

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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): May 22, 2020

**BOSTON PROPERTIES, INC.
BOSTON PROPERTIES LIMITED PARTNERSHIP**
(Exact name of registrant as specified in its charter)

Boston Properties, Inc.	Delaware (State or Other Jurisdiction of Incorporation)	1-13087 (Commission File Number)	04-2473675 (IRS Employer Identification No.)
Boston Properties Limited Partnership	Delaware (State or Other Jurisdiction of Incorporation)	0-50209 (Commission File Number)	04-3372948 (IRS Employer Identification No.)

800 Boylston Street, Suite 1900, Boston, Massachusetts 02199
(Address of principal executive offices) (Zip Code)

(617) 236-3300
(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Registrant</u>	<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of exchange on which registered</u>
Boston Properties, Inc.	Common Stock, par value \$0.01 per share	BXP	New York Stock Exchange
Boston Properties, Inc.	Depository Shares Each Representing 1/100th of a share of 5.25% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share	BXP PRB	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Boston Properties, Inc.:

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Boston Properties Limited Partnership:

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01. Other Events.

On May 22, 2020, Boston Properties, Inc. (the “Company”) and Boston Properties Limited Partnership, the Company’s operating partnership (the “Partnership”), filed an automatic shelf registration statement on Form S-3 (File No. 333-238607) (the “Universal Shelf Registration Statement”) with the Securities and Exchange Commission (the “SEC”) to replace an existing shelf registration statement, which was scheduled to expire on June 2, 2020. In connection with the filing of this new registration statement, the Company also filed two new prospectus supplements. These prospectus supplements relate to (i) the Company’s new \$600 million “at the market” equity offering program as described below, which replaced the Company’s prior \$600 million “at the market” equity offering program that was scheduled to expire on June 2, 2020, and which is no longer effective, and (ii) the issuance of up to 256,073 shares of common stock of the Company that may be issued from time to time if, and to the extent that, the holders of previously issued common units of limited partnership interest in the Partnership present such units for redemption, which offerings had been covered by the prior registration statement. In addition, on May 22, 2020, the Company filed an automatic shelf registration statement on Form S-3 (File No. 333-238620) with the SEC to replace an existing shelf registration statement relating to its Dividend Reinvestment and Stock Purchase Plan, which was scheduled to expire on August 4, 2020.

In connection with the commencement of the “at the market” equity offering, the Company may sell up to an aggregate of \$600 million of shares of its common stock (the “Shares”) from time to time during a period of up to three years in “at the market” equity offerings or certain other transactions (the “Offering”). The Company may sell the Shares in amounts and at times to be determined by the Company from time to time, but has no obligation to sell any of the Shares in the Offering. Actual sales will depend on a variety of factors to be determined by the Company from time to time, including (among others) market conditions, the trading price of the Company’s common stock, capital needs and determinations by the Company of the appropriate sources of funding for the Company.

The Offering will occur pursuant to ten separate sales agency financing agreements (each, individually, a “Sales Agreement” and, collectively, the “Sales Agreements”) entered into by the Company with each of BofA Securities, Inc., BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc., Jefferies LLC, J.P. Morgan Securities LLC, Mizuho Securities USA LLC, Morgan Stanley & Co. LLC, Scotia Capital (USA) Inc., SunTrust Robinson Humphrey, Inc. and TD Securities (USA) LLC (and in certain cases, certain of their respective affiliates) for the offer and sale of the Shares. The Company refers to these entities, when acting in their capacity as sales agents for the Company or as principals, each, individually, as a “Sales Agent” and, collectively, as the “Sales Agents,” and when acting in their capacity as agents for the Forward Purchasers (as defined below), each, individually, as a “Forward Seller” and, collectively, as the “Forward Sellers.”

The Sales Agreements contemplate that, in addition to the issuance and sale of the Shares by the Company through or to the Sales Agents, acting as its sales agents or as principals, as applicable, the Company may also engage in forward sale transactions under separate master forward confirmations (collectively, the “Master Forward Confirmations”) and related supplemental confirmations (each, a “Forward Sale Agreement” and, collectively, the “Forward Sale Agreements”), with each of Bank of America, N.A., The Bank of New York Mellon, Deutsche Bank AG, London Branch, Jefferies LLC, JPMorgan Chase Bank, National Association, Mizuho Markets Americas LLC, Morgan Stanley & Co. LLC, The Bank of Nova Scotia and The Toronto-Dominion Bank (and in certain cases, certain of their respective affiliates). The Company refers to these entities when acting in their capacity as purchasers under any forward sale transactions, each, individually, as a “Forward Purchaser” and, collectively, as the “Forward Purchasers.”

If the Company decides to engage in a forward sale transaction, it will deliver instructions to the relevant Forward Purchaser and Forward Seller to borrow and sell shares of the Company’s common stock. Subject to, among other things, the terms and conditions in the relevant Sales Agreement and the acceptance of such instructions from the Company by the relevant Forward Purchaser and Forward Seller, such Forward Purchaser will use its commercially reasonable efforts to borrow or cause its affiliate to borrow, offer and sell through the relevant Forward Seller, the applicable shares of the Company’s common stock to establish the initial forward sale price under the applicable Forward Sale Agreement. Following such sales, pursuant to the relevant Forward Sale Agreement, the Company generally will have the right during the term of the relevant Forward Sale Agreement to issue and sell to the relevant Forward Purchaser a number of shares of the Company’s common stock equal to the number of borrowed shares that were sold in exchange for the forward sale price or, in the sole discretion of the Company, to cash settle or net share settle the Forward Sale Agreement. At the end of the term of the relevant Forward Sale Agreement, the Company generally will be obligated to issue and sell such shares to the relevant Forward Purchaser for the forward sale price if the Forward Sale Agreement has not been previously settled. The forward price generally is based on the initial forward price, as adjusted on a daily basis based on a floating interest rate factor equal to the overnight bank funding rate less a spread, to be agreed upon by the Company and the Forward Purchaser under the relevant Forward Sale Agreement, and subject to decrease on certain dates specified in the relevant Forward Sale Agreement by the amount per share of quarterly dividends the Company expects to declare on its common stock during the term of the relevant Forward Sale Agreement.

Each Sales Agreement has a term of up to three years and provides that the Company may offer and sell from time to time pursuant to the Sales Agreements up to a combined total of \$600 million of shares of its common stock during such three-year term through the Sales Agents. The Sales Agreements provide that each Sales Agent will be entitled to compensation that will not exceed, but may be lower than, 2.0% of the gross sales price of all shares sold through it as Sales Agent under the applicable Sales Agreement. In

connection with any Forward Sale Agreement, the Company will pay the applicable Forward Seller a commission, in the form of a reduced initial forward sale price under the related Forward Sale Agreement, at a mutually agreed rate not exceeding 2.0% of the volume-weighted average of the sales prices per share of the borrowed shares of the Company's common stock sold through such Forward Seller during the applicable forward hedge selling period for such transaction (subject to certain adjustments).

Sales of the Shares, if any, pursuant to the Sales Agreements may be made in transactions that are deemed to be "at the market offerings" as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made directly on the New York Stock Exchange or sales made to or through a market maker or through an electronic communications network, as well as in negotiated or other transactions described in the prospectus supplement relating to the Offering, which may include block trades. The Company or any of the Sales Agents may at any time suspend solicitation and offers under the Sales Agreements or terminate the Sales Agreements.

The Shares will be issued pursuant to the prospectus supplement and the Universal Shelf Registration Statement described above. The forms of the Sales Agreements and Master Forward Confirmations are filed as Exhibits 1.1 and 1.2, respectively, to this Current Report on Form 8-K. The descriptions of the Sales Agreements and Master Forward Confirmations do not purport to be complete and are qualified in their entirety by reference to the forms of the Sales Agreements and Master Forward Confirmations filed herewith as exhibits to this Current Report on Form 8-K and incorporated herein by reference.

Opinions of the Company's counsel, Goodwin Procter LLP, regarding the legality of the shares of common stock covered by the prospectus supplements described above are filed as Exhibits 5.1 and 5.2 hereto and are incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

<u>Exhibit Number</u>	<u>Description</u>
1.1	Form of Sales Agency Financing Agreement
1.2	Form of Master Forward Confirmation
5.1	Opinion of Goodwin Procter LLP regarding the legality of the shares offered
5.2	Opinion of Goodwin Procter LLP regarding the legality of the shares offered
23.1	Consent of Goodwin Procter LLP (included in Exhibits 5.1 and 5.2)
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibits 101.*)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

BOSTON PROPERTIES, INC.

By: /s/ Michael E. LaBelle

Michael E. LaBelle

Executive Vice President, Chief Financial Officer and
Treasurer

BOSTON PROPERTIES LIMITED PARTNERSHIP

By: Boston Properties, Inc., its General Partner

By: /s/ Michael E. LaBelle

Michael E. LaBelle

Executive Vice President, Chief Financial Officer and
Treasurer

Date: May 22, 2020

Boston Properties, Inc. and Boston Properties Limited Partnership have entered into Sales Agency Financing Agreements with each of BofA Securities, Inc., BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc., Jefferies LLC, J.P. Morgan Securities LLC, Mizuho Securities USA LLC, Morgan Stanley & Co. LLC, Scotia Capital (USA) Inc., SunTrust Robinson Humphrey, Inc. and TD Securities (USA) LLC (and in some cases, certain of their respective affiliates). What follows is the form of Sales Agency Financing Agreement.

SALES AGENCY FINANCING AGREEMENT

May 22, 2020

[BANK]
[ADDRESS]

As Agent [and Forward Seller]

[[BANK AFFILIATE]
[ADDRESS]

As Forward Purchaser]

Ladies and Gentlemen:

Each of Boston Properties, Inc., a Delaware corporation (the "Company"), and Boston Properties Limited Partnership, a Delaware limited partnership (the "Operating Partnership"), confirms its agreement with [[●] (in its capacity as purchaser under any Forward Contract (as defined below), the "Forward Purchaser") and] [●] (in its capacity as agent for the Company and/or principal in connection with the offering and sale of any Issuance Shares (as defined below) hereunder, the "Agent" [and, in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares (as defined below) hereunder, the "Forward Seller"), as stated in this sales agency financing agreement (as the same may be amended or supplemented from time to time, this "Agreement") as follows:

It is understood and agreed by the parties hereto that if Shares (as defined below) are offered or sold through the Agent acting as Forward Seller, then the Agent, as Forward Seller, shall be acting solely as sales agent for the Forward Purchaser with respect to the offering and sale of such Shares. Notwithstanding any other provision of this Agreement, if a Forward Seller and Forward Purchaser have not been identified in the introductory paragraph of this Agreement and have not executed this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller, the Forward Purchaser and Forwards are not applicable hereunder and no sales of Forward Hedge Shares shall take place pursuant to this Agreement.

The Company and the Operating Partnership have also entered into separate sales agency financing agreements (each, an “Alternative Sales Agency Agreement” and, collectively, the “Alternative Sales Agency Agreements”), dated as of even date herewith, with each of [●], [●], [●], [●], [●], [●], [●] and [●] (and, as applicable, their respective affiliates) (each in its capacity as agent and/or principal, forward seller and/or forward purchaser thereunder, an “Alternative Sales Agent”) for the issuance (in the case of the Issuance Shares) or borrowing (in the case of Forward Hedge Shares) and sale from time to time through the applicable Alternative Sales Agent of Shares on the terms set forth in the applicable Alternative Sales Agency Agreement. This Agreement and the Alternative Sales Agency Agreements are collectively referred to herein as the “Sales Agency Agreements.” The Company and the Operating Partnership may also in the future enter into one or more additional sales agency financing agreements for the issuance (in the case of the Issuance Shares) or borrowing (in the case of Forward Hedge Shares) and sale from time to time of the Shares, each of which will be deemed to be an Alternative Sales Agency Agreement upon execution thereof. The aggregate gross sales price of the Shares that may be sold pursuant to the Sales Agency Agreements shall not exceed the Maximum Program Amount (as defined herein).

ARTICLE I

DESCRIPTION OF SHARES

The Company proposes to issue and sell, in the manner contemplated by this Agreement, shares of the Company’s common stock, par value \$0.01 per share (“Common Stock”), having an aggregate gross sales price of up to \$600,000,000 (the “Shares”) (including shares sold pursuant to any Alternative Sales Agency Agreements), from time to time during the term of this Agreement and on the terms set forth in Article II of this Agreement. The Agent has been appointed by the Company as its agent to sell the Issuance Shares and agrees to use commercially reasonable efforts consistent with its normal trading and sales practices to sell the Issuance Shares offered by the Company pursuant to any Placement Notice (as defined herein) upon the terms and subject to the conditions contained herein and therein. The Forward Seller shall be acting as sales agent for the Forward Purchaser and agrees with the Company and the Forward Purchaser to use commercially reasonable efforts consistent with its normal trading and sales practices to sell the Forward Hedge Shares pursuant to any Placement Notice upon the terms and subject to the conditions contained herein and therein. The Company agrees that whenever it determines to sell Shares directly to the Agent as principal (each such transaction, a “Principal Transaction”), it will enter into a separate agreement (each, a “Terms Agreement”) in substantially the form of Exhibit A hereto, relating to such sale in accordance with Section 2.10 of this Agreement. Certain terms used herein are defined in Article X hereof.

ARTICLE II

PLACEMENTS; ISSUANCE, BORROWING AND SALE OF COMMON STOCK; SETTLEMENT

Section 2.01 Issuance, Borrowing and Sale. (a) Upon the terms and subject to the conditions of this Agreement, (i) the Company may issue Issuance Shares through the Agent and Agent shall use its commercially reasonable efforts to sell Issuance Shares in accordance with Section 2.01(b), or (ii) the Company may deliver a notice to the Forward Seller and the Forward Purchaser to borrow and use commercially reasonable efforts to sell Forward Hedge Shares in accordance with Section 2.01(c), in each case with an aggregate Sales Price of up to the Maximum Program Amount, based on and in accordance with such number of Placement Notices as the Company in its sole discretion shall choose to deliver during the Commitment Period until the aggregate Sales Price of the Shares sold under the Sales Agency Agreements equals the Maximum Program Amount or this Agreement is otherwise terminated. For the avoidance of doubt, Shares shall not include Forward Settlement Shares.

(b) On the basis of the representations and warranties herein contained and subject to the other terms and conditions of this Agreement, upon the delivery of a Placement Notice specifying that it relates to an "Issuance," and unless sales pursuant to such Placement Notice have been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell Issuance Shares in accordance with the terms of such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has made sales of Issuance Shares hereunder setting forth the number of Issuance Shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof. The Agent may sell Issuance Shares in the manner described in Section 2.01(f) herein. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Issuance Shares, (ii) the Agent will incur no liability or obligation to the Company or any other Person if it does not sell Issuance Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares as required under this Section 2.01 and (iii) no Agent shall be under any obligation to purchase Issuance Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent in a Terms Agreement and subject to this Article II hereof. In the case of clause (i) and (ii), the Agent will be acting as agent for the Company and not as principal.

(c) On the basis of the representations and warranties herein contained and subject to the other terms and conditions in this Agreement and the Master Forward Confirmation, upon the Forward Purchaser's and the Forward Seller's acceptance of the terms of a Placement Notice specifying that it relates to a "Forward" or upon receipt by the Forward Purchaser and the Forward Seller of an Acceptance, as the case may be, and unless the sale of the Forward Hedge Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement or the Master Forward Confirmation, the Forward Purchaser will use its commercially reasonable efforts to borrow or cause its affiliate to borrow a number of Forward Hedge Shares sufficient to have an aggregate Sales Price as close as reasonably practicable to the

Forward Hedge Amount specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable) and the Forward Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). The Forward Seller will provide written confirmation to the Company and to the Forward Purchaser no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Forward Hedge Shares hereunder setting forth the number of Forward Hedge Shares sold on such day, the Forward Hedge Selling Commission in respect of such Forward Hedge Shares, the corresponding Sales Price and the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect thereof. Each of the Company and the Forward Purchaser acknowledges and agrees that (i) there can be no assurance that the Forward Purchaser or its affiliate will be successful in borrowing or that the Forward Seller will be successful in selling Forward Hedge Shares, (ii) the Forward Seller will not incur any liability or obligation to the Company, the Forward Purchaser, or any other person or entity if it does not sell Forward Hedge Shares borrowed by the Forward Purchaser or its affiliate for any reason other than a failure by the Forward Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares as required under this Article II, and (iii) the Forward Purchaser will not incur any liability or obligation to the Company, the Forward Seller, or any other person or entity if it or its affiliate does not borrow Forward Hedge Shares for any reason other than a failure by the Forward Purchaser to use its commercially reasonable efforts to borrow or cause its affiliate to borrow such Forward Hedge Shares as required under this Article II. In acting hereunder, the Forward Seller will be acting as an agent for the Forward Purchaser and not as principal.

