax purposes by virtue of the purchase of common stock with the optional cash purchase. However, in the event we decide to offer shares at a discount, you will be treated as receiving a taxable dividend to the extent of any discount you receive. The tax cost and basis of stock purchased with optional cash investments is the amount you paid for such stock.

The holding period for stock purchased under the Plan generally will begin on the day following the date on which common shares are credited to your Plan account.

Distributions with respect to your stock that are not capital gains dividends will generally be taxable as ordinary income, and generally will not constitute qualified dividend income eligible to be taxed at capital gains rates (through 2012 under current law) for federal income tax purposes to the extent made out of our current or accumulated earnings and profits. Dividends paid to a non-corporate U.S. stockholder generally will not qualify for the 15% tax rate for qualified dividend

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income that is currently in effect through 2012. Qualified dividend income generally includes dividends paid to most United States non-corporate taxpayers by domestic C corporations and certain qualified foreign corporations. Because we are not generally subject to United States federal income tax on the portion of our REIT taxable income distributed to our stockholders, our dividends generally will not be eligible for the 15% rate on qualified dividend income. As a result, our ordinary REIT dividends will continue to be taxed at the higher tax rate applicable to ordinary income. Currently, the highest marginal individual income tax rate on ordinary income is 35%, but this rate is scheduled to increase after 2012. However, the 15% tax rate for qualified dividend income will apply to our ordinary REIT dividends (1) attributable to dividends received by us from taxable corporations, such as our taxable REIT subsidiaries, and (2) to the extent attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). The preferential rates on qualified dividend income will expire on December 31, 2012, unless extended by Congress. In general, to qualify for the reduced tax rate on qualified dividend income, a stockholder must hold our stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend. Dividends paid to a corporate U.S. stockholder will not qualify for the dividends received deduction generally available to corporations. Distributions in excess of our current or accumulated earnings and profits will be treated for federal income tax purposes as a return of capital. The amount of a return of capital would first reduce the tax basis of the common stock to which the distribution is attributable to the extent of that tax basis, and the excess, if any, of the amount treated as a return of capital over such tax basis would be treated as a gain from the disposition of such stock.

In the event that we designate a part or the entire amount distributed as a capital gain dividend, the amount so designated should be treated by you as long-term capital gain to the extent that they do not exceed our actual net capital gain for the taxable year, without regard to the period for which the U.S. stockholder has held its stock. Corporate U.S. stockholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Long-term capital gains are generally taxable at maximum U.S. federal rates of 15% (through 2012) in the case of U.S. stockholders who are individuals, and 35% for corporations. Capital gains dividends attributable to the sale of depreciable real property held for more than 12 months are subject to a 25% U.S. federal income tax rate for individual U.S. stockholders who are individuals, to the extent of previously claimed depreciation deductions.

You will recognize gain or loss when a fractional share interest is liquidated or when you sell or exchange stock. The gain or loss will equal the difference between the amount you receive for the fractional share interest or the stock and the tax basis for the fractional share or stock. If you hold our stock as a capital asset in excess of one year gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The maximum tax rate on long-term capital gains applicable to non-corporate taxpayers is 15% for sales and exchanges of capital assets held for more than one year occurring through December 31, 2012. A 20% rate applies to sales and exchanges of capital assets occurring after December 31, 2012. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates (currently up to 35%).

Because we intend to qualify as a REIT, we must satisfy certain annual distribution requirements imposed by the Internal Revenue Code. Under IRS Revenue Procedure 2010-12, a REIT may distribute taxable dividends that are partially payable in cash and partially payable in stock in order to meet the annual REIT distribution requirements. Under this IRS guidance, up to 90% of any such taxable dividend declared on or before December 31, 2012, in respect of calendar years 2010 or 2011 could be payable in stock. Taxable U.S. stockholders receiving such dividends will be required to include as dividend income the fair market value of the stock received plus any cash or other property received in the distribution, to the extent of the REIT's current and accumulated earnings and profits for U.S. federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash received. If a U.S. stockholder sells the stock it received as a dividend, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of the stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, a REIT may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock.

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For taxable years beginning after December 31, 2012, a U.S. person that is an individual is subject to a 3.8% tax on the lesser of (1) the U.S. person's net investment income for the relevant taxable year and (2) the excess of the U.S. person's modified gross income for the taxable year over a certain threshold (which will be between \$125,000 and \$250,000, depending on the individual's circumstances). Estates and trusts that do not fall into a special class of trusts that is exempt from such tax are subject to the same 3.8% tax on the lesser of their undistributed net investment income and the excess of their adjusted gross income over a certain threshold. Net investment income generally would include dividends on our stock and gain from the sale of our stock. If you are a U.S. person that is an individual, estate or trust, you are urged to consult your tax advisors regarding the applicability of this tax to your income and gains in respect of your investment in our common or preferred stock.

**We will report to our stockholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules as applicable through December 31, 2012, a stockholder may be subject to backup withholding at a current rate of up to 28% with respect to distributions unless the holder:**

is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or

provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. For taxable years beginning after December 31, 2012, the backup withholding rates are scheduled to increase to as high as 31%. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, we may be required to withhold a portion of any dividends or capital gain distributions to any stockholders who fail to certify their non-foreign status to us.

Congress recently passed legislation that imposes withholding taxes on dividends and sales proceeds made to foreign financial institutions and certain other non-U.S. entities unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner. If the payee is a foreign financial institution, it must enter into an agreement with the United States Treasury requiring, among other things, that it undertakes to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent them from complying with these reporting and other requirements. The legislation by its terms would apply to payments made after December 31, 2012. However, in Notice 2011-53 the IRS announced a delay in the implementation of certain provisions of the legislation. Under Notice 2011-53, the legislation will be phased in as follows: (i) the IRS will begin to accept applications for foreign financial institution agreements no later than January 1, 2013, (ii) a foreign financial institution must enter into such an agreement by June 30, 2013 to avoid withholding tax after December 31, 2013, (iii) withholding on certain U.S. source periodical income (including dividends paid in respect of our stock) begins after December 31, 2013, and (iv) withholding on all other withholdable payments (including gross proceeds from the sale of our stock) begins after December 31, 2014. Prospective investors should consult their tax advisors regarding this legislation.

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*Tax consequences will vary depending on your specific circumstances. You should discuss specific tax questions regarding your participation in the Plan with your own tax advisor.*

*We urge you to save your account statements in order to calculate your tax basis per share of stock. The Plan administrator will charge you a fee for copies of past account statements.*

### **37. What provision is made for stockholders subject to income tax withholding?**

If you are a foreign stockholder whose dividends or distributions are subject to United States income tax withholding, or a domestic stockholder whose dividends or distributions are subject to backup withholding taxes, the Plan administrator will reinvest an amount equal to the dividend or distribution less the amount of any tax required to be withheld. The respective participants will be advised of the amounts withheld.

Foreign stockholders who elect to make optional cash investments only will receive cash dividends or distributions on stock registered in their names in the same manner as if they were not participating in this Plan. Funds for optional cash investments must be in U.S. dollars and will be invested in the same way as payments from other participants.

## **Other Important Provisions**

### **38. Can Boston Properties change or discontinue the Plan?**

While we currently intend to continue this Plan indefinitely, we may amend, suspend, modify or terminate this Plan at any time. We will send you notice of any amendment, suspension, modification or termination. The Plan administrator may resign at any time upon reasonable notice to Boston Properties in writing. We may elect and appoint at any time a new Plan administrator, including ourselves, to administer this Plan.

### **39. What are the responsibilities of Boston Properties and the Plan administrator under the Plan?**

Boston Properties and the Plan administrator will not be liable for any act done in good faith or for any omission to act, in good faith, including, without limitation, any claim of liability arising out of failure to terminate a participant's Plan account upon the participant's death prior to receipt of notice in writing of such death.

*You should recognize that neither Boston Properties nor the Plan administrator can assure you of a profit or protect you against a loss on the stock purchased or sold by you under this Plan.*

### **40. Who interprets and regulates the Plan?**

Any questions of interpretation arising under this Plan will be determined by Boston Properties in its sole discretion and any determination will be final. We may adopt rules and regulations to facilitate the administration of this Plan. The terms and conditions of this Plan and its operation will be governed by the laws of the State of Delaware.

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**United States Federal Income Tax Considerations**

The following is a summary of certain material United States federal income tax consequences relating to the purchase, ownership and disposition of common stock and preferred stock of Boston Properties, Inc. and the qualification and taxation of Boston Properties, Inc. as a REIT.