(d) No later than the opening of the Trading Day immediately following the last Trading Day of each Forward Hedge Selling Period (or, if earlier, no later than the opening of the Trading Day immediately following the date on which any Forward Hedge Selling Period is suspended or terminated pursuant to Section 2.11 or the Forward Contract or this Agreement is terminated pursuant to Article V or Article VII hereof), the Forward Purchaser shall execute and deliver to the Company a "Supplemental Confirmation" in respect of the Forward for such Forward Hedge Selling Period, which "Supplemental Confirmation" shall set forth the "Trade Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the last Trading Day of such Forward Hedge Selling Period), the "Effective Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date one Settlement Cycle (as such term is defined in the Master Forward Confirmation) immediately following the last Trading Day of such Forward Hedge Selling Period), the initial "Number of Shares" for such Forward (which shall be the Actual Sold Forward Amount for such Forward Hedge Selling Period), the "Maturity Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date set forth opposite the caption "Maturity Date" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward), the "Initial Forward Price" for such Forward, the "Spread" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Settlement Commission" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Volume-Weighted Hedge Price" for such Forward, the "Threshold Price" for such Forward, the "Initial Stock Loan Rate" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Maximum Stock Loan Rate" for such Forward (as set forth in the related Placement Notice

(as amended by the corresponding Acceptance, if applicable)), the “Forward Price Reduction Dates” for such Forward (which shall be each of the dates set forth below the caption “Forward Price Reduction Dates” in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the “Forward Price Reduction Amounts” corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each “Forward Price Reduction Date” and below the caption “Forward Price Reduction Amounts” in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the “Regular Dividend Amounts” for such Forward (which shall be each of the amount(s) set forth below the caption “Regular Dividend Amounts” in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward).

(e) Notwithstanding anything herein to the contrary, the Forward Purchaser’s obligation to use its commercially reasonable efforts to borrow or cause its affiliate to borrow all or any portion of the Forward Hedge Shares (and the Forward Seller’s obligation to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such portion of the Forward Hedge Shares) for any Forward hereunder in accordance with the terms of the relevant Placement Notice (as amended by the corresponding Acceptance, if applicable) shall be subject in all respects to the terms and conditions of the Master Forward Confirmation.

(f) Method of Offer and Sale. The Shares may be offered and sold by any method permitted by law deemed to be an “at the market” offering as defined in Rule 415 under the Securities Act, including, without limitations, sales made directly on the NYSE, on any other existing trading market for the Common Stock or to or through a market maker, or subject to the terms of the Placement Notice (as amended by the corresponding Acceptance in the case of a Forward, if applicable), by any other method permitted by law, including, but not limited to, privately negotiated transactions, which may include block trades.

Section 2.02 Effectiveness. The effectiveness of this Agreement (the “Closing”) shall be deemed to take place concurrently with the execution and delivery of this Agreement by the parties hereto and the completion of the closing transactions set forth in the immediately following sentence. At the Closing, the following closing transactions shall take place, each of which shall be deemed to occur simultaneously: (i) the Company shall deliver to the Agent, the Forward Seller and the Forward Purchaser a certificate executed by the Secretary or Assistant Secretary of the Company, signing in such capacity, dated the date of the Closing (A) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company (or a duly authorized committee thereof) authorizing the execution and delivery of this Agreement and, subject to the conditions contained therein, the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate and (B) certifying and attesting to the office, incumbency, due authority and specimen or electronic signatures of each Person who executed the Agreement for or on behalf of the Company; (ii) the Company shall deliver to the Agent, the Forward Seller and the Forward Purchaser (A) a certificate executed by the Chief Executive Officer, the President, any Executive Vice President or any Senior Vice President of the Company and by the Chief Financial Officer of the Company, signing in such capacity, dated the date of the Closing, confirming that the representations and warranties of the Company contained in this Agreement are true and correct and that the Company has performed all of its obligations hereunder to be performed on or prior

to the Closing Date and as to the satisfaction of the conditions precedent set forth in clauses (i), (ii) and (iv) in Section 5.01(a) hereof, and (B) a certificate executed by the Chief Legal Officer of the Company, signing in such capacity, dated the date of the Closing, substantially in the form of **Exhibit C** attached hereto; (iii) the Chief Legal Officer of the Company shall deliver to the Agent, the Forward Seller and the Forward Purchaser an opinion, dated the date of the Closing, substantially in the form of **Exhibit D** attached hereto; (iv) Goodwin Procter LLP, counsel for the Company, shall deliver to the Agent, the Forward Seller and the Forward Purchaser opinions and a negative assurance letter, dated the date of the Closing and addressed to the Agent, the Forward Seller and the Forward Purchaser, as applicable, substantially in the forms of **Exhibit E**, **Exhibit F** and **Exhibit G** attached hereto; (v) Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Agent, the Forward Seller and the Forward Purchaser, shall deliver to the Agent, the Forward Seller and the Forward Purchaser an opinion and a negative assurance letter, dated the date of the Closing and addressed to the Agent, the Forward Seller and the Forward Purchaser, substantially in the forms of **Exhibit H** and **Exhibit I** attached hereto; (vi) PricewaterhouseCoopers LLP shall deliver to the Agent, the Forward Seller and the Forward Purchaser a letter, dated the Closing Date, in form and substance satisfactory to the Agent, the Forward Seller and the Forward Purchaser; and (vii) the Company shall pay the expenses set forth in Section 9.02(ii), (iv) and (vii) hereof by wire transfer to the respective accounts designated by the Agent, the Forward Seller and the Forward Purchaser in writing reasonably promptly following the Closing.

Section 2.03 Mechanics.

(a) Placement Notice. On any Trading Day during the Commitment Period on which (i) the conditions set forth in Sections 5.01 have been satisfied and (ii) solely with respect to any Forward, no event described in clause (x) or clause (y) of the proviso set forth in the definition of a Forward Hedge Selling Period shall have occurred, the Company may (x) in the case of an Issuance, deliver a notice to the Agent for the issuance and sale of Shares hereunder (each, a "Placement") or (y) in the case of a Forward, deliver a notice to the Forward Seller and the Forward Purchaser containing the parameters in accordance with which it desires the Shares to be sold, which notice, in each case for either clause (x) or clause (y), shall be in the form of an e-mail (or other method mutually agreed to in writing by the parties) and shall specify whether it relates to an "Issuance" or a "Forward" and shall include the maximum number of Shares to be sold (the "Placement Shares"), the time period during which sales are requested to be made, any limitation on the number of Shares that may be sold in any one day, any Floor Price per Share below which sales may not be made or a formula pursuant to which such Floor Price shall be determined and, as applicable, certain specified terms of the Forward (a notice under either clause (x) or clause (y), a "Placement Notice"), a form of which containing such necessary minimum sales parameters is attached hereto as **Exhibit B**; provided, however, that notwithstanding anything in this Agreement to the contrary, the Agent, the Forward Seller and the Forward Purchaser shall have no obligations with respect to any Placement Notice if and to the extent the aggregate Sales Price of the Shares sold pursuant thereto, together with the aggregate Sales Price of the Shares previously sold under the Sales Agency Agreements, shall exceed the Maximum Program Amount. A Placement Notice shall be executed by the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, any Executive Vice President or any Senior Vice President of the Company.

(b) With respect to a Placement Notice for a Forward, if the Forward Seller and the Forward Purchaser wish to accept such proposed terms included in the Placement Notice (which they may decline to do for any reason in their sole discretion) or, following discussion with the Company, wish to accept amended terms, the Forward Seller and the Forward Purchaser will promptly, and in any event prior to 5:00 p.m. (New York City time) on the Business Day immediately following the Business Day on which such Placement Notice was delivered to the Forward Seller and the Forward Purchaser, issue to the Company a notice by e-mail (or other method mutually agreed to in writing by the parties), setting forth the terms that the Forward Seller and the Forward Purchaser are willing to accept. Where the terms provided in the Placement Notice are amended as provided for in the immediately preceding sentence, such terms will not be binding on the Company or the Forward Seller and the Forward Purchaser until the Company delivers to the Forward Seller and the Forward Purchaser an acceptance by e-mail (or other method mutually agreed to in writing by the parties) of all of the terms of such Placement Notice, as amended (an “Acceptance”). The Placement Notice (as amended by the corresponding Acceptance, if applicable) shall be effective upon receipt by the Company of the Forward Seller’s and the Forward Purchaser’s acceptance of the terms of the Placement Notice or upon receipt by the Forward Seller and the Forward Purchaser of the Company’s Acceptance, as the case may be, unless and until (1) the entire amount of the Placement Shares has been sold, (2) in accordance with the notice requirements set forth herein, the Company terminates the Placement Notice, (3) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice (as amended by the corresponding Acceptance, if applicable), (4) this Agreement has been terminated under the provisions of Article V or Article VII hereof or (5) any party shall have suspended the sale of the Placement Shares in accordance with Section 2.11 below. With respect to a Forward, it is expressly acknowledged and agreed that the Company and the Forward Seller and the Forward Purchaser will have no obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Forward Seller and the Forward Purchaser and either (x) the Forward Seller and the Forward Purchaser accept the terms of such Placement Notice or (y) where the terms of such Placement Notice are amended by the Forward Seller or the Forward Purchaser, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable), this Agreement and the Master Forward Confirmation. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice with respect to a Forward (as amended by the corresponding Acceptance, if applicable), the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable) will control.

(c) Delivery of Placement Notice. No Placement Notice may be delivered hereunder (i) other than on a Trading Day during the Commitment Period, (ii) if the Selling Period specified therein would overlap in whole or in part with any Selling Period specified in any other Placement Notice (as amended by the corresponding Acceptance in the case of a Forward, if applicable) delivered hereunder unless the Shares to be sold under all such previously delivered Placement Notices have all been sold or (iii) if any Selling Period specified therein would overlap in whole or in part with any Unwind Period under (and as defined in) any Forward Contract entered into between the Company and the Forward Purchaser, and no Placement Notice specifying that it relates to a “Forward” may be delivered if such Placement Notice, together with all prior Placement Notices (as amended by the corresponding Acceptance in the case of a Forward, if applicable) delivered by the Company relating to a “Forward” hereunder or any “Forward” under any

Alternative Sales Agency Agreements, would result in the sum of the number of Shares issued under all Forward Contracts (entered into in connection with any Sales Agency Agreements) that have settled, *plus* the aggregate Capped Number under all Forward Contracts (entered into in connection with any Sales Agency Agreements) then outstanding or to be entered into between the Company and the Forward Purchaser (or any forward purchaser in connection with any Alternative Sales Agency Agreement) exceeding 19.99% of the number of shares of Common Stock outstanding as of the date of this Agreement.

(d) Floor Price. During a Selling Period, neither the Agent nor the Forward Seller shall sell Shares below the Floor Price for such Selling Period and such Floor Price may be adjusted by the Company at any time during such Selling Period with respect to any sales that have not yet occurred upon notice to the Agent or the Forward Seller, as applicable, and confirmation to the Company.

(e) Trading Guidelines. The Company acknowledges and consents to the Agent, the Forward Seller and the Forward Purchaser trading in the Company's Common Stock for their respective accounts and for the accounts of their respective clients at the same time as sales of Shares occur pursuant to this Agreement, any Terms Agreement or any Alternative Sales Agency Agreement (including any terms agreement pursuant thereto) or while this Agreement, any Master Forward Agreement, any Terms Agreement or any Alternative Sales Agency Agreement (including any terms agreement pursuant thereto) is in effect; provided, however, that such consent is expressly limited to trading activity that complies with applicable federal and state laws, rules and regulations.

Section 2.04 Settlements of Issuance Shares. Subject to the provisions of Article V, on or before each Issuance Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Issuance Shares being sold by crediting the Agent or its designee's account at the Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) System, or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Issuance Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Agent will deliver the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Issuance Settlement Date. If the Company defaults in its obligation to deliver Issuance Shares on an Issuance Settlement Date, the Company agrees that it will (i) hold the Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company, and (ii) pay to the Agent any Selling Commission to which it would otherwise have been entitled absent such default. The parties acknowledge and agree that, in performing its obligations under this Agreement, the Agent may borrow shares of Common Stock from stock lenders, and may use the Issuance Shares to settle or close out such borrowings.

Section 2.05 Settlements of Forward Hedge Shares. Subject to the provisions of Article V, on or before each Forward Hedge Settlement Date, the Forward Purchaser will, or will cause its transfer agent to, electronically transfer the Forward Hedge Shares being sold by crediting the Forward Seller or its designee's account (provided the Forward Seller shall have given the Forward Purchaser written notice of such designee prior to the Forward Hedge Settlement Date) at The Depository Trust Company through its Deposit/Withdrawal at Custodian (DWAC) System or by

such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Forward Hedge Settlement Date, the Forward Seller will deliver the related Aggregate Forward Hedge Price to the Forward Purchaser in same day funds to an account designated by the Forward Purchaser prior to the relevant Forward Hedge Settlement Date.

Section 2.06 Use of Free Writing Prospectus. None of the Company, the Agent or the Forward Seller has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, which consent shall not be unreasonably withheld, any "written communication" which constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering of Shares contemplated by this Agreement.

Section 2.07 Multiple Sales Agents. The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales of Shares by the Company shall be effected by or through only one Agent, Forward Seller or Alternative Sales Agent on any single given day, and the Company shall in no event request or allow more than one Agent, Forward Seller or Alternative Sales Agent to sell Shares on the same day. In addition, the Company agrees that it will not sell, or instruct any other party to sell, any shares of Common Stock under any other sales agency financing agreements or other similar arrangements on such day.

Section 2.08 Exemption from Regulation M. If any party to this Agreement has reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Company or the Shares, it shall promptly notify every other party to this Agreement and sales of Shares under this Agreement, any Terms Agreement, any Alternative Sales Agency Agreement (including any terms agreement pursuant thereto) or any Forward Contract (including under any Alternative Sales Agency Agreement) shall be suspended until that or other exemptive provisions have been satisfied in the reasonable judgment of each party.

Section 2.09 Material Non-Public Information. Notwithstanding any other provision of this Agreement, (a) the Company shall not request the sale of any Shares that would be sold during any period in which the Company believes it is in possession of material non-public information and (b) the Agent and the Forward Seller shall not be obligated to sell any Shares hereunder during any period in which either the Agent or the Forward Seller believes that the Company is or could be deemed to be in possession of material non-public information.

Section 2.10 Sales Through Principal Transactions. If the Company wishes to issue and sell Shares pursuant to this Agreement through a Principal Transaction, it shall notify the Agent of the proposed terms of such Principal Transaction. If the Agent, acting as principal, wishes to accept such proposed terms (which it may decline to do for any reason in its sole discretion) or, following discussions with the Company wishes to accept amended terms, the Agent and the Company will enter into a Terms Agreement setting forth the terms of such Principal Transaction. The terms set forth in a Terms Agreement will not be binding on the Company or the Agent unless and until the Company and the Agent have each executed such Terms Agreement accepting all of the terms of such Terms Agreement. A Terms Agreement may specify certain provisions relating to the reoffering of such Shares by the Agent. The commitment of the Agent to purchase the Shares

pursuant to any Terms Agreement shall be deemed to have been made on the basis of the representations and warranties of the Company herein contained and shall be subject to the terms and conditions herein set forth. Each Terms Agreement shall specify the number of the Shares to be purchased by the Agent pursuant thereto, the price to be paid to the Company for such Shares, any provisions relating to rights of, and default by, underwriters acting together with the Agent in the reoffering of the Shares, and the time and date (each such time and date being referred to herein as a "Time of Delivery") and place of delivery of and payment for such Shares. Such Terms Agreement shall also specify any requirements for opinions of counsel, accountants' letters and officers' certificates pursuant to Section 6 of this Agreement and any other information or documents required by the Agent. In the event of a conflict between the terms of this Agreement and the terms of a Terms Agreement, the terms of such Terms Agreement will control.

Section 2.11 Suspension of Sales. The Company, the Agent, the Forward Seller or the Forward Purchaser may, upon notice to the other parties in writing (including via e-mail to one of the individuals named on Schedule 1 hereto or by any other method mutually agreed to in writing by the parties) or by telephone (confirmed immediately by verifiable facsimile transmission or via e-mail to one of the individuals named on Schedule 1 hereto), suspend any sale of Shares and the applicable Selling Period shall immediately terminate; provided, however, that such suspension and termination shall not affect or impair any party's obligations with respect to any Shares sold hereunder prior to the receipt of such notice (including, in the case of any Forward Hedge Shares, the obligation to enter into the resulting Forward Contract). The Company agrees that no such notice shall be effective against the Agent, the Forward Seller or the Forward Purchaser unless it is made to one of the individuals named on Schedule 1 hereto, as such Schedule 1 may be amended from time to time; provided, however, that the failure by the Company to deliver such notice shall in no way affect its right to suspend the sale of Shares hereunder. The Agent, the Forward Seller and the Forward Purchaser agree that no such notice shall be effective against the Company unless it is made to one of the individuals named on Schedule 1 hereto, as such Schedule 1 may be amended from time to time; provided, however, that the failure by the Agent, the Forward Seller or the Forward Purchaser to deliver such notice shall in no way effect such party's right to suspend the sale of Shares hereunder.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company and the Operating Partnership, jointly and severally, represent and warrant to, and agree with, the Agent, the Forward Seller and the Forward Purchaser that as of the date of this Agreement and on each such other time the following representations and warranties are repeated or deemed to be made pursuant to this Agreement:

Section 3.01 Registration. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed and quoted on the NYSE under the trading symbol "BXP", and the Shares have been listed on the NYSE, subject to notice of issuance. The Company meets the requirements for the use of Form S-3 under the Securities Act and Securities Act Regulations for the registration of the transactions contemplated by this Agreement. The Company has filed with the Commission a registration statement on Form S-3 (File No. 333-238607) (the "Original Registration Statement"), to be used in connection with, among other securities, the public offering

and sale of Common Stock, including the Shares of the Company. The Original Registration Statement and each further registration statement filed by the Company for the purpose of registering additional Shares to be sold pursuant to this Agreement (or, on and after the date on which the Shares may no longer be offered and sold pursuant to any such registration statement, any such further registration statement filed by the Company for the purpose of continuing the offering of the Shares following such date), and the prospectus constituting a part of such registration statement, together with the Prospectus Supplement and any pricing supplement relating to a particular issuance of the Shares (each, an "Issuance Supplement"), including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, are referred to herein as the "Registration Statement" and the "Prospectus," respectively, except that if any revised prospectus is provided to the Agent, the Forward Seller and the Forward Purchaser by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) promulgated by the Commission under the Securities Act, the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to the Agent, the Forward Seller and the Forward Purchaser for such use. Promptly after the execution and delivery of this Agreement, the Company will prepare and file the Prospectus Supplement relating to the Shares pursuant to Rule 424(b) promulgated by the Commission under the Securities Act, as contemplated by Section 5.01(k) of this Agreement. As used in this Agreement, the terms "amendment" or "supplement" when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

Section 3.02 Registration Statement; Prospectus and Disclosure Package. The Original Registration Statement is an "automatic effective registration statement" as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof. Each further registration statement, other than the Original Registration Statement, filed by the Company for the purpose of registering additional Shares to be sold pursuant to this Agreement either (1) is an "automatic effective registration statement" as defined under Rule 405 of the Securities Act that has been filed with the Commission or (2) has otherwise become effective under the Securities Act. On and after the date on which the Shares may no longer be offered and sold pursuant to the Original Registration Statement (or any such further registration statement filed by the Company for the purpose of registering additional Shares to be sold pursuant to this Agreement), each registration statement filed by the Company for the purpose of continuing the offering of the Shares following any such date either (1) is an "automatic effective registration statement" as defined under Rule 405 of the Securities Act that has been filed with the Commission or (2) has otherwise become effective under the Securities Act. No notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. Upon expiration of the effectiveness of the Original Registration Statement after the third anniversary of its original effective date, however, the Company will be required to file a further registration statement for the purpose of continuing the offering of the Shares. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the Commission. As of the applicable effective date of the Registration Statement and any amendment thereto, the Registration

Statement complied and will comply in all material respects with the Securities Act, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus Supplement, the Prospectus does not contain, and as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; as of each Applicable Time and the Closing Date, as the case may be, neither (i) the Issuer Free Writing Prospectus(es), if any, issued at or prior to such Applicable Time, the Prospectus and the public offering price of the Shares offered thereby, all considered together (collectively, the “General Disclosure Package”), nor (ii) any individual Issuer Free Writing Prospectus(es), if any, when considered together with the General Disclosure Package, will contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to the Agent, the Forward Seller and the Forward Purchaser furnished to the Company in writing by the Agent, the Forward Seller and the Forward Purchaser expressly for use in the Registration Statement, the Prospectus and the General Disclosure Package and any amendment or supplement thereto.

Section 3.03 Incorporated Documents. The documents incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and none of such documents contained any untrue statement of a material fact or, when taken together with the Registration Statement, Prospectus or General Disclosure Package, as applicable, including the documents incorporated by reference therein, omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain any untrue statement of a material fact or, when taken together with the Registration Statement, Prospectus or General Disclosure Package, as applicable, including the documents incorporated by reference therein, omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.04 Status under the Securities Act. The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the Securities Act Regulations. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the Securities Act Regulations.

Except for the free writing prospectuses, if any, identified in **Schedule 2** hereto or permitted pursuant to Section 2.06, and electronic road shows, if any, furnished to the Agent, the Forward Seller and the Forward Purchaser before first use, the Company has not prepared, used or referred to, and will not, without the prior consent of the Agent, the Forward Seller and the Forward Purchaser, use or refer to, any free writing prospectus with respect to the offering of Shares contemplated by this Agreement.

Section 3.05 **Independent Registered Public Accountants**. The registered public accounting firm that certified the financial statements and supporting schedules, if any, of the Company and its subsidiaries included or incorporated by reference in the General Disclosure Package, is an independent registered public firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act and the Securities Act Regulations.

Section 3.06 **Financial Statements**. The consolidated financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related notes, present fairly in all material respects the financial position of the Company and its subsidiaries at the dates indicated or for the periods specified, as the case may be; said financial statements have been prepared in conformity with generally accepted accounting principles of the United States of America (“GAAP”) applied on a consistent basis throughout the periods involved, except as noted therein. The selected financial data and the summary financial information included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the information shown therein and have been compiled on a basis materially consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement, except as noted therein. Other than the historical financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, no other historical financial statements are required by the Securities Act or the Securities Act Regulations to be included or incorporated by reference therein. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission’s rules and guidelines applicable thereto.

Section 3.07 **No Material Adverse Change**. Since the date of the most recent financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement, the Prospectus and the General Disclosure Package, except as described in the General Disclosure Package or in documents incorporated by reference therein, (i) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business or any material adverse effect on the Company’s ability to consummate the transactions contemplated by, or to execute, deliver and perform its obligations under, this Agreement, any Forward Contract and any applicable Terms Agreement (a “**Material Adverse Effect**”), (ii) no material casualty loss or material condemnation or other material adverse event with respect to the commercial real estate properties owned by the Company or any of its subsidiaries as of the date of this Agreement (the “**Properties**”) that are still

owned by the Company or any of its subsidiaries or any other real property owned by the Company or any of its subsidiaries, when considered in the aggregate, has occurred, and (iii) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise.

Section 3.08 Organization and Qualification of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package, and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

Section 3.09 Organization, Qualification and Capitalization of the Subsidiaries of the Company. Each of the subsidiaries of the Company has been duly formed or organized, as the case may be, and is validly existing as a general or limited partnership, limited liability company, corporation or trust, as the case may be, in good standing (in the case of corporations, limited liability companies and limited partnerships) under the laws of the jurisdiction of its formation or organization, has partnership, corporate, limited liability company or trust power and authority, as the case may be, to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and is duly qualified as a foreign entity to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect. All of the issued and outstanding capital stock of each of the subsidiaries of the Company that is a corporation has been duly authorized and validly issued, is fully paid and non-assessable, and all of the partnership interests in each subsidiary of the Company that is a partnership are validly issued and fully paid. Except as otherwise disclosed in the General Disclosure Package, all such shares and interests, as the case may be, that are owned by the Company or any of its subsidiaries are owned by the Company, directly or through subsidiaries of the Company, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity, except where such security interest, mortgage, pledge, lien, encumbrance, claim or equity would not reasonably be expected to result in a Material Adverse Effect. None of the outstanding shares of capital stock or limited liability company or partnership interests of any subsidiary of the Company was issued in violation of the preemptive or similar rights of any securityholder of such subsidiary.

Section 3.10 Due Authorization of Common Stock. The outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and nonassessable; none of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

Section 3.11 Authority. Each of the Company and the Operating Partnership, as applicable, has full right, power and authority to execute and deliver this Agreement and Master Forward Confirmation and to perform their respective obligations hereunder and thereunder (including, without limitation, with respect to the Company, the issuance of the Shares pursuant to

this Agreement). This Agreement and the Master Forward Confirmation have been duly authorized, executed and delivered by each of the Company and the Operating Partnership, as applicable. The Company has full right, power and authority to execute and deliver any Terms Agreement or Forward Contract and perform its obligations thereunder and all action required to be taken for the due and proper authorization, execution and delivery by it of any Terms Agreement or Forward Contract and the consummation by it of the transactions contemplated thereby will have been duly and validly authorized and any Terms Agreement or Forward Contract will have been duly authorized, executed and delivered by the Company.

Section 3.12 Common Stock. The Common Stock, including the Shares, conforms in all material respects to the description thereof contained in each of the General Disclosure Package and the Prospectus or in documents incorporated therein by reference and such description conforms, in all material respects, to the rights set forth in the instruments defining the same; no holder of the Shares will be subject to personal liability by reason of being such a holder.

Section 3.13 Due Authorization of Shares and Forward Settlement Shares. The Shares and the Forward Settlement Shares have been duly authorized and, when issued and delivered against payment therefor as provided herein or in the applicable Forward Contract, will be validly issued, fully paid and nonassessable, and the issuance of such Shares or Forward Settlement Shares, as applicable, will not be subject to any preemptive rights under the certificate of incorporation or bylaws of the Company or the Delaware General Corporation Law. Upon issuance, the Shares or Forward Settlement Shares, as applicable, will conform in all material respects to the statements relating thereto contained in the Prospectus and the General Disclosure Package. Upon payment of the purchase price and delivery of the Shares or Forward Settlement Shares, as applicable, in accordance with this Agreement or the applicable Forward Contract, each of the purchasers thereof will receive good, valid and marketable title to such Shares or Forward Settlement Shares, free and clear of all liens, charges and encumbrances.

Section 3.14 Sale of Shares. Immediately after any sale of Shares hereunder, the aggregate amount of Common Stock that has been sold under this Agreement will not exceed the aggregate amount of Common Stock registered under the Registration Statement (in this regard, the Company acknowledges and agrees that the Agent, the Forward Seller and the Forward Purchaser shall have no responsibility for maintaining records with respect to the aggregate amount of Shares sold, or of otherwise monitoring the availability of Common Stock for sale, under the Registration Statement).

Section 3.15 OP Units. The issued and outstanding units of limited partnership of the Operating Partnership (“OP Units”), if any, have been duly authorized and validly issued and are fully paid. OP Units issued and sold in connection with the acquisition of properties currently under contract to be acquired, if any, have been and will be offered, issued and sold in compliance with all applicable laws (including, without limitation, federal and state securities laws).

Section 3.16 No Conflict. Neither the Company nor any of its subsidiaries is in violation of its organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of

the property or assets of the Company or any of its subsidiaries is subject (collectively, “Agreements and Instruments”) except for such violations or defaults that would not result in a Material Adverse Effect. Except with respect to the authorization of actual sales of Shares, other than those previously sold or subject to a Placement Notice, the execution, delivery and performance of this Agreement, any Forward Contract and any applicable Terms Agreement and the consummation of the transactions contemplated in this Agreement, any Forward Contract, any applicable Terms Agreement and the General Disclosure Package (including the issuance, if any, of the Shares or the Forward Settlement Shares, and sale of the Shares, and the use of the proceeds from the sale of the Shares as described in the Prospectus under the caption “Use of Proceeds”) and compliance by the Company and the Operating Partnership with their obligations under this Agreement, any Forward Contract, if applicable, and any applicable Terms Agreement have been duly authorized by all necessary corporate or partnership action, as the case may be, and (except as contemplated by the General Disclosure Package) do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the Properties or any other property or assets of the Company or any of its subsidiaries pursuant to, the Agreements and Instruments or violations of any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their assets, properties or operations (except for such conflicts, breaches, defaults, Repayment Events, liens, charges, encumbrances or violations that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the organizational documents of the Company or any of its subsidiaries. As used herein, the term “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

Section 3.17 No Labor Disputes. Except as disclosed in the General Disclosure Package or as would not reasonably be expected to result in a Material Adverse Effect, no material labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent.

Section 3.18 No Material Actions, Suits or Proceedings. Except as disclosed in the General Disclosure Package, there is no action, suit or proceeding before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which is required to be disclosed in the Registration Statement or the Prospectus, or than which might reasonably be expected, if determined adversely to the Company or any of its subsidiaries, to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the consummation of the transactions contemplated in this Agreement or the performance by the parties of their obligations hereunder.

Section 3.19 REIT Status. Commencing with the taxable year ended December 31, 1997 and through the date hereof, the Company has been organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and its method of operation has enabled and will enable it to meet the requirements for qualification and taxation as a REIT under the Code.

Section 3.20 Filing of Contracts. There are no contracts or documents which are required to be described in the Registration Statement or the General Disclosure Package or to be filed as exhibits thereto or to documents incorporated by reference therein which have not been so described and filed as required.

Section 3.21 No Further Consents Required. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company and the Operating Partnership of their obligations hereunder, in connection with the offering, issuance or sale of the Shares under this Agreement or the consummation of the transactions contemplated by this Agreement, except such as have been already filed or obtained or as may be required under the Securities Act or the Securities Act Regulations and foreign or state securities or blue sky laws.

Section 3.22 Governmental Licenses. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them; the Company and its subsidiaries are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any written notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

Section 3.23 Title to Properties. (i) The Company and its subsidiaries have either good and marketable title in fee simple or good and marketable leasehold title, as applicable, to all of the Properties and good and marketable title to all other real properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (a) are described in each of the General Disclosure Package and the Prospectus or in documents incorporated by reference therein or (b) do not, in the aggregate, materially affect the value of such properties and do not, in the aggregate, materially interfere with the use made and proposed to be made of such properties by the Company or any of its subsidiaries; (ii) all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances on or affecting the properties and assets of the Company or any of its subsidiaries that are required to be disclosed in the Prospectus are disclosed therein or in documents incorporated by reference therein; (iii) except as disclosed in the General Disclosure Package, the Company does not know of any violation of any municipal, state or federal law, rule or regulation (including those pertaining to environmental matters) concerning the Properties or any part thereof which would have a Material Adverse Effect and will not result in a forfeiture or reversion of title; (iv) except as disclosed in the General Disclosure Package, each of the Properties complies with all applicable zoning laws, ordinances, regulations and deed restrictions or other covenants in all material respects and, if and to the extent there is a failure to comply, such failure does not result in a Material Adverse Effect; (v) except as disclosed in the General Disclosure Package, none of the Company or any of its subsidiaries has received from any governmental authority any written notice of any condemnation of or zoning change affecting the Properties or any part thereof which

would have a Material Adverse Effect, and none of the Company or any of its subsidiaries knows of any such condemnation or zoning change which is threatened and which if consummated would have a Material Adverse Effect; and (vi) except as disclosed in the General Disclosure Package, no lessee of any portion of any of the Properties is in default under any of the leases governing such Properties and there is no event which, but for the passage of time or the giving of notice or both, would constitute a default under any of such leases, except such defaults that would not have a Material Adverse Effect.

Section 3.24 Insurance. Except as disclosed in the General Disclosure Package, the Company and each of its subsidiaries is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they will be engaged; and neither the Company nor any of its subsidiaries has any reason to believe that any of them will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business assuming that such coverage continues to be available on commercially reasonable terms at the time.

Section 3.25 Taxes. The Company and each of its subsidiaries has filed all foreign, federal, state and local tax returns that are required to be filed or have requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith and would not reasonably be expected to have a Material Adverse Effect or as described in or contemplated by the General Disclosure Package.

Section 3.26 Mortgages. Except as set forth in the General Disclosure Package, the mortgages and deeds of trust encumbering the properties and assets described in the General Disclosure Package are not convertible and none of the Company, any of its subsidiaries, or any person affiliated therewith holds a participating interest therein, and such mortgages and deeds of trust are not cross-defaulted or cross-collateralized to any property not owned directly or indirectly by the Company or any of its subsidiaries.

Section 3.27 Compliance of Prospectus Supplement. Each prospectus supplement relating to the Shares, if any, filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the Securities Act Regulations.

Section 3.28 Company and Operating Partnership Not Investment Companies. The Company and the Operating Partnership are not, and upon the issuance and sale of the Shares as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus will not be, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

Section 3.29 Environmental Laws; Hazardous Materials. Except as otherwise disclosed in the Prospectus, or except as would not, singly or in the aggregate, have a Material Adverse Effect, (i) to the best knowledge of the Company, the Company and its subsidiaries have been and

are in compliance with applicable Environmental Statutes (as defined below); (ii) to the best knowledge of the Company, none of the Company, any of its subsidiaries or any other owners of the Properties at any time or any other party has at any time released (as such term is defined in Section 101(22) of CERCLA (as defined below)) or otherwise disposed of Hazardous Materials (as defined below) on, to or from the Properties; (iii) the Company does not intend to use the Properties or any subsequently acquired properties, other than in compliance with applicable Environmental Statutes; (iv) neither the Company nor any of its subsidiaries knows of any seepage, leak, discharge, release, emission, spill, or dumping of Hazardous Materials into waters (including, but not limited to, groundwater and surface water) on, beneath or adjacent to the Properties or onto lands from which Hazardous Materials might seep, flow or drain into such waters; (v) neither the Company nor any of its subsidiaries has received any notice of, or has any knowledge of any occurrence or circumstance which, with or without notice or passage of time or both, would give rise to a claim under or pursuant to any Environmental Statute with respect to the Properties or the assets described in the Prospectus or arising out of the conduct of the Company or its subsidiaries; and (vi) neither the Properties nor any other land are included or, to the best of the Company's knowledge, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency or to the best of the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Statute or issued by any other Governmental Authority (as defined below).

As used herein, "Hazardous Materials" shall include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances, asbestos or any hazardous material as defined by any federal, state or local environmental law, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801-1819, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-K, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Clean Air Act, 42 U.S.C. §§ 7401-7642, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, 29 U.S.C. §§ 651-678, as any of the above statutes may be amended from time to time, and in the regulations promulgated pursuant to each of the foregoing (including environmental statutes not specifically defined herein) (individually, an "Environmental Statute" and collectively "Environmental Statutes") or by any federal, state or local governmental authority having or claiming jurisdiction over the properties and assets described in the Prospectus (a "Governmental Authority").