Because this is a summary that is intended to address only certain material United States federal income tax consequences relating to the ownership and disposition of shares of our common stock and preferred stock generally applicable to holders, it may not contain all the information that may be important to you. As you review this discussion, you should keep in mind that:

the tax consequences to you may vary depending on your particular tax situation;

special rules that are not discussed below may apply to you if, for example, you are a tax-exempt organization, a broker-dealer, a trust, an estate, a regulated investment company, a financial institution, an insurance company, a person who holds 10% or more (by vote or value) of our stock, or are otherwise subject to special tax treatment under the Internal Revenue Code of 1986, as amended, or the Code;

this summary does not address state, local, or non-U.S. tax considerations;

this discussion is not intended to be, and should not be construed as, tax advice.

**You are urged both to review the following discussion and to consult with your own tax advisor to determine the effect of ownership and disposition of shares of our common stock and preferred stock on your individual tax situation, including any state, local, or non-U.S. tax consequences.**

The information in this section is based on the current Code, current, temporary, and proposed Treasury regulations, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service, or IRS, including its practices and policies as endorsed in private letter rulings, which are not binding on the IRS except in the case of the taxpayer to whom a private letter ruling is addressed, and existing court decisions. Future legislation, regulations, administrative interpretations, and court decisions could change current law or adversely affect existing interpretations of current law. Any change could apply retroactively. We have not obtained any rulings from the IRS concerning the tax treatment of the matters discussed below. Thus, it is possible that the IRS could challenge the statements in this discussion which do not bind the IRS or the courts, and that a court could agree with the IRS.

**Classification and Taxation of Boston Properties, Inc. as a REIT**

For purposes of this discussion references to we, us or our, and any similar terms, refer to Boston Properties, Inc. We have elected to be taxed as a REIT under the Code. A REIT generally is not subject to federal income tax on the income that it distributes to stockholders if it meets the applicable REIT distribution requirements and other requirements for qualification.

We believe that we are organized and have operated in such a manner so as to qualify as a REIT, but there can be no assurance that we have qualified or will remain qualified as a REIT. In the opinion of our tax counsel, Goodwin Procter LLP, based upon and subject to the various assumptions and on our representations concerning our organization and operations, commencing with the taxable year ended December 31, 1997, our form of organization and operations are such as to enable us to qualify as a real estate investment trust under the applicable provisions of the Code. It must be emphasized that the opinion of Goodwin Procter LLP is based on various assumptions relating to our organization and operation, including that

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all factual representations and statements set forth in all relevant documents, records and instruments are true and correct, all actions described in this prospectus are completed in a timely fashion and that we will at all times operate in accordance with the method of operation described in our organizational documents and this prospectus, and is conditioned upon factual representations and covenants made by our management and affiliated entities regarding our organization, assets, and past, present and future conduct of our business operations, and assumes that such representations and covenants are accurate and complete and that we will take no action inconsistent with our status as a REIT. While we believe that we are organized and have operated and intend to continue to operate so that we will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by Goodwin Procter LLP or us that we have so qualified or will so qualify for any particular year. Goodwin Procter LLP will have no obligation to advise us or the holders of Boston Properties, Inc. common stock of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

Qualification and taxation as a REIT depends on our ability to meet, on a continuing basis, through actual operating results, distribution levels, and diversity of stock ownership, various qualification requirements imposed upon REITs by the Code, the compliance with which will not be reviewed by Goodwin Procter LLP. Our ability to qualify as a REIT also requires that we satisfy certain asset tests, some of which depend upon the fair market values of assets directly or indirectly owned by us. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of our operations for any taxable year will satisfy such requirements for qualification and taxation as a REIT.

So long as we qualify for taxation as a REIT, we generally will not be subject to federal corporate income tax on our net income that we distribute currently to our stockholders. This treatment substantially eliminates double taxation (that is, taxation at both the corporate and stockholder levels) that generally results from an investment in a regular corporation. However, we will be subject to federal income tax as follows:

We will be taxed at regular corporate rates on any undistributed REIT taxable income. REIT taxable income is the taxable income of the REIT subject to specified adjustments, including a deduction for dividends paid;

Under some circumstances, we may be subject to the alternative minimum tax on our items of tax preference;

If we have net income from the sale or other disposition of foreclosure property that is held primarily for sale to customers in the ordinary course of business (including certain foreign currency gain attributable thereto recognized after July 30, 2008), or other nonqualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on this income;

If we have net income from prohibited transactions (including certain foreign currency gain attributable thereto recognized after July 30, 2008) we will be subject to a 100% tax on this income. In general, prohibited transactions are sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property;