Section 3.30 No Registration Rights. Except as described in the Registration Statement or in respect of (i) OP Units issued by the Operating Partnership, (ii) the issuance or resale of any security issuable upon the conversion, exchange or exercise of any previously outstanding security or right or (iii) the resale of securities issued in an unregistered transaction not required to be disclosed pursuant to Item 3.02 of Form 8-K or its successor, there are no registration rights or other similar rights to have any securities registered pursuant to the Registration Statement. Except as described in the Registration Statement or in respect of (i) OP Units issued by the Operating Partnership, (ii) the issuance or resale of any security issuable upon the conversion, exchange or exercise of any previously outstanding security or right or (iii) the resale of securities issued in an

unregistered transaction not required to be disclosed pursuant to Item 3.02 of Form 8-K or its successor, there are no registration rights or other similar rights to have any securities otherwise registered by the Company under the Securities Act.

Section 3.31 Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the General Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

Section 3.32 Officers' Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Agent, the Forward Seller and the Forward Purchaser or to counsel for the Agent, the Forward Seller and the Forward Purchaser in connection with this Agreement, any Forward Contract or any Terms Agreement shall be deemed a representation and warranty solely by the Company to the Agent, the Forward Seller and the Forward Purchaser as to the matters covered thereby.

Section 3.33 Internal Accounting Controls. The Company and its subsidiaries maintain a system of internal accounting and other controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Section 3.34 Internal Controls Over Financial Reporting. The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Except as disclosed in the General Disclosure Package, the Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting. Since the date of the latest audited financial statements included or incorporated by reference in the General Disclosure Package, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Section 3.35 Disclosure Controls. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities; and, except as disclosed in the General Disclosure Package, such disclosure controls and procedures are effective.

Section 3.36 Compliance with FCPA. Neither the Company nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

Section 3.37 Compliance with Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company and the Operating Partnership, threatened.

Section 3.38 Compliance with OFAC. Neither the Company nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of any of the Company or the Operating Partnership is currently the subject of any sanctions administered by the OFAC; and neither the Company nor the Operating Partnership will directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person or entity that, at the time of such funding, is the subject of any sanctions administered by OFAC.

Section 3.39 No Price Stabilization or Manipulation. Neither the Company, the Operating Partnership nor any of their respective directors, officers or affiliates has taken or will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Shares pursuant to this Agreement.

Section 3.40 No Broker’s Fees. Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or the Agent, Forward Seller or Forward Purchaser for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Shares pursuant to this Agreement.

Section 3.41 Compliance with Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company’s directors or officers, in their capacities as such, to comply in all material respects with any applicable provision of the Sarbanes-Oxley Act and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

Section 3.42 Statistical, Market and Operational Data. The statistical, market and operational data included in each of the Prospectus and the General Disclosure Package (i) matches, is based on or was accurately derived from the applicable internal accounting, operational and/or financial records of the Company and the Operating Partnership in all material respects and/or (ii) matches, is based on or was accurately derived from public sources or publications that the Company and the Operating Partnership believe, in good faith, to be reliable and accurate in all material respects.

Section 3.43 Cybersecurity. (i) There has been no security breach or incident, unauthorized access or disclosure, or other compromise of or relating to the Company or its subsidiaries information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective tenants, employees, suppliers, vendors and any third party data maintained, processed or stored by or on behalf of the Company and its subsidiaries), equipment or technology (collectively, "IT Systems and Data"); (ii) neither the Company nor its subsidiaries have been notified of, and have no knowledge of, any event or condition that would reasonably be expected to result in, any security breach or incident, unauthorized access or disclosure or other compromise to their IT Systems and Data; and (iii) the Company and its subsidiaries have implemented appropriate controls, policies, procedures and technological safeguards to maintain and protect the integrity, continuous operations, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards, except, in the case of either clause (i) or (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or, with respect to clause (iii), where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

ARTICLE IV

COVENANTS

The Company covenants and agrees during the term of this Agreement with each of the Agent, the Forward Seller and the Forward Purchaser as follows:

Section 4.01 Registration Statement and Prospectus. (i) At any time after the date of delivery of a Placement Notice and prior to the later of (A) the end of the Selling Period established by such Placement Notice and (B) the last Settlement Date for Shares sold pursuant to such Placement Notice, to make no amendment or supplement to the Registration Statement or the Prospectus at any time prior to having afforded the Agent, the Forward Seller and the Forward Purchaser, as applicable, a reasonable opportunity to review and comment thereon; provided,

however, that this clause (i) shall not apply to (x) an amendment or supplement relating solely to the issuance or offering of securities other than the Shares and (y) an amendment or supplement by means of a Current Report on Form 8-K that does not include financial statements of the Company or an earnings release of the Company filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference in the Registration Statement or the Prospectus; provided, further, that the Company will give prior written notice to the Agent, the Forward Seller and the Forward Purchaser, as applicable, of the intention to file such report and describing the subject matter to be included in such report as soon as reasonably practicable prior to the filing of such report; (ii) upon the reasonable request of the Agent, the Forward Seller or the Forward Purchaser, to prepare, with respect to any Shares to be sold pursuant to this Agreement, an Issuance Supplement with respect to such Shares in a form previously approved by the Agent, the Forward Seller and the Forward Purchaser and to file such Issuance Supplement pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and to deliver such number of copies of each Issuance Supplement to each exchange or market on which such sales were effected, in each case unless delivery and filing of such an Issuance Supplement is not required by applicable law, by the rules and regulations of the Commission or by the rules and regulations of each such exchange or market; (iii) at any time other than the period set forth in clause (i) above, to make no amendment or supplement to the Registration Statement or the Prospectus at any time prior to having afforded the Agent, the Forward Seller and the Forward Purchaser a reasonable opportunity to review and comment thereon, and to advise the Agent, the Forward Seller and the Forward Purchaser as soon as practicable when any such amendment to the Registration Statement has been filed or has become effective or any such amendment or supplement to the Prospectus has been filed with the Commission; provided, however, that this clause (iii) shall not apply to (x) an amendment or supplement relating solely to the issuance or offering of securities other than the Shares, and (y) an amendment or supplement by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q, a Proxy Statement on Schedule 14A, a Current Report on Form 8-K or a Registration Statement on Form 8-A or any amendments thereto filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Registration Statement or the Prospectus; (iv) to file within the time periods required by the Exchange Act all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act for so long as the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction in connection with the offering or sale of the Shares, and during such same period to advise the Agent, the Forward Seller and the Forward Purchaser, promptly after the Company receives notice thereof if such notice shall be received during a Selling Period, or prior to delivery of a Placement Notice at all other times, of the time when any amendment to the Registration Statement has been filed or has become effective or any supplement to the Prospectus or any amended Prospectus has been filed with the Commission (other than an amendment or supplement relating solely to the issuance or offering of securities other than the Shares or an amendment or supplement by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q, a Proxy Statement on Schedule 14A, a Current Report on Form 8-K or a Registration Statement on Form 8-A or any amendments thereto filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Registration Statement or the Prospectus), of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus relating to the Shares, of the suspension of the

qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, of any request by the Commission for the amendment or supplement of the Registration Statement or the Prospectus or for additional information with respect thereto, or the receipt of any comments from the Commission with respect to the Registration Statement or the Prospectus (including, without limitation, any documents incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package); (v) in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any such prospectus or suspending any such qualification during a Selling Period, to use promptly its commercially reasonable efforts to obtain its withdrawal and (vi) if, immediately prior to the third anniversary of the filing of the Original Registration Statement, any of the Shares remain unsold hereunder, to, prior to such third anniversary, advise the Agent, the Forward Seller and the Forward Purchaser as to whether it intends to file (unless it has already done so) a new automatic shelf registration statement or shelf registration statement, as applicable, relating to the Shares;

Section 4.02 Blue Sky. To use its commercially reasonable efforts to cause the Shares to be listed on the NYSE and promptly from time to time to take such action as the Agent, the Forward Seller or the Forward Purchaser may reasonably request to cooperate with the Agent, the Forward Seller or the Forward Purchaser in the qualification of the Shares for offering and sale under the blue sky or securities laws of such jurisdictions within the United States and its territories as the Agent, the Forward Seller or the Forward Purchaser may reasonably request and to use its commercially reasonable efforts to comply with such laws so as to permit the continuance of sales and dealings in such jurisdictions for as long as may be necessary to complete the sale of the Shares; provided, that in connection therewith, the Company shall not be required to qualify as a foreign corporation, to file a general consent to service of process or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so qualified, has not otherwise made such filing or is not otherwise so subject;

Section 4.03 Copies of Registration Statement and Prospectus. (i) Except where such reports, communications, financial statements or other information is available on the Commission's Electronic Data Gathering Analysis and Retrieval, or EDGAR, system or its successor, to furnish the Agent, the Forward Seller and the Forward Purchaser with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) promulgated by the Commission under the Securities Act, both in such quantities as the Agent, the Forward Seller or the Forward Purchaser may reasonably request from time to time; and (ii) if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any Selling Period in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agent and the Forward Seller and request the Agent and the Forward

Seller to suspend offers to sell Shares (and, if so notified, the Agent and the Forward Seller shall cease such offers as soon as practicable); and, if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agent, the Forward Seller and the Forward Purchaser promptly by telephone (with confirmation in writing, which may be by e-mail) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; provided, however, that if during such same period the Agent, the Forward Seller or the Forward Purchaser is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement;

Section 4.04 Reports. To timely file such reports pursuant to the Exchange Act as are necessary to make generally available to its holders of the Shares an earnings statement of the Company and its consolidated subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the Securities Act Regulations;

Section 4.05 Representations and Warranties. At each Applicable Time, Issuance Date, each Settlement Date, each Registration Statement Amendment Date (as defined in Section 4.06) and each Request Date, (i) the Company shall be deemed to have affirmed (a) each covenant and other agreement contained in this Agreement and (b) that each representation and warranty contained in this Agreement is true and correct, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and supplements thereto), and (ii) the Company will undertake to advise the Agent, the Forward Seller and the Forward Purchaser if any of such representations and warranties will not be true and correct as of each such date, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares);

Section 4.06 Opinions of Counsel. That (i) each time the Registration Statement or the Prospectus is amended or supplemented (other than by means of (a) an amendment or supplement relating solely to the offering of securities other than the Shares, (b) an Issuance Supplement, (c) a Current Report on Form 8-K (other than a Current Report on Form 8-K containing financial statements or an earnings release or with respect to material federal income tax considerations relating to ownership of the Company's Common Stock), (d) a Definitive Proxy Statement on Schedule 14A or (e) a Part III-only amendment to an Annual Report on Form 10-K, unless, in the case of (a) or (b) reasonably requested by the Agent, the Forward Seller and the Forward Purchaser within five (5) Business Days of the filing thereof with the Commission), including by means of an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q or a Current Report on Form 8-K containing financial statements or an earnings release or with respect to material federal income tax considerations relating to ownership of the Company's Common Stock filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus (each such date, a "Registration Statement Amendment Date") or (ii) otherwise after each reasonable request by the Agent, the Forward Seller and the Forward Purchaser (each date of any such request, an "Opinion Request Date"), the Company shall as soon as practicable thereafter furnish or cause to be furnished as soon as practicable thereafter to the Agent, the Forward Seller and the Forward Purchaser, as applicable, the written opinion of the Chief Legal Officer of the Company and the written opinions and negative assurance letter of Goodwin Procter

LLP, counsel for the Company, dated the date of delivery and in form reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser, (i) if such counsel has previously furnished opinions and negative assurance letters to the effect set forth in **Exhibits D, E, F and G** hereto, to the effect that the Agent, the Forward Seller and the Forward Purchaser may rely on such previously furnished opinions and negative assurance letters of such counsel to the same extent as though they were dated the date of such letter authorizing reliance (except that the statements in such last opinions and negative assurance letters shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such date) and any other appropriate updates or (ii) of the same tenor as such opinions and negative assurance letters of such counsel as set forth in **Exhibits D, E, F and G** hereto, but modified to relate to the Registration Statement, the Prospectus and the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended and supplemented to such date; provided, however, that the Company shall have the right in its sole discretion to suspend the delivery of all such opinions and negative assurance letters otherwise required by this Section 4.06 if a Selling Period is not then in effect and the Settlement Date has occurred for all Shares previously sold pursuant to this Agreement; provided further, that the delivery of each such opinion and negative assurance letter (dated as of or after the date on which the most recent such amendment or supplement was filed by the Company with the Commission) shall be a condition precedent to the delivery by the Company of a Placement Notice with respect to the Shares;

Section 4.07 Comfort Letters. That (i) each time the Registration Statement or the Prospectus is amended or supplemented, including by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q or a Current Report on Form 8-K (but only a Current Report on Form 8-K that contains financial statements or an earnings release of the Company filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus), other than by (a) an amendment or supplement relating solely to the offering of securities other than the Shares, (b) a Definitive Proxy Statement on Schedule 14A or (c) a Part III-only amendment to an Annual Report on Form 10-K, in any case to set forth financial information included in or derived from the Company's financial statements or accounting records or (ii) otherwise after each reasonable request by the Agent, the Forward Seller or the Forward Purchaser (each date of any such request, a "Comfort Letter Request Date"), the Company shall as soon as practicable thereafter cause each of the independent registered public accounting firms that have audited the financial statements of the Company included or incorporated by reference in the Registration Statement to furnish as soon as practicable thereafter to the Agent, the Forward Seller and the Forward Purchaser a letter, dated the date of delivery, in form reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser, of the same tenor as the letter referred to in Section 5.01(g) hereof but modified to relate to the Registration Statement, the Prospectus and, to the extent applicable, the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended or supplemented to the date of such letter, with such changes as may be necessary to reflect changes in the financial statements and other information derived from the accounting records of the Company, to the extent such financial statements and other information are available as of a date not more than three (3) Business Days prior to the date of such letter; provided, however, that, with respect to any financial information or other matters, such letter may reconfirm as true and correct at such date as though made at and as of such date, rather than repeat, statements with respect to such financial information or other matters made in the letter referred to in Section 5.01(g) hereof that was last furnished to the Agent, the Forward Seller and the Forward Purchaser; provided, however, that the Company shall have the right in its

sole discretion to suspend the delivery of any such letter otherwise required by this Section 4.07 if a Selling Period is not then in effect and the Settlement Date has occurred for all Shares previously sold pursuant to this Agreement; provided, further, that the delivery of each such letter (dated as of or after the date on which the most recent such amendment or supplement was filed by the Company with the Commission) required by this Section 4.07 shall be a condition precedent to the delivery by the Company of a Placement Notice with respect to the Shares;

Section 4.08 Officers' Certificate. That (i) each time the Registration Statement or the Prospectus is amended or supplemented (other than by means of (a) an amendment or supplement relating solely to an offering of securities other than the Shares, (b) an Issuance Supplement, (c) a Current Report on Form 8-K (other than a Current Report on Form 8-K containing financial statements or an earnings release or with respect to material federal income tax considerations relating to ownership of the Company's Common Stock), (d) a Definitive Proxy Statement on Schedule 14A or (e) a Part III-only amendment to an Annual Report on Form 10-K, unless in the case of (a), (b) or (c), reasonably requested by the Agent, the Forward Seller or the Forward Purchaser within five (5) Business Days of the filing thereof with the Commission), including by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q or a Current Report on Form 8-K containing financial statements or an earnings release or with respect to material federal income tax considerations relating to ownership of the Company's Common Stock filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus or (ii) otherwise after each reasonable request by the Agent, the Forward Seller or the Forward Purchaser (each date of any such request, an "Officers' Certificate Request Date"), the Company shall as soon as practicable thereafter furnish or cause to be furnished as soon as practicable thereafter to the Agent, the Forward Seller and the Forward Purchaser (A) a certificate, dated the date of delivery, in such form and executed by such officers of the Company as is reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser, of the same tenor as the certificate referred to in Section 2.02(ii)(A) and (B) a certificate substantially in the form of Exhibit C hereto, but, in the case of each of clauses (A) and (B), modified to relate to the Registration Statement, the Prospectus and the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended and supplemented to such date; provided, however, that the Company shall have the right in its sole discretion to suspend the delivery of any such certificate otherwise required by this Section 4.08 if a Selling Period is not then in effect and the Settlement Date has occurred for all Shares previously sold pursuant to this Agreement; provided further, that the delivery of each such certificate (dated as of or after the date on which the most recent such amendment or supplement was filed by the Company with the Commission) required by this Section 4.08 shall be a condition precedent to the delivery by the Company of a Placement Notice with respect to the Shares;

Section 4.09 [Intentionally Omitted]

Section 4.10 Market Activities. Neither the Company nor any of its affiliated purchasers will, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares or (ii) during any Stand Off Period sell, bid for or purchase the Shares, or pay anyone any compensation for soliciting purchases of the Shares other than as contemplated by this Agreement, any Terms Agreement, any Alternative Sales Agency Agreement and any terms agreement pursuant thereto;

Section 4.11 Prospectus Supplement Filing; Periodic Reports. To the extent required under applicable law, promptly following the end of each quarterly period, the Company shall be required to file a prospectus supplement with the Commission, disclosing the number of Shares sold through the Agent, the Forward Seller and the Alternative Sales Agents under the Sales Agency Agreements and the net proceeds received by the Company with respect to sales of the Shares pursuant to the Sales Agency Agreements relating to such quarter, together with any other information that the Company reasonably believes is required to comply with the Securities Act or any rules or regulations thereunder. In the alternative, to the extent permitted by the rules and regulations of the Commission, the Company in its sole discretion may make the disclosures contemplated by the preceding sentence by including such disclosures in its Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company for any quarter in which sales of Shares were made by or through the Agent, the Forward Seller and the Alternative Sales Agents under the Sales Agency Agreements;

Section 4.12 Maximum Program Amount. The Company will promptly notify the Agent, the Forward Seller and the Forward Purchaser when the Maximum Program Amount has been sold pursuant to the Sales Agency Agreements;

Section 4.13 Due Diligence. The Company shall promptly reply to due diligence inquiries from the Agent, the Forward Seller or the Forward Purchaser, or their respective agents, including, without limitation, furnishing requested materials and making senior management available for due diligence conference calls, upon the reasonable request of the Agent, the Forward Seller or the Forward Purchaser;

Section 4.14 DTC. The Company shall cooperate with the Agent, the Forward Seller and the Forward Purchaser and use its reasonable efforts to permit the Shares to be eligible for clearance and settlement through the facilities of The Depository Trust Company;

Section 4.15 Required Notices During Forward Hedge Selling Period. During any Forward Hedge Selling Period, the Company shall provide the Agent, the Forward Seller and the Forward Purchaser notice as promptly as reasonably possible before it offers to sell, contracts to sell, sells, grants any option to sell or otherwise disposes of any shares of Common Stock (other than Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire Common Stock; provided that such notice shall not be required in connection with (i) the issuance, grant or sale of Common Stock, options to purchase Common Stock or Common Stock issuable upon the exercise of options or other equity awards pursuant to any stock option, stock bonus or other stock or compensatory plan or arrangement described in the Prospectus, (ii) the issuance of securities in connection with an acquisition, merger or sale or purchase of assets described in the Prospectus, (iii) the issuance or sale of Common Stock pursuant to any current or future dividend reinvestment plan that the Company may adopt from time to time, (iv) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, provided the implementation of such is disclosed to the Agent, the Forward Seller and the Forward Purchaser in advance or (v) any shares of Common Stock issuable upon the exchange, conversion, or redemption of securities, including, but not limited to, OP Units, or the exercise of warrants, options or other rights in effect or outstanding. To the extent requested in writing by the Company, the Agent, the Forward Seller and the Forward Purchaser shall keep notices provided under this Section 4.15 confidential; and

Section 4.16 Long Positions. During any Forward Hedge Selling Period, on the date of delivery of any Placement Notice relating to a “Forward” or otherwise entering into any Forward Contract, neither the Company nor any of its affiliated purchasers will acquire any long position (either directly or indirectly, including through a derivative transaction) with respect to shares of Common Stock.

ARTICLE V

CONDITIONS TO DELIVERY OF PLACEMENT NOTICES AND TO SETTLEMENT

Section 5.01 Conditions to the Obligations of the Agent, the Forward Seller and the Forward Purchaser. The right of the Company to deliver a Placement Notice hereunder is subject to the satisfaction, on the date of delivery of such Placement Notice, and the obligations of the Agent and the Forward Seller hereunder with respect to a Placement, the obligations of the Forward Purchaser hereunder with respect to the borrowing of Forward Hedge Shares in connection with a Placement and the obligations of the Agent under any Term Agreement is subject to the satisfaction, on the applicable Settlement Date, of each of the following conditions:

(a) Effective Registration Statement and Authorizations. The Registration Statement shall remain effective and sales of all of the Shares (including all of the Shares expected to be issued in connection with the Issuance specified by the current Placement Notice) may be made by the Agent and the Forward Seller thereunder, and (i) no stop order suspending the effectiveness of the Registration Statement shall have been issued under the Securities Act and no proceeding for that purpose shall have been initiated or, to the Company’s knowledge, threatened by the Commission; (ii) no other suspension of the use or withdrawal of the effectiveness of the Registration Statement or Prospectus shall exist; (iii) all requests for additional information with respect to the Registration Statement of the Prospectus on the part of the Commission shall have been complied with to the reasonable satisfaction of the Agent, the Forward Seller and the Forward Purchaser and (iv) no event specified in clause (ii) of Section 4.03 hereof shall have occurred and be continuing without the Company amending or supplementing the Registration Statement or the Prospectus as provided in Section 4.03.

(b) Accuracy of the Company’s Representations and Warranties. The representations and warranties of the Company set forth in Article III hereof shall be true and correct as of each Applicable Time, as of the Closing Date, as of the applicable date referred to in Section 4.05 that is prior to such Issuance Date or Settlement Date, as the case may be, and as of such Issuance Date and Settlement Date as though made at such time.

(c) Performance by the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date.

(d) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.

(e) Material Adverse Changes. Since the date of this Agreement, no event that had or is reasonably likely to have a Material Adverse Effect shall have occurred that has not been disclosed in the Registration Statement, the Prospectus or the General Disclosure Package (including the documents incorporated by reference therein and any supplements thereto).

(f) No Suspension of Trading In or Delisting of Common Stock; Other Events. The trading of the Common Stock (including without limitation the Shares) shall not be suspended by the Commission, the NYSE or FINRA, and the Shares and the Forward Settlement Shares, if any, shall have been approved for listing or quotation on, and shall not have been delisted from, the NYSE. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) if trading generally on the NYSE or The Nasdaq Stock Market has been suspended or materially limited, or minimum and maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, FINRA or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States; (ii) a general moratorium on commercial banking activities in New York declared by either federal or New York state authorities; or (iii) any material adverse change in the financial markets in the United States or in the international financial markets, any outbreak or escalation of hostilities or other calamity or crisis involving the United States or the declaration by the United States of a national emergency or war or any change or development involving a prospective change in national or international political, financial or economic conditions, if the effect of any such event specified in this clause (iii) in the sole judgment of the Agent or the Forward Seller, as applicable, makes it impracticable or inadvisable to proceed with the sale of Shares of the Company.

(g) Comfort Letters. On the Closing Date and on each applicable date referred to in Section 4.07 hereof that is on or prior to such Issuance Date or Settlement Date, as the case may be, each of the independent registered public accounting firms that have audited the financial statements of the Company included or incorporated by reference in the Registration Statement shall have furnished to the Agent, the Forward Seller and the Forward Purchaser a letter, dated the Closing Date or such applicable date, as the case may be, in form and substance satisfactory to the Agent, the Forward Seller and the Forward Purchaser of the type described in PCAOB Statement on Auditing Standards AU 634, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the General Disclosure Package.

(h) No Defaults. The execution and delivery of this Agreement and the issuance and sale of the Shares and the compliance by the Company or any of its consolidated subsidiaries with all of the provisions of this Agreement will not result in the Company or any of its consolidated subsidiaries being in default of (whether upon the passage of time, the giving of notice or both) its organizational and other governing documents, or any provision of any security issued by the Company or any of its consolidated subsidiaries, or of any agreement, instrument or other undertaking to which the Company or any of its consolidated subsidiaries is a party or by which it or any of its property or assets is bound, or the applicable provisions of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company or any of its consolidated subsidiaries or any of their property or assets is bound, in each case which default, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(i) Trading Cushion. The Selling Period for any previous Placement Notice shall have expired.

(j) Maximum Issuance Amount. In no event may the Company issue a Placement Notice to sell an Issuance Amount or a Forward Hedge Amount, as the case may be, to the extent that the sum of (i) the Sales Price of the requested Issuance Amount or Forward Hedge Amount, as applicable, (ii) the aggregate Sales Price of all Shares issued under all previous Issuances and Forwards effected pursuant to the Sales Agency Agreements and (iii) the aggregate amount sold under any Terms Agreements (including under any terms agreements under any Alternative Sales Agency Agreements) would exceed the Maximum Program Amount.

(k) Prospectus Supplement and Issuance Supplement.

(1) The Prospectus Supplement, setting forth information regarding this Agreement including, without limitation, the Maximum Program Amount, shall have been filed with the Commission pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and sufficient copies thereof delivered to the Agent, the Forward Seller and the Forward Purchaser on or prior to the Issuance Date.

(2) To the extent required by Section 4.01(ii), an Issuance Supplement, in form and substance to be agreed upon by the parties, shall have been filed with the Commission pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and sufficient copies thereof delivered to the Agent, the Forward Seller and the Forward Purchaser on or prior to the Issuance Date.

(l) Counsel Opinions and Letters. The counsel specified in Section 4.06, or other counsel selected by the Company and reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser shall have furnished to the Agent, the Forward Seller and the Forward Purchaser their written opinions and negative assurance letter, dated the Closing Date and each applicable date referred to in Section 4.06 hereof that is on or prior to such Issuance Date or Settlement Date, as the case may be, to the effect required by Section 4.06. Skadden, Arps Slate, Meagher & Flom LLP, counsel for the Agent, the Forward Seller and the Forward Purchaser, or other counsel selected by the Agent, the Forward Seller and the Forward Purchaser, shall have furnished to the Agent, the Forward Seller and the Forward Purchaser its written opinion and

negative assurance letter to the effect set forth in **Exhibit H** and **Exhibit I** hereto (modified to relate to the Registration Statement, the Prospectus and the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended and supplemented to such date, as the case may be), dated the Closing Date and each Registration Statement Amendment Date or Opinion Request Date that is on or prior to such Issuance Date or Settlement Date, as the case may be; provided that (i) if such counsel has previously furnished opinions and negative assurance letters to the effect set forth in **Exhibit H** and **Exhibit I** hereto, such counsel shall have furnished to the Agent, the Forward Seller and the Forward Purchaser a letter or letters to the effect that the Agent, the Forward Seller and the Forward Purchaser may rely on such previously furnished opinions and negative assurance letters of such counsel to the same extent as though they were dated the date of such letter authorizing reliance (except that the statements in such last opinions and negative assurance letters shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such date).

(m) Officers' Certificate. The Company shall have furnished or caused to be furnished to the Agent, the Forward Seller and the Forward Purchaser an officers' certificate executed by the Chief Executive Officer, the President, any Executive Vice President or any Senior Vice President of the Company and by the Chief Financial Officer of the Company, signing in their respective capacities, dated the Closing Date and each applicable date referred to in Section 4.08 hereof that is on or prior to such Issuance Date or Settlement Date, as the case may be, as to the matters specified in Section 2.02(ii).

(n) Other Documents. On the Closing Date and prior to each Issuance Date and Settlement Date, each of the Agent, the Forward Seller, the Forward Purchaser and their counsel shall have received such documents as they may reasonably require in order to evidence the accuracy and completeness of any of the representations or warranties, or the fulfillment of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Shares as herein contemplated shall be satisfactory in form and substance to each of the Agent, the Forward Seller, the Forward Purchaser and their counsel.

(o) Documents Required to be Delivered on each Issuance Date. The Agent's and the Forward Seller's respective obligations to sell Shares pursuant to a Placement Notice hereunder shall additionally be conditioned upon the delivery to the Agent, the Forward Seller and the Forward Purchaser on or before the Issuance Date of a certificate in form and substance reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser, executed by the Chief Executive Officer, the President or the Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Placement Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Placement Notice).

ARTICLE VI

INDEMNIFICATION AND CONTRIBUTION

Section 6.01 Indemnification by the Company and the Operating Partnership. The Company and the Operating Partnership, jointly and severally, agree to indemnify and hold harmless the Agent, the Forward Seller, the Forward Purchaser and their respective officers,

directors, employees and agents, and each Person, if any, who controls the Agent, the Forward Seller or the Forward Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers, directors, employees and agents (collectively, the "Controlling Persons"), and each affiliate of the Agent, the Forward Seller and the Forward Purchaser (within the meaning of Rule 405 under the Securities Act), from and against any and all losses, claims, damages or liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim), and any action or proceeding in respect thereof, to which the Agent, the Forward Seller, the Forward Purchaser, and their respective officers, directors, employees and agents, and any such Controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus or any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus or any amendment or supplement thereto, or any preliminary prospectus, or any Issuer Free Writing Prospectus in light of the circumstances in which they were made) not misleading, except insofar as the same are made in reliance upon and in conformity with information related to the Agent, the Forward Seller and the Forward Purchaser or their plan of distribution furnished in writing to the Company by the Agent, the Forward Seller and the Forward Purchaser expressly for use therein, and the Company and the Operating Partnership shall reimburse the Agent, the Forward Seller and the Forward Purchaser, their respective officers, directors, employees and agents, and each Controlling Person for any reasonable legal and other expenses incurred thereby in investigating or defending or preparing to defend against any such losses, claims, damages or liabilities, or actions or proceedings in respect thereof, as such expenses are incurred.

Section 6.02 Indemnification by the Agent, the Forward Seller and the Forward Purchaser. The Agent, the Forward Seller and the Forward Purchaser, severally and not jointly, agree to indemnify and hold harmless the Company and the Operating Partnerships, their respective officers, directors, employees and agents and each Person, if any, who controls the Company or the Operating Partnership within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers, directors, employees and agents, and each affiliate of the Company (within the meaning of Rule 405 under the Securities), from and against any losses, claims, damages or liabilities, and any action or proceeding in respect thereof, to which the Company, the Operating Partnership, their respective officers, directors, employees or agents, any such Controlling Person and any officer, director, employee or agent of such Controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as losses, claims, damages or liabilities (or action or proceeding in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus or any Issuer Free Writing Prospectus, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus or any other prospectus relating to the

Shares, or any amendment or supplement thereto, any preliminary prospectus or any Issuer Free Writing Prospectus in light of the circumstances in which they were made) not misleading in each case to the extent, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made therein in reliance upon and in conformity with written information related to the Agent, the Forward Seller and the Forward Purchaser or their plan of distribution furnished to the Company by or on behalf of the Agent, the Forward Seller and the Forward Purchaser expressly for use therein, and the Agent, the Forward Seller and the Forward Purchaser shall reimburse the Company, the Operating Partnership, their respective officers, directors, employees and agents, and each Controlling Person, for any reasonable legal and other expenses incurred thereby in investigating or defending or preparing to defend against any such losses, claims, damages or liabilities, or actions or proceedings in respect thereof.

Section 6.03 Conduct of Indemnification Proceedings. Promptly after receipt by any Person (an “Indemnified Party”) of notice of any claim or the commencement of any action in respect of which indemnity may be sought pursuant to Section 6.01 or 6.02, the Indemnified Party shall, if a claim in respect thereof is to be made against the Person against whom such indemnity may be sought (an “Indemnifying Party”), notify the Indemnifying Party in writing of the claim or the commencement of such action. In the event an Indemnified Party shall fail to give such notice as provided in this Section 6.03 and the Indemnifying Party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice, the indemnification provided for in Sections 6.01 or 6.02 shall be reduced to the extent of any actual prejudice resulting from such failure to so notify the Indemnifying Party; provided that the failure to notify the Indemnifying Party shall not relieve it from any liability that it may have to an Indemnified Party otherwise than under Section 6.01 or 6.02. If any such claim or action shall be brought against an Indemnified Party, the Indemnifying Party shall be entitled to participate therein, and, to the extent that it wishes, jointly with any other similarly notified Indemnifying Party, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided that the Indemnified Party shall have the right to employ separate counsel to represent the Indemnified Party, but the fees and expenses of such counsel shall be for the account of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) such Indemnified Party reasonably concludes that representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest with the Company, it being understood, however, that the Indemnifying Party shall not, in connection with any one such claim or action or separate but substantially similar or related claims or actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (together with appropriate local counsel) at any time for all Indemnified Parties or for fees and expenses that are not reasonable. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnification could have been sought hereunder by such Indemnified Party unless such settlement includes an unconditional release of each such Indemnified Party from all losses, claims, damages or liabilities arising out of such claim or proceeding and such settlement does not

admit or constitute an admission of fault, guilt, failure to act or culpability on the part of any such Indemnified Party. Whether or not the defense of any claim or action is assumed by an Indemnifying Party, such Indemnifying Party will not be subject to any liability for any settlement made without its prior written consent, which consent will not be unreasonably withheld. Notwithstanding the preceding sentence, if at any time an Indemnified Party shall have requested an Indemnifying Party to reimburse the Indemnified Party for fees and expenses of counsel, such Indemnifying Party agrees that it shall be liable for any settlement described in the preceding sentence effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such Indemnifying Party of the aforesaid request, (ii) such Indemnifying Party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such Indemnifying Party shall not have reimbursed such Indemnified Party in accordance with such request prior to the date of such settlement.