If we fail to satisfy either the 75% gross income test or the 95% gross income test discussed below, but nonetheless maintain our qualification as a REIT because other requirements are met, we will be subject to a tax equal to the gross income attributable to the greater of either (1) the amount by which we fail the 75% gross income test for the taxable year or (2) the amount by which we fail the 95% gross income test for the taxable year, multiplied by a fraction intended to reflect our profitability;

If we fail to satisfy any of the REIT asset tests, as described below, other than a failure by a *de minimis* amount of the 5% or 10% assets tests, as described below, but our failure is due to reasonable cause and not due to willful neglect and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be





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required to pay a tax equal to the greater of \$50,000 or the product of (x) the net income generated by the nonqualifying assets during the period in which we failed to satisfy the asset tests and (y) the highest U.S. federal income tax rate then applicable to U.S. corporations;

If we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a gross income or asset test requirement) and that violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification, but we will be required to pay a penalty of \$50,000 for each such failure;

We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of our stockholders, as described below in Requirements for Qualification as a REIT;

We will be subject to a nondeductible 4% excise tax on the excess of the required distribution over the sum of amounts actually distributed and amounts retained for which federal income tax was paid, if we fail to distribute during each calendar year at least the sum of 85% of our REIT ordinary income for the year, 95% of our REIT capital gain net income for the year; and any undistributed taxable income from prior taxable years;

We will be subject to a 100% penalty tax on some payments we receive (or on certain expenses deducted by a taxable REIT subsidiary of ours) if arrangements among us, our tenants, and/or our taxable REIT subsidiaries are not comparable to similar arrangements among unrelated parties;

If we acquire any asset from a C corporation in a carry-over basis transaction and we subsequently recognize gain on the disposition of such asset during the ten-year recognition period beginning on the date on which we acquired the asset, then, to the extent of any built-in gain, such gain will be subject to tax at the highest regular corporate tax rate. Built-in gain means the excess of (1) the fair market value of the asset as of the beginning of the applicable recognition period over (2) the adjusted basis in such asset as of the beginning of such recognition period;

We may elect to retain and pay income tax on our net long-term capital gain. In that case, a stockholder would: (1) include its proportionate share of our undistributed long-term capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, (2) be deemed to have paid the tax that we paid on such gain and (3) be allowed a credit for its proportionate share of the tax deemed to have been paid with an adjustment made to increase the stockholders' basis in our stock; and

We may have subsidiaries or own interests in other lower-tier entities that are C corporations that will jointly elect, with us, to be treated as a taxable REIT subsidiary, the earnings of which would be subject to U.S. federal corporate income tax.

No assurance can be given that the amount of any such federal income taxes will not be substantial. In addition, we and our subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state, local, and foreign income, franchise, property and other taxes on assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

***Requirements for Qualification as a REIT***

We elected to be taxable as a REIT for United States federal income tax purposes for our taxable year ended December 31, 1997. In order to have so qualified, we must have met and continue to meet the requirements discussed below, relating to our organization, sources of income, nature of assets and distributions of income to stockholders.

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The Code defines a REIT as a corporation, trust, or association:

- (1) which is managed by one or more trustees or directors;
- (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- (3) which would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
- (4) which is neither a financial institution nor an insurance company subject to applicable provisions of the Code;
- (5) the beneficial ownership of which is held by 100 or more persons;
- (6) during the last half of each taxable year not more than 50% in value of the outstanding shares of which is owned directly or indirectly by five or fewer individuals, as defined in the Code to include specified entities;
- (7) which makes an election to be taxable as a REIT, or has made this election for a previous taxable year which has not been revoked or terminated, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;
- (8) which uses a calendar year for United States federal income tax purposes and complies with the recordkeeping requirements of the Code and regulations promulgated thereunder; and
- (9) which meets other applicable tests, described below, regarding the nature of its income and assets and the amount of its distributions. Conditions (1), (2), (3), and (4) above must be met during the entire taxable year and condition (5) above must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. For purposes of determining stock ownership under condition (6) above, a supplemental unemployment compensation benefits plan, a private foundation, and a portion of a trust permanently set aside or used exclusively for charitable purposes generally are each considered an individual. A trust that is a qualified trust under Code Section 401(a) generally is not considered an individual, and beneficiaries of a qualified trust are treated as holding shares of a REIT in proportion to their actuarial interests in the trust for purposes of condition (6) above.