Section 6.04 Contribution. If for any reason the indemnification provided for in this Article VI is unavailable to the Indemnified Parties in respect of any losses, claims, damages or liabilities referred to herein, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities as between the Company and the Operating Partnership, on the one hand, and the Agent, the Forward Seller or the Forward Purchaser, severally, on the other hand, in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership, on the one hand, and the Agent, the Forward Seller or the Forward Purchaser, on the other hand, from the offering of the Shares to which such losses, claims, damages or liabilities relate. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Party shall contribute to such amount paid or payable by such Indemnifying Party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Operating Partnership, on the one hand, and of the Agent, the Forward Seller and the Forward Purchaser, on the other, in connection with such statements or omissions, as well as any other relevant equitable considerations. Benefits received by the Company and the Operating Partnership, on the one hand, and the Agent, the Forward Seller or the Forward Purchaser, on the other, shall be deemed to be in the same proportions as (a) in the case of the Company and the Operating Partnership, (x) the total Net Proceeds from the offering of the Issuance Shares for each Issuance under this Agreement or a Terms Agreement (before deducting expenses) received by the Company and the Operating Partnership bear to the aggregate Sales Price of the Issuance Shares, or (y) the Actual Sold Forward Amount for each Forward under this Agreement, *multiplied by* the Forward Hedge Price for such Forward (the "Net Forward Proceeds"), bears to the sum of the Net Forward Proceeds and the Actual Forward Commission (as defined below) (such sum, the "Gross Forward Amount"), (b) in the case of the Agent, the total commissions received by the Agent bear to the aggregate Sales Price of the Issuance Shares, (c) in the case of the Forward Seller, the Actual Sold Forward Amount for each Forward under this Agreement, *multiplied by* the Forward Hedge Selling Commission for such Forward (the "Actual Forward Commission"), bear to the Gross Forward Amount, and (d) in the case of the Forward Purchaser, the aggregate net Spread (as such term is defined in the related Forward Contract for each Forward and net of any related stock borrow costs or other costs or expenses actually incurred) for each Forward executed in connection with this Agreement bears to the Gross Forward Amount. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by

the Company and the Operating Partnership, on one hand, or by the Agent, the Forward Seller and the Forward Purchaser, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company, the Operating Partnership, the Forward Seller and the Forward Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 6.04 were determined by pro rata allocation (even if the Forward Seller and the Forward Purchaser were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6.04, (i) neither the Agent nor the Forward Seller shall be required to contribute any amount in excess of the amount by which the commissions with respect to the offering of the Issuance Shares or the aggregate Forward Hedge Selling Commissions, as the case may be, received by it under this Agreement exceeds the amount of any damages which the Agent or the Forward Seller has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, and (ii) the Forward Purchaser shall in no event be required to contribute any amount in excess of the amount by which the aggregate net Spread (as such term is defined in the relevant Forward Contract and net of any related stock borrow costs or other costs or expenses actually incurred) for all Forward Contracts entered into pursuant to this Agreement exceeds the amount of any damages the Forward Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6.04, each officer, director, employee and agent of the Agent, the Forward Seller or the Forward Purchaser, and each Controlling Person, shall have the same rights to contribution as the Agent, the Forward Seller or the Forward Purchaser, and each director of the Company or the Operating Partnership, each officer of the Company or the Operating Partnership who signed the Registration Statement, and each Person, if any, who controls the Company or the Operating Partnership within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company. The obligations of the Company, the Operating Partnership, the Agent, the Forward Seller and the Forward Purchaser under this Article VI shall be in addition to any liability that the Company, the Operating Partnership, the Agent, the Forward Seller and the Forward Purchaser may otherwise have.

ARTICLE VII

TERMINATION

Section 7.01 Term. Subject to the provisions of this Article VII, the term of this Agreement shall run until the end of the Commitment Period.

(a) The Company, the Operating Partnership, the Agent, the Forward Seller or the Forward Purchaser may, by giving written notice as hereinafter specified, each in its sole discretion at any time, terminate this Agreement with respect to itself, and any termination of this Agreement shall be effective on the date specified in such notice of termination; provided that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent, the Forward Seller, the Forward Purchaser, the Company or the Operating Partnership, as the case may be; provided, further, that any such termination shall have no effect on the obligations of any other party under this Agreement. If such termination shall occur prior to the Settlement Date or Time of Delivery for any sale of the Shares, such sale shall settle on the Issuance Settlement Date. For the avoidance of doubt, any termination shall not affect or impair any party's obligations with respect to any Shares sold hereunder prior to the occurrence thereof (including, in the case of any Forward Hedge Shares, the obligation to enter into the "Supplemental Confirmation" in respect thereof).

(b) Unless earlier terminated pursuant to this Article VII, this Agreement shall automatically terminate on the date that the aggregate offering price of the Shares sold pursuant to the Sales Agency Agreements and any Terms Agreements (including under any term agreements under any Alternative Sales Agency Agreements) equals the Maximum Program Amount; provided that if a "Supplemental Confirmation" required to be executed pursuant to Section 2.01(d) of this Agreement has not been executed on or prior to such date, then the provisions of this Agreement as they relate to the Forward for the relevant Forward Hedge Selling Period shall survive such termination until such "Supplemental Confirmation" has been executed or deemed effective pursuant to such Forward.

(c) In the case of any purchase of Shares by the Agent pursuant to a Terms Agreement, the obligations of the Agent pursuant to such Terms Agreement shall be subject to termination, in the absolute discretion of the Agent, by notice given to the Company prior to the Time of Delivery relating to such Shares, if at any time prior to such delivery and payment (i) trading in the Company's Common Stock shall have been suspended by the Commission or the NYSE or trading in securities generally on the NYSE shall have been suspended or limited or minimum prices shall have been established on such exchange, (ii) a banking moratorium shall have been declared either by federal or New York State authorities, (iii) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or (iv) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Agent, impractical or inadvisable to proceed with the offering or delivery of the Shares as contemplated by the Prospectus (exclusive of any amendment or supplement thereto).

Section 7.03 Liability; Provisions that Survive Termination. If this Agreement is terminated pursuant to this Article VII, such termination shall be without liability of any party hereto to any other party hereto except as provided in Section 9.02 and for the Company's obligations in respect of all prior Placement Notices; provided that in any case the provisions of Article VI, Article VIII and Article IX shall survive termination of this Agreement without limitation.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES TO SURVIVE DELIVERY

All representations and warranties of the Company herein or in certificates delivered pursuant hereto shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Agent, the Forward Seller, the Forward Purchaser or any of their respective officers, directors, employees, agents or any Controlling Persons, (ii) delivery and acceptance of the Shares and payment therefor, (iii) the settlement of any Forwards or (iii) any termination of this Agreement.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the Closing Date, and may file with the Commission a Current Report on Form 8-K describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agent, the Forward Seller and the Forward Purchaser prior to making such disclosures, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby that includes information related to this Agreement or transactions contemplated hereby that has not previously been disclosed without the prior written approval of the other party hereto, except as may be necessary or appropriate in the opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties. Notwithstanding the foregoing, the Company may disclose any of the following: the results of any sale of Shares, including the Sales Price, the Issuance Price, the use or anticipated use of proceeds, the number of Shares issued pursuant to an Issuance, the number of Shares sold or issued pursuant to a Forward, and the portion of the Maximum Program Amount that has not yet been issued without the prior review or approval of the Agent, the Forward Seller and the Forward Purchaser.

Section 9.02 Expenses. The Company covenants and agrees with the Agent, the Forward Seller and the Forward Purchaser that the Company shall pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the preparation, printing and filing of the Registration Statement, the Prospectus and any Issuance Supplements and all other amendments and supplements thereto and the mailing and delivering of copies thereof to the Agent, the Forward Seller and the Forward Purchaser and the NYSE; (ii) reasonable documented out-of-pocket expenses of the Agent, the Forward Seller and the Forward Purchaser, including the reasonable fees, disbursements and expenses of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Agent, the Forward Seller and the Forward

Purchaser (up to, together with the fees, disbursements and expenses of such counsel, pursuant to Section 9.02(ii) of the Alternative Sales Agency Agreements, \$75,000 in the aggregate) (including in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 4.02 hereof, in connection with preparing any blue sky survey and in connection with any review by FINRA), in connection with the Closing and in connection with the Master Forward Confirmation; (iii) the cost (other than those expenses described in clause (ii) above) of printing, preparing or reproducing this Agreement and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (iv) all filing fees and expenses (other than those expenses described in clause (ii) above) in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 4.02 hereof; (v) the cost of preparing the Shares; (vi) the fees and expenses of any transfer agent of the Company; (vii) the cost of providing any CUSIP or other identification numbers for the Shares; (viii) the fees and expenses incurred in connection with the listing or qualification of the Shares on the NYSE and any filing fees incident to any required review by FINRA of the terms of the sale of the Shares in connection with this Agreement and the Registration Statement (including the reasonable fees, disbursements and expenses of counsel for the Agent, the Forward Seller and the Forward Purchaser), and (ix) all other costs and expenses incident to the performance of the Company's obligations hereunder and under the Master Forward Confirmation that are not otherwise specifically provided for in this Section.

Section 9.03 Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Agent, the Forward Seller and the Forward Purchaser are required to obtain, verify and record information that identifies their respective clients, including the Company and the Operating Partnership, which information may include the name and address of their respective clients, as well as other information that will allow the Agent, the Forward Seller and the Forward Purchaser to properly identify their respective clients.

Section 9.04 Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be personally served or deposited in the mail, registered or certified, return receipt requested, postage prepaid or delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or e-mail, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice:

(a) if to the Company, to Boston Properties, Inc., 800 Boylston Street, Suite 1900, Boston, Massachusetts 02199, Attention, Frank D. Burt, Esq., E-Mail: fburt@bxp.com, with a copy (which shall not constitute notice) to: Goodwin Procter LLP, 100 Northern Avenue, Boston, MA 02210, Attention Ettore A. Santucci, Esq. and Daniel P. Adams, Esq., E-Mail: esantucci@goodwinlaw.com and dadams@goodwinlaw.com;

(b) if to the Agent or the Forward Seller, to [●], with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attention: David J. Goldschmidt; or

(c) if to the Forward Purchaser, to [●], with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attention: David J. Goldschmidt.

Except as set forth in Section 2.11, notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, telex or confirmed e-mail. Notice otherwise sent as provided herein shall be deemed given on the third (3rd) Business Day following the date mailed or on the next Business Day following delivery of such notice to a reputable air courier service for next day delivery.

Section 9.05 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written, with respect to the subject matter hereof.

Section 9.06 Amendment and Waiver. This Agreement may not be amended, modified, supplemented, restated or waived except by a writing executed by the party against which such amendment, modification, supplement, restatement or waiver is sought to be enforced. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

Section 9.07 No Assignment; No Third-Party Beneficiaries. This Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by the Company, the Agent, the Forward Seller or the Forward Purchaser. Any purported assignment or delegation of rights, duties or obligations hereunder shall be void and of no effect. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and their respective successors and, to the extent provided in Article VI, the controlling persons, officers, directors, employees and agents referred to in Article VI. This Agreement is not intended to confer any rights or benefits on any Persons other than as set forth in Article VI or elsewhere in this Agreement.

Section 9.08 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 9.09 Further Assurances. Each party hereto, upon the request of any other party hereto, shall do all such further acts and execute, acknowledge and deliver all such further instruments and documents as may be necessary or desirable to carry out the transactions contemplated by this Agreement.

Section 9.10 Titles and Headings. Titles, captions and headings of the sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

Section 9.11 Governing Law; Jurisdiction. THIS AGREEMENT, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, SHALL BE GOVERNED BY, INTERPRETED UNDER AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. Any action, suit or proceeding to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan, and the Company agrees to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) and each party waives (to the full extent permitted by law) any objection it may have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding has been brought in an inconvenient forum.

Section 9.12 Waiver of Jury Trial. **THE COMPANY, THE AGENT, THE FORWARD SELLER AND THE FORWARD PURCHASER EACH HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE FORWARD CONTRACTS, ANY TERMS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.**

Section 9.13 Counterparts. This Agreement, any Forward Contract and any Terms Agreement may be executed in two or more counterparts and delivered by facsimile or in electronic form, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 9.14 Adjustments for Stock Splits, etc. The parties acknowledge and agree that share related numbers contained in this Agreement (including the Floor Price) shall be equitably adjusted to reflect stock splits, stock dividends, reverse stock splits, combinations and similar events.

Section 9.15 No Fiduciary Duty. The Company acknowledges and agrees that (a) the purchase and sale of the Shares pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the Agent, the Forward Seller and the Forward Purchaser (and any affiliate through which the Agent, the Forward Seller or the Forward Purchaser may be acting), on the other, (b) the Agent, the Forward Seller and the Forward Purchaser are acting solely as agent and/or as principal in connection with the public offering of the Shares and in connection with each transaction contemplated by this Agreement, any Terms Agreement and the Master Forward Confirmation and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, the Forward Seller and the Forward Purchaser, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, any Terms

Agreement and the Master Forward Confirmation, irrespective of whether or not the Agent, the Forward Seller or the Forward Purchaser has advised or is advising the Company on other matters, and none of the Agent, the Forward Seller or the Forward Purchaser has any obligation to the Company with respect to the transactions contemplated by this Agreement, any Terms Agreement or the Master Forward Confirmation except the obligations expressly set forth herein and therein, (c) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement, any Terms Agreement and the Master Forward Confirmation, (d) none of the Agent, the Forward Seller or the Forward Purchaser has provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement, any Terms Agreement or the Master Forward Confirmation and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (e) it is aware that the Agent, the Forward Seller and the Forward Purchaser and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent, the Forward Seller and the Forward Purchaser have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise, (f) the Sales Price of the Shares sold pursuant to this Agreement, any Terms Agreement or any Forward Contract will not be established by the Agent, the Forward Seller or the Forward Purchaser, (g) it waives, to the fullest extent permitted by law, any claims it may have against the Agent, the Forward Seller and the Forward Purchaser for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Shares under this Agreement, any Terms Agreement and the Master Forward Confirmation and agrees that none of the Agent, the Forward Seller or the Forward Purchaser shall have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company and (h) the Company's engagement of the Agent and the Forward Seller in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, the Company agrees that it is solely responsible for making its own judgments in connection with the offering (irrespective of whether the Agent, the Forward Seller or the Forward Purchaser have advised or are currently advising the Company on related or other matters). The Company agrees that it will not claim that any of the Agent, the Forward Seller or the Forward Purchaser has rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company in connection with such transaction or the process leading thereto.

Section 9.16 Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any of the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity (as hereinafter defined) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Agent, Forward Seller or Forward Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any of the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity or a BHC Act Affiliate (as hereinafter defined) of such Agent, Forward Seller or Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as hereinafter defined) under this Agreement that may be exercised against such Agent, Forward Seller or Forward Purchaser are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime (as hereinafter defined) if this Agreement were governed by the laws of the United States or a state of the United States.

As used in this Section 9.16, "BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); "Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b) or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); "Default Rights" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and "U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

ARTICLE X

DEFINITIONS

Section 10.01 Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

"Acceptance" has the meaning set forth in Section 2.03(b).

"Actual Forward Commission" has the meaning set forth in Section 6.04.

"Actual Sold Forward Amount" means, for any Forward Hedge Selling Period (as defined below) for any Forward (as defined below) or any portion thereof, as the context may require, the number of Forward Hedge Shares that the Forward Seller has sold during such Forward Hedge Selling Period or any portion thereof, respectively.

"Agent" has the meaning set forth in the introductory paragraph of this Agreement.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement.

"Aggregate Forward Hedge Price" means, with respect to a period, the product of the Actual Sold Forward Amount during such period and the Forward Hedge Price during such period.

"Agreements and Instruments" has the meaning set forth in Section 3.16.

“Alternative Sales Agency Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

“Alternative Sales Agents” has the meaning set forth in the introductory paragraph of this Agreement.

“Applicable Time” means the time of sale of any Issuance Shares pursuant to this Agreement.

“BHC Act Affiliate” has the meaning set forth in Section 9.16.

“Business Day” means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Capped Number” with respect to any Forward Contract has the meaning set forth in such Forward Contract.

“CERCLA” has the meaning set forth in Section 3.29.

“Closing” has the meaning set forth in Section 2.02.

“Closing Date” means the date on which the Closing occurs.

“Code” means the United States Internal Revenue Code of 1986, as amended, or any successor thereto.

“Comfort Letter Request Date” has the meaning set forth in Section 4.07.

“Commission” means the United States Securities and Exchange Commission.

“Commitment Period” means the period commencing on the date of this Agreement and expiring on the earliest to occur of (i) the date this Agreement is terminated pursuant to Article VII and (ii) the third anniversary of the date of this Agreement.

“Common Stock” has the meaning set forth in Article I.

“Company” has the meaning set forth in the introductory paragraph of this Agreement.

“Controlling Persons” has the meaning set forth in Section 6.01.

“Covered Entity” has the meaning set forth in Section 9.16.

“Default Rights” has the meaning set forth in Section 9.16.

“Environmental Statutes” has the meaning set forth in Section 3.29.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Floor Price” means, for a Selling Period, the minimum price per share set by the Company in the Placement Notice establishing such Selling Period below which the Agent or the Forward Seller, as applicable, shall not sell Shares during such Selling Period, which may be adjusted by the Company with respect to any sales that have not yet occurred pursuant to Section 2.01(c) and which in no event shall be less than \$1.00.

“Forward” means the transaction resulting from each Placement Notice (as defined below) (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a “Forward” and requiring the Forward Seller to use its good faith and commercially reasonable efforts consistent with its normal trading and sales practices to borrow and sell, as specified in such Placement Notice and subject to the terms and conditions of this Agreement and the applicable Forward Contract, the Forward Hedge Shares.

“Forward Contract” means, for each Forward, the contract evidencing such Forward between the Company and the Forward Purchaser, which shall be comprised of the Master Forward Confirmation and the related “Supplemental Confirmation” (as defined in the Master Forward Confirmation) for such Forward.

“Forward Hedge Amount” means, for any Forward, the amount specified by the Company as such in the Placement Notice for such Forward (as amended by the corresponding Acceptance, if applicable), which amount shall be the requested aggregate Sales Price of the Forward Hedge Shares to be sold by the Forward Seller in respect of such Forward, subject to the terms and conditions of this Agreement.

“Forward Hedge Price” means, for any Forward Contract, the product of (x) an amount equal to one (1) minus the Forward Hedge Selling Commission Rate for such Forward Contract and (y) the Volume-Weighted Hedge Price.

“Forward Hedge Selling Commission” means, for any Forward Contract, the product of (x) the Forward Hedge Selling Commission Rate for such Forward Contract and (y) the Volume-Weighted Hedge Price.

“Forward Hedge Selling Commission Rate” means, for any Forward Contract, a rate of any commission, discount or other compensation to be paid by the Company to the Forward Seller in connection with the sale of the Forward Hedge Shares, not to exceed 2.0%, as specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable).

“Forward Hedge Selling Period” means, subject to Section 2.03 hereof, the period of such number of consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a “Forward”), beginning on the date specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) or, if such date is not a Trading Day, the next Trading Day following such date and ending on the

last such Trading Day or such earlier date on which the Forward Seller shall have completed the sale of Forward Hedge Shares in connection with the applicable Forward; provided that if, prior to the scheduled end of any Forward Hedge Selling Period (x) any event occurs that would permit the Forward Purchaser to designate a “Scheduled Trading Day” as an “Early Valuation Date” (as each such term is defined in the Master Forward Confirmation) under, and pursuant to the provisions opposite the caption “Early Valuation” in Section 2 of the Master Forward Confirmation or (y) a “Bankruptcy Termination Event” (as such term is defined in the Master Forward Confirmation) occurs, then the Forward Hedge Selling Period shall, upon the Forward Seller becoming aware of such occurrence, immediately terminate as of the first such occurrence. Any Forward Hedge Selling Period then in effect shall immediately terminate upon the termination of this Agreement pursuant to Article V or Article VII hereof and as set forth in Sections 2.03(b) and 2.11 hereof.

“Forward Hedge Settlement Date” means, for any Forward Contract, unless specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), the second (2nd) Trading Day (as defined below) (or such earlier day as is industry practice for regular-way trading) following a date on which sales of any Forward Hedge Shares are made.

“Forward Hedge Shares” means all Common Stock borrowed by the Forward Purchaser or its affiliate and offered and sold by the Forward Seller or its affiliate in connection with any Forward that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term “Forward Hedge Shares” as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

“Forward Purchaser” has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Purchaser has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Purchaser are not applicable hereunder.

“Forward Seller” has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Seller has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller are not applicable hereunder.

“Forward Settlement Shares” means any shares of Common Stock issued by the Company pursuant to the Company’s election (or deemed election) of “net-share” settlement or “physical” settlement of any Forward Contract.

“GAAP” has the meaning set forth in Section 3.06.

“General Disclosure Package” has the meaning set forth in Section 3.02.

“Governmental Authority” has the meaning set forth in Section 3.29.

“Governmental Licenses” has the meaning set forth in Section 3.22.

“Gross Forward Amount” has the meaning set forth in Section 6.04.

“Hazardous Materials” has the meaning set forth in Section 3.29.

“Indemnified Party” has the meaning set forth in Section 6.03.

“Indemnifying Party” has the meaning set forth in Section 6.03.

“Issuance” means each occasion the Company elects to exercise its right to enter into a Terms Agreement or deliver a Placement Notice that does not involve a Forward and that specifies that it relates to an “Issuance” and, pursuant to a Placement Notice, requires the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Issuance Shares as specified in such Placement Notice, subject to the terms and conditions of this Agreement.

“Issuance Amount” means, for any Issuance, the amount specified as such in the Placement Notice or Terms Agreement for such Issuance, which amount, in the case of an Issuance pursuant to a Placement Notice, shall be the target aggregate Sales Price of the Issuance Shares to be sold by the Agent, subject to the terms and conditions of this Agreement.

“Issuance Date” means any Trading Day during the Commitment Period that a Placement Notice is deemed delivered pursuant to Section 2.03(b) hereof.

“Issuance Price” means the Sales Price less the Selling Commission.

“Issuance Selling Period” means the period of one to five consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Placement Notice specifying that it relates to an “Issuance”) commencing on the Trading Day on which a Placement Notice for such Issuance is delivered or deemed to be delivered pursuant to Section 2.03(b) hereof.

“Issuance Settlement Date” means, for each sale of Issuance Shares, unless otherwise specified in the applicable Placement Notice or Terms Agreement, the second (2nd) Business Day following the Trading Day (or such earlier day as is industry practice for regular-way trading) on which such Issuance Shares are sold pursuant to this Agreement.

“Issuance Shares” means all shares of Common Stock issued or issuable pursuant to an Issuance that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term “Issuance Shares” as used herein, shall include the definition of the same under the Alternative Sales Agency Agreements.

“Issuance Supplement” has the meaning set forth in Section 3.01.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Shares, in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“IT Systems and Data” has the meaning set forth in Section 3.43.

“Master Forward Confirmation” means the Master Confirmation for Issuer Share Forward Transactions substantially in the form attached hereto as Exhibit J, dated as of the date hereof, by and between the Company and the Forward Purchaser, including all provisions incorporated by reference therein.

“Material Adverse Effect” has the meaning set forth in Section 3.07.

“Maximum Program Amount” means Shares with an aggregate Sales Price of \$ 600,000,000 (or, if less, the aggregate amount of Shares registered under the Registration Statement).

“Money Laundering Laws” has the meaning set forth in Section 3.37.

“Net Forward Proceeds” has the meaning set forth in Section 6.04.

“NYSE” means the New York Stock Exchange.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Officers’ Certificate Request Date” has the meaning set forth in Section 4.08.

“OP Units” has the meaning set forth in Section 3.15.

“Operating Partnership” has the meaning set forth in the introductory paragraph of this Agreement.

“Opinion Request Date” has the meaning set forth in Section 4.06.

“Original Registration Statement” has the meaning set forth in Section 3.01.

“Person” means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

“Placement” has the meaning set forth in Section 2.03(a).

“Placement Notice” has the meaning set forth in Section 2.03(a).

“Placement Shares” has the meaning set forth in Section 2.03(a).

“Principal Transaction” has the meaning set forth in Article I.

“Properties” has the meaning set forth in Section 3.07.

“Prospectus” has the meaning set forth in Section 3.01.

“Prospectus Supplement” means the most recent prospectus supplement, relating to the Shares, filed or to be filed by the Company with the Commission pursuant to Rule 424(b) within the time period prescribed therein, in form and substance to be agreed upon by the parties hereto, in connection with the offering of the Shares pursuant to this Agreement.

“Registration Statement” has the meaning set forth in Section 3.01.

“Registration Statement Amendment Date” has the meaning set forth in Section 4.06.

“REIT” means a real estate investment trust under the Code.

“Repayment Event” has the meaning set forth in Section 3.16.

“Request Date” means each Comfort Letter Request Date, each Officers’ Certificate Request Date and each Opinion Request Date.

“Sales Agency Agreements” has the meaning set forth in the introductory paragraph of this Agreement.

“Sales Price” means, for each Forward or each Issuance hereunder, the actual sale execution price of each Forward Hedge Share or Issuance Share, as the case may be, sold by the Agent or the Forward Seller on the NYSE hereunder in the case of ordinary brokers’ transactions, or as otherwise agreed by the parties in other methods of sale; provided that the aggregate Sales Price of the Shares that may be sold pursuant to the Sales Agency Agreements shall not exceed the Maximum Program Amount. Where the context requires, the term “Sales Price” as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Act Regulations” means rules and regulations of the Commission under the Securities Act.

“Selling Commission” means at a mutually agreed rate, not to exceed 2.0%, of the Sales Price of Issuance Shares sold during a Selling Period.

“Selling Period” means any Forward Hedge Selling Period or any Issuance Selling Period.

“Settlement Date” means, unless the Company and the Agent shall otherwise agree (including in any Terms Agreement), any Forward Hedge Settlement Date or any Issuance Settlement Date, as applicable.

“Shares” shall have the meaning set forth in Article I hereof, provided, however, that where the context requires, the term “Shares” as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

“Terms Agreement” has the meaning set forth in Article I.

“Time of Delivery” has the meaning set forth in Section 2.10.

“Trading Day” means any day which is a trading day on the NYSE (notwithstanding the NYSE closing prior to its scheduled closing time).

“U.S. Special Resolution Regime” has the meaning set forth in Section 9.16.

“Volume-Weighted Hedge Price” has the meaning set forth in the Master Forward Confirmation; provided that, for purposes of determining the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect of a Trading Day on which the Forward Seller has made sales of Forward Hedge Shares hereunder, the Volume-Weighted Hedge Price shall be determined solely with respect to the Forward Hedge Shares sold by the Forward Seller on such Trading Day.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

BOSTON PROPERTIES, INC.

By: _____
Name: Michael E. LaBelle
Title: Executive Vice President, Chief Financial
Officer and Treasurer

BOSTON PROPERTIES LIMITED PARTNERSHIP

By: BOSTON PROPERTIES, INC.,
as general partner

By: _____
Name: Michael E. LaBelle
Title: Executive Vice President, Chief Financial
Officer and Treasurer

[Signature Page 1 of 2 to Sales Agency Financing Agreement]

[AGENT NAME], AS AGENT [AND FORWARD SELLER]

By: _____
NAME:
Title:

[[•], AS FORWARD PURCHASER]

By: _____
NAME:
Title:

[Signature Page 2 of 2 to Sales Agency Financing Agreement]

Boston Properties, Inc. has entered into Master Forward Confirmations with each of Bank of America, N.A., The Bank of New York Mellon, Deutsche Bank AG, London Branch, Jefferies, JPMorgan Chase Bank, National Association, Mizuho Markets Americas LLC, Morgan Stanley & Co. LLC, The Bank of Nova Scotia and The Toronto-Dominion Bank (and in some cases, certain of their respective affiliates). What follows is the form of Master Forward Confirmation.

MASTER FORWARD CONFIRMATION

To: Boston Properties, Inc. (“**Party B**”)
From: [DEALER] (“**Party A**”)
 [DEALER CONTACT INFORMATION]
Re: Master Confirmation for Issuer Share Forward Sale Transactions
Date: May 22, 2020

Ladies and Gentlemen:

The purpose of this communication (this “**Master Confirmation**”) is to set forth the terms and conditions of the transactions to be entered into from time to time (each, a “**Transaction**” and, collectively, the “**Transactions**”) between [DEALER] (“**Party A**”), represented by [•] as its agent (“**Agent**”), and Boston Properties, Inc. (“**Party B**”) in accordance with the terms of the Sales Agency Financing Agreement (the “**Sales Agreement**”), dated as of May 22, 2020, among Party A, Party B, Boston Properties Limited Partnership, a Delaware limited partnership (the “**Operating Partnership**”) and the other parties thereto. Each Transaction will be evidenced by a supplemental confirmation substantially in the form of Annex A hereto (each, a “**Supplemental Confirmation**”, and each such Supplemental Confirmation, together with this Master Confirmation, a “**Confirmation**” for purposes of the Agreement specified below). Each Confirmation will be a confirmation for purposes of Rule 10b-10 promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

1. Each Confirmation is subject to, and incorporates, the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). For purposes of the Equity Definitions, each Transaction to which this Master Confirmation relates will be deemed to be a Share Forward Transaction.

Each Confirmation shall supplement, form a part of and be subject to an agreement (the “**Agreement**”) in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) (the “**ISDA Form**”), as published by ISDA, as if Party A and Party B had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method, New York law (without regard to New York’s choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law) as the governing law and US Dollars (“**USD**”) as the Termination Currency, and (ii) the replacement of the word “third” in the last line of Section 5(a)(i) with the word “second”. All provisions contained in the Agreement are incorporated into and shall govern each Confirmation except as expressly modified below. Each Confirmation will evidence a complete and binding agreement between Party A and Party B as to the terms of the relevant Transaction and will replace any previous agreement between the parties with respect to the subject matter thereof.

The Transactions under this Master Confirmation shall be the only Transactions under the Agreement. If there exists any ISDA Master Agreement between Party A or any of its Affiliates and Party B or any confirmation or other agreement between Party A or any of its Affiliates and Party B pursuant to which an ISDA Master Agreement is deemed to exist between Party A or any of its Affiliates and Party B, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Party A or any of its Affiliates and Party B are parties, none of the Transactions to which this Master Confirmation relates shall be considered a “Transaction” under, or otherwise governed by, such existing or deemed ISDA Master Agreement. In the event of any inconsistency among the Agreement, this Master Confirmation, any Supplemental Confirmation and the Equity Definitions, the following will prevail in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; (iii) the Equity Definitions; and (iv) the Agreement.

2. The terms of the particular Transactions to which this Master Confirmation relates are as follows:

General Terms:

Trade Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the last Trading Day (as defined in the Sales Agreement) of the Forward Hedge Selling Period (as defined in the Sales Agreement) for such Transaction.
Effective Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that is one Settlement Cycle following the Trade Date for such Transaction, or such later date on which the conditions set forth in Section 3 of this Master Confirmation shall have been satisfied or waived by Party A.
Buyer:	Party A
Seller:	Party B
Maturity Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date set forth in the effective Placement Notice as amended by any corresponding Acceptance (each such term as defined in the Sales Agreement) for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day).
Shares:	The common stock, par value \$0.01 per Share, of Party B (Ticker: "BXP")
Number of Shares:	For each Transaction, initially, as specified in the Supplemental Confirmation for such Transaction, to be the number of Shares equal to the Actual Sold Forward Amount (as defined in the Sales Agreement) for the Forward Hedge Selling Period for such Transaction; provided that the Number of Shares is subject to reduction as provided in Section 3 below (the " Initial Number of Shares "). On each Settlement Date, the Number of Shares shall be reduced by the number of Settlement Shares settled on such date.
Settlement Currency:	USD
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Initial Forward Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the product of (i) an amount equal to 1 <i>minus</i> the Forward Hedge Selling Commission Rate (as defined in the Sales Agreement) applicable to such Transaction; and (ii) the Volume-

Weighted Hedge Price for such Transaction (such product adjusted as the Calculation Agent determines appropriate to (x) reflect on each day during the Forward Hedge Selling Period and through the Effective Date the sum of 1 and the Daily Rate for such day multiplied by the then-Initial Forward Price as of such day and (y) reduce the then-Initial Forward Price by the relevant Forward Price Reduction Amount on each Forward Price Reduction Date, if any, occurring on or before the Trade Date).

- Forward Price: For each Transaction, on the Effective Date of such Transaction, the Initial Forward Price, and on any day thereafter, the product of the Forward Price on the immediately preceding calendar day and $1 + \text{the Daily Rate} * (1/365)$;
provided that the Forward Price on each Forward Price Reduction Date shall be the Forward Price otherwise in effect on such date *minus* the Forward Price Reduction Amount for such Forward Price Reduction Date.
- Volume-Weighted Hedge Price: For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the volume-weighted average of the Sales Prices (as defined in the Sales Agreement) per share of Forward Hedge Shares (as defined in the Sales Agreement) sold on each Trading Day of the Forward Hedge Selling Period for such Transaction.
- Daily Rate: For any day, the Variable Rate *minus* the Spread.
- Spread: For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
- Variable Rate: For any day, the rate set forth for such day on the page "OBFR01 <Index> <GO>" on the BLOOMBERG Professional Service, or any successor page; *provided* that if no such rate appears for such day on such page, the Variable Rate for such day shall be such rate for the immediately preceding day for which such a rate appears.
- Forward Price Reduction Dates: For each Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be each date set forth under the heading "Forward Price Reduction Dates" in the effective Placement Notice for such Transaction.
- Forward Price Reduction Amount: For each Forward Price Reduction Date of a Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be the Forward Price Reduction Amount set forth opposite such date in the effective Placement Notice for such Transaction.

Valuation:

- Valuation Date: For any Settlement (as defined below) with respect to any Transaction, if Physical Settlement is applicable, as designated in the relevant Settlement Notice (as defined below); or if Cash Settlement or Net Share Settlement is applicable, the last Unwind Date for such Settlement. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date. For the avoidance of doubt, the last Unwind Date shall be determined by Party A in a good faith and commercially reasonable manner based on the completion of the unwinding of its commercially reasonable hedge position. Party A shall notify Party B in writing that such last Unwind Date has so occurred before the next following Scheduled Trading Day.