To qualify as a REIT, we also cannot have at the end of any taxable year any undistributed earnings and profits that are attributable to a non-REIT taxable year. We do not believe that we have any non-REIT earnings and profits and believe that we therefore satisfy this requirement.

***Protection from Stock Concentration***

In order to protect us from a concentration of ownership of stock that would cause us to fail condition (6) above, our charter provides that stock owned, or deemed to be owned or transferred to a stockholder in excess of specified ownership limits will be converted automatically into Excess Stock (as defined below) and transferred to a charity for resale. The original stockholder is entitled to receive certain proceeds from such a resale. Excess Stock is a separate class of our capital stock that is entitled to no voting rights but shares ratably with the common stock in dividends and rights upon dissolution. Because of the absence of authority on this issue, however, we cannot assure you that the operation of the Excess Stock or other provisions contained in our charter will, as a matter of law, prevent a violation of the share ownership requirements in conditions (5) and (6) above. If there were such a share ownership violation and the operation of the Excess Stock or other provisions contained in our charter were not held to cure such violation, we may be disqualified as a REIT. In rendering its opinion that we are organized in a manner

that permits us to qualify as a REIT, Goodwin Procter LLP is relying on our

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representation that the ownership of our stock (without regard to the Excess Stock provisions) satisfies condition (6) above. Goodwin Procter LLP expresses no opinion as to whether, as a matter of law, the Excess Stock or other provisions contained in our charter preclude us from failing condition (6) above.

To monitor its compliance with condition (6) above, a REIT is required to send annual letters to certain stockholders requesting information regarding the actual ownership of its shares. If we comply with the annual letters requirement and we do not know or, exercising reasonable diligence, would not have known of our failure to meet condition (6) above, then we will be treated as having met condition (6) above. A list of those persons failing or refusing to comply with this demand must be maintained as part of our records. Failure by us to comply with these record-keeping requirements could subject us to monetary penalties. A stockholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of the shares and other information.

### ***Qualified REIT Subsidiaries***

If a REIT owns a corporate subsidiary that is a qualified REIT subsidiary, the separate existence of that subsidiary will be disregarded for United States federal income tax purposes. Generally, a qualified REIT subsidiary is a corporation, other than a taxable REIT subsidiary (discussed below), all of the stock of which is owned by the REIT. All assets, liabilities, and items of income, deduction, and credit of the qualified REIT subsidiary will be treated as assets, liabilities, and items of income, deduction, and credit of the REIT itself. A qualified REIT subsidiary of ours will not be subject to federal corporate income taxation, although it may be subject to state and local taxation in some states.

### ***Taxable REIT Subsidiaries***

A taxable REIT subsidiary of ours is a corporation in which we directly or indirectly own stock and that jointly elects with us to be treated as a taxable REIT subsidiary under Section 856(l) of the Code. In addition, if one of our taxable REIT subsidiaries owns, directly or indirectly, securities representing 35% or more of the vote or value of a subsidiary corporation, that subsidiary will also be treated as a taxable REIT subsidiary of ours. A taxable REIT subsidiary is a corporation subject to United States federal income tax, and state and local income tax where applicable, as a regular C corporation.

Generally, a taxable REIT subsidiary can perform some impermissible tenant services without causing us to receive impermissible tenant services income under the REIT income tests. However, several provisions regarding the arrangements between a REIT and its taxable REIT subsidiaries ensure that a taxable REIT subsidiary will be subject to an appropriate level of United States federal income taxation. For example, a taxable REIT subsidiary is limited in its ability to deduct interest payments in excess of a certain amount made to us. In addition, we will be obligated to pay a 100% penalty tax on some payments that we receive or on certain expenses deducted by the taxable REIT subsidiary if the economic arrangements among us, our tenants, and/or the taxable REIT subsidiary are not comparable to similar arrangements among unrelated parties. A taxable REIT subsidiary may also engage in other activities that if conducted by us, other than through a taxable REIT subsidiary, could result in the receipt of non-qualified income or the ownership of non-qualified assets.

### ***Ownership of Partnership Interests by a REIT***

A REIT that is a partner in a partnership will be deemed to own its proportionate share of the assets of the partnership and will be deemed to earn its proportionate share of the partnership's income. The assets and gross income of the partnership retain the same character in the hands of the REIT for purposes of the gross income and asset tests applicable to REITs as described below. Thus, Boston Properties, Inc.'s proportionate share of the assets and items of income of Boston Properties Limited Partnership, including Boston Properties Limited Partnership's share of the assets and liabilities and items