Unwind Dates:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, each day on which Party A (or its agent or affiliate) purchases Shares in the market in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, starting on the First Unwind Date for such Settlement.
First Unwind Date:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, as designated in the relevant Settlement Notice.
Unwind Period:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, the period starting on the First Unwind Date for such Settlement and ending on the Valuation Date for such Settlement.
Cash Settlement Valuation Disruption:	If Cash Settlement is applicable with respect to any Transaction and any Unwind Date during an Unwind Period is a Disrupted Day, then the 10b-18 VWAP for such Disrupted Day shall not be included in the calculation of the Settlement Price.
Market Disruption Event:	<p>The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words “at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” and inserting the words “at any time on any Exchange Business Day during the Unwind Period” after the word “material,” in the third line thereof.</p> <p>Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.</p>

Settlement Terms:

Settlement:	With respect to any Transaction, any Physical Settlement, Cash Settlement or Net Share Settlement of all or any portion of such Transaction.
Settlement Notice:	For any Transaction, subject to “Early Valuation” below, Party B may elect to effect a Settlement of all or any portion of such Transaction by designating one or more Scheduled Trading Days following the Effective Date and on or prior to the Maturity Date for such Transaction to be Valuation Dates (or, with respect to Cash Settlements or Net Share Settlements, First Unwind Dates, each of which First Unwind Dates shall occur no later than the 50 th Scheduled Trading Day immediately preceding the Maturity Date for such Transaction) in a written notice to Party A (a “ Settlement Notice ”) delivered no later than the applicable Settlement Method Election Date for such Transaction, which notice shall also specify (i) the number of Shares (the “ Settlement Shares ”) for such Settlement (not to exceed the number of Undesignated Shares as of the date of such Settlement Notice) and (ii) the Settlement Method applicable to such Settlement; <i>provided</i> that (A) Party B may not designate a First Unwind Date for a Cash Settlement or a Net Share

Settlement of any Transaction if, as of the date of such Settlement Notice, any Shares have been designated as Settlement Shares for a Cash Settlement or a Net Share Settlement of such Transaction for which the related Relevant Settlement Date has not occurred; and (B) if the number of Undesignated Shares as of the Maturity Date for such Transaction is not zero, then the Maturity Date for such Transaction shall be a Valuation Date for a Physical Settlement of such Transaction and the number of Settlement Shares for such Settlement shall be the number of Undesignated Shares for such Transaction as of the Maturity Date for such Transaction (*provided* that if such Maturity Date occurs during the period from the time any Settlement Notice is given for a Cash Settlement or Net Share Settlement of such Transaction until the related Relevant Settlement Date, inclusive, then the provisions set forth below opposite “Early Valuation” shall apply to such Transaction as if the Maturity Date for such Transaction were the Early Valuation Date for such Transaction).

Undesignated Shares:

For any Transaction, as of any date, the Number of Shares for such Transaction *minus* the number of Shares designated as Settlement Shares for Settlements of such Transaction for which the related Relevant Settlement Date has not occurred.

Settlement Method Election:

For any Transaction, applicable; *provided* that:

(i) Net Share Settlement shall be deemed to be included as an additional settlement method under Section 7.1 of the Equity Definitions;

(ii) Party B may elect Cash Settlement or Net Share Settlement for any Settlement of any Transaction only if Party B represents and warrants to Party A in the Settlement Notice containing such election that, as of the date of such Settlement Notice, (A) Party B is not aware of any material nonpublic information concerning itself or the Shares, (B) Party B is electing the settlement method and designating the First Unwind Date specified in such Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 under the Exchange Act (“**Rule 10b-5**”) or any other provision of the federal securities laws, (C) Party B is not “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”)), (D) Party B would be able to purchase a number of Shares equal to the greater of (x) the number of Settlement Shares designated in such Settlement Notice and (y) a number of Shares with a value as of the date of such Settlement Notice equal to the product of (I) such number of Settlement Shares and (II) the applicable Relevant Forward Price for such Cash Settlement or Net Share Settlement in compliance with the laws of Party B’s jurisdiction of organization and (E) such election, and settlement in accordance therewith, does not and will not violate or conflict with any law or regulation applicable to Party B, or any order or judgment of any court or other agency of government applicable to it or any of its assets, and any governmental consents that are required to have been obtained by Party B with respect to such election or settlement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(iii) Notwithstanding any election to the contrary in any Settlement Notice, Physical Settlement shall be applicable for any Settlement of any Transaction:

- (A) to all of the Settlement Shares designated in such Settlement Notice if, at any time from the date such Settlement Notice is received by Party A until the related First Unwind Date, inclusive, (I) the trading price per Share on the Exchange (as determined by Party A in a good faith and commercially reasonable manner) is below the Threshold Price or (II) Party A determines, in its good faith and commercially reasonable judgment, that it would, after using commercially reasonable efforts, be unable to purchase a number of Shares in the market sufficient to unwind a commercially reasonable hedge position in respect of the portion of such Transaction represented by such Settlement Shares and satisfy its delivery obligation hereunder, if any, by the Maturity Date (x) in a manner that (A) would, if Party A were Party B or an affiliated purchaser of Party B, be subject to the safe harbor provided by Rule 10b-18(b) under the Exchange Act and (B) based on advice of counsel, would not raise material risks under applicable securities laws or (y) due to the lack of sufficient liquidity in the Shares (each, a “Trading Condition”); or
- (B) to all or a portion of the Settlement Shares designated in such Settlement Notice if, on any day during the relevant Unwind Period, (I) the trading price per Share on the Exchange (as determined by Party A in a good faith and commercially reasonable manner) is below the Threshold Price or (II) Party A determines, in its good faith and commercially reasonable judgment or based on advice of counsel, as applicable, that a Trading Condition has occurred with respect to such Transaction, in which case the provisions set forth below in the fifth paragraph opposite “Early Valuation” shall apply as if such day were the Early Valuation Date and (x) for purposes of clause (i) of such paragraph, such day shall be the last Unwind Date of such Unwind Period and the “Unwound Shares” shall be calculated to, and including, such day and (y) for purposes of clause (ii) of such paragraph, the “Remaining Shares” shall be equal to the number of Settlement Shares designated in such Settlement Notice *minus* the Unwound Shares determined in accordance with clause (x) of this sentence.

Threshold Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be 33% of the Initial Forward Price for such Transaction.
Electing Party:	Party B
Settlement Method Election Date:	With respect to any Settlement of any Transaction, the 3 rd Scheduled Trading Day immediately preceding (x) the Valuation Date for such Transaction, in the case of Physical Settlement, or (y) the First Unwind Date for such Transaction, in the case of Cash Settlement or Net Share Settlement.
Default Settlement Method:	Physical Settlement
Physical Settlement:	Notwithstanding Section 9.2(a)(i) of the Equity Definitions, on the Settlement Date for any Physical Settlement of any Transaction, Party A shall pay to Party B an amount equal to the Forward Price for such Transaction on the relevant Valuation Date <i>multiplied</i> by the number of Settlement Shares for such Settlement, and Party B shall deliver to Party A such Settlement Shares.

Settlement Date:	For any Settlement of any Transaction to which Physical Settlement is applicable, the Valuation Date for such Settlement.
Net Share Settlement:	On the Net Share Settlement Date for any Settlement of any Transaction to which Net Share Settlement is applicable, if the Net Share Settlement Amount for such Settlement is greater than zero, Party B shall deliver a number of Shares equal to such Net Share Settlement Amount (rounded down to the nearest integer) to Party A, and if such Net Share Settlement Amount is less than zero, Party A shall deliver a number of Shares equal to the absolute value of such Net Share Settlement Amount (rounded down to the nearest integer) to Party B, in either case, in accordance with Section 9.4 of the Equity Definitions, with such Net Share Settlement Date deemed to be a "Settlement Date" for purposes of such Section 9.4, and, in either case, plus cash in lieu of any fractional Shares included in such Net Share Settlement Amount but not delivered due to rounding required hereby, valued at the Settlement Price.
Net Share Settlement Date:	For any Settlement of any Transaction to which Net Share Settlement is applicable, the date that follows the Valuation Date for such Settlement by one Settlement Cycle.
Net Share Settlement Amount:	For any Settlement of any Transaction to which Net Share Settlement is applicable, an amount equal to the Forward Cash Settlement Amount for such Settlement <i>divided by</i> the Settlement Price.
Forward Cash Settlement Amount:	Notwithstanding Section 8.5(c) of the Equity Definitions, the Forward Cash Settlement Amount for any Cash Settlement or Net Share Settlement of any Transaction shall be equal to (i) the number of Settlement Shares for such Settlement <i>multiplied by</i> (ii) an amount equal to (A) the Settlement Price for such Settlement <i>minus</i> (B) the Relevant Forward Price for such Settlement.
Relevant Forward Price:	For any Cash Settlement of any Transaction, the arithmetic average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement. For any Net Share Settlement of any Transaction, the weighted average of the Forward Prices for such Transactions on each Unwind Date relating to such Settlement (weighted based on the number of Shares purchased by Party A or its agent or affiliate on each such Unwind Date in connection with unwinding Party A's commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent).
Settlement Price:	For any Cash Settlement of any Transaction, the arithmetic average of the 10b-18 VWAP on each Unwind Date relating to such Settlement, <i>plus</i> the Settlement Commission. For any Net Share Settlement of any Transaction, the weighted average price of the purchases of Shares made by Party A (or its agent or affiliate) during the Unwind Period in connection with unwinding its commercially reasonable hedge position relating to such Settlement (weighted based on the number of Shares purchased by Party A or its agent or affiliate on each Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent), <i>plus</i> the Settlement Commission.

Settlement Commission:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be an amount that will not exceed the product of (i) the Forward Hedge Selling Commission Rate and (ii) the Settlement Price.
10b-18 VWAP:	For any Exchange Business Day, as determined by the Calculation Agent based on the 10b-18 Volume Weighted Average Price per Share for the regular trading session (including any extensions thereof) of the Exchange on such Exchange Business Day (without regard to pre-open or after hours trading outside of such regular trading session for such Exchange Business Day), as published by Bloomberg at 4:15 p.m. New York time (or 15 minutes following the end of any extension of the regular trading session) on such Exchange Business Day, on Bloomberg page “BXP <Equity> AQR_SEC” (or any successor thereto), or if such price is not so reported on such Exchange Business Day for any reason or is, in the Calculation Agent’s reasonable determination, erroneous, such 10b-18 VWAP shall be as reasonably determined by the Calculation Agent. For purposes of calculating the 10b-18 VWAP for such Exchange Business Day, the Calculation Agent will include only those trades that are reported during the period of time during which Party B could purchase its own shares under Rule 10b-18(b)(2) and are effected pursuant to the conditions of Rule 10b-18(b)(3), each under the Exchange Act (such trades, “ Rule 10b-18 eligible transactions ”).
Unwind Activities:	The times and prices at which Party A (or its agent or affiliate) purchases any Shares during any Unwind Period in connection with unwinding its commercially reasonable hedge position in respect of each Transaction shall be determined by Party A in a commercially reasonable manner. Without limiting the generality of the foregoing, in the event that Party A concludes, in its reasonable discretion based on advice of counsel, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Party A) (a “ Regulatory Disruption ”), for it to refrain from purchasing Shares in connection with unwinding its commercially reasonable hedge position in respect of such Transaction on any Scheduled Trading Day that would have been an Unwind Date but for the occurrence of a Regulatory Disruption, Party A shall notify, within a reasonable period of time, Party B in writing that a Regulatory Disruption has occurred on such Scheduled Trading Day with respect to such Transaction, and Party A shall, in its good faith and reasonable discretion based on advice of counsel and subject to applicable legal, regulatory and self-regulatory requirements and related policies and procedures of Party A (in the case of policies and procedures, so long as such policies and procedures have been adopted by Party A in good faith and are consistently applied in similar situations to transactions like the Transactions hereunder), specify the nature of such Regulatory Disruption. For the avoidance of doubt, such Scheduled Trading Day shall not be an Unwind Date for such Transaction and such Regulatory Disruption shall be deemed to be a Market Disruption Event; <i>provided that</i> Party A may exercise its right to suspend under this sentence only in good faith and based on advice of counsel in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.

Relevant Settlement Date: For any Settlement of any Transaction, the Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date for such Settlement, as the case may be.

Other Applicable Provisions: To the extent Party A is obligated to deliver Shares under any Transaction, the provisions of Sections 9.2 (last sentence only), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to such Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Party B is the issuer of the Shares.

Share Adjustments:

Potential Adjustment Events: An Extraordinary Dividend shall not constitute a Potential Adjustment Event. For the avoidance of doubt, a cash dividend on the Shares that differs from expected dividends as of the first Trading Day of the Forward Hedge Selling Period for any Transaction shall not be a Potential Adjustment Event under Section 11.2(e) (vii) of the Equity Definitions with respect to such Transaction.

Extraordinary Dividend: For any Transaction, any dividend or distribution on the Shares with an ex-dividend date occurring on any day following the first Trading Day of the Forward Hedge Selling Period for such Transaction (other than (i) any dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions or (ii) a regular, quarterly cash dividend in an amount equal to or less than the Regular Dividend Amount for such calendar quarter for such Transaction that has an ex-dividend date no earlier than the Forward Price Reduction Date occurring in the relevant quarter for such Transaction).

Regular Dividend Amount: For each Transaction and for each calendar quarter, the amount set forth under the heading “Regular Dividend Amounts” in the Placement Notice as amended by any corresponding Acceptance (each such term as defined in the Sales Agreement) for such Transaction and for such calendar quarter (or, if no such amount is specified, an amount determined by the Calculation Agent), as specified in Schedule I to the Supplemental Confirmation for such Transaction.

Method of Adjustment: Calculation Agent Adjustment

Extraordinary Events:

Extraordinary Events: The consequences that would otherwise apply under Article 12 of the Equity Definitions to any applicable Extraordinary Event (excluding any Failure to Deliver, Increased Cost of Hedging, Increased Cost of Stock Borrow or any Extraordinary Event that also constitutes a Bankruptcy Termination Event, but including, for the avoidance of doubt, any other applicable Additional Disruption Event) shall not apply.

Tender Offer: Applicable; *provided* that Section 12.1(d) of the Equity Definitions shall be amended by replacing the reference therein to “10%” with a reference to “20%”.

Delisting: In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

Additional Disruption Events:

Change in Law: With respect to any Transaction, applicable; *provided* that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (ii) the promulgation of or any change in or public announcement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date of such Transaction, (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by adding the words “(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)” after the word “regulation” in the second line thereof and (ii) by replacing the words “the interpretation” with the words “or public announcement of any formal or informal interpretation” in the third line thereof and (C) the words “, unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction” are added immediately following the word “Transaction” in the fifth line thereof; and *provided further* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by adding the phrase “and/or Hedge Position” after the word “Shares” in clause (X) thereof and (iii) by immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date”.

Failure to Deliver: Applicable with respect to a Transaction if Party A is required to deliver Shares under such Transaction; otherwise, Not Applicable.

Hedging Disruption: Applicable

Increased Cost of Hedging: Applicable; *provided* that Section 12.9(b)(vi) of the Equity Definitions shall be amended by (i) adding “or” before clause (B) of the second sentence thereof; (ii) deleting clause (C) of the second sentence thereof; (iii) deleting the third and fourth sentences thereof; and (iv) inserting the following language at the end of such Section: “*provided, however,* that any such increased tax, duty, expense or fee that occurs solely due to the deterioration of the creditworthiness of the Hedging Party relative to comparable financial institutions shall not be an Increased Cost of Hedging.”

Increased Cost of Stock Borrow:	Applicable; <i>provided</i> that Section 12.9(b)(v) of the Equity Definitions shall be amended by (i) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); (ii) deleting clause (C) of the second sentence thereof and (iii) deleting the third, fourth and fifth sentences thereof. For the avoidance of doubt, upon the announcement of any event that, if consummated, would result in a Merger Event or Tender Offer, the term “rate to borrow Shares” as used in Section 12.9(a)(viii) of the Equity Definitions shall include any commercially reasonable cost borne or amount payable by the Hedging Party in respect of maintaining or reestablishing its commercially reasonable hedge position, including, but not limited to, any assessment or other amount payable by the Hedging Party to a lender of Shares in respect of any merger or tender offer premium, as applicable.
Initial Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Loss of Stock Borrow:	Applicable; <i>provided</i> that Section 12.9(b)(iv) of the Equity Definitions shall be amended by (i) deleting clause (A) of the first sentence thereof in its entirety and (ii) deleting the words “neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or” in the second sentence thereof.
Maximum Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Hedging Party:	For all applicable Additional Disruption Events, Party A
Determining Party:	For all applicable Extraordinary Events, Party A
<u>Early Valuation:</u>	
Early Valuation:	<p>For any Transaction, notwithstanding anything to the contrary herein, in the Agreement, in any Supplemental Confirmation or in the Equity Definitions, at any time (x) following the occurrence of a Hedging Event with respect to such Transaction, the declaration by Issuer of an Extraordinary Dividend, or an ISDA Event with respect to such Transaction or (y) if an Excess Ownership Position (as defined below), an Excess Charter Ownership Position (as defined below) or an Excess Regulatory Ownership Position (as defined below) exists, Party A (or, in the case of an ISDA Event that is an Event of Default or Termination Event, the party entitled to designate an Early Termination Date in respect of such event pursuant to Section 6 of the Agreement) shall have the right to designate any Scheduled Trading Day to be the “Early Valuation Date” for such Transaction, in which case the provisions set forth in this “Early Valuation” section shall apply to such Transaction, in the case of an Event of Default or Termination Event, in lieu of Section 6 of the Agreement. For the avoidance of doubt, any amount calculated pursuant to this “Early Valuation” section as a result of an Extraordinary Dividend shall not be adjusted by the value associated with such Extraordinary Dividend.</p> <p>Party A represents and warrants to and agrees with Party B, assuming the accuracy and completeness of the representations of Party B hereunder and the compliance with, and satisfaction of, the covenants and undertakings of Party B hereunder, that (i) based upon advice of counsel, Party A (A) does not know of the existence as of the date hereof</p>

of an Excess Ownership Position, an Excess Charter Ownership Position or an Excess Regulatory Ownership Position and (B) based on reasonable internal inquiry in the ordinary course of Party A's business does not know as of the date hereof of any event or circumstance that will cause the occurrence of an Excess Ownership Position, an Excess Charter Ownership Position or an Excess Regulatory Ownership Position on any day during the term of any Transaction; and (ii) Party A will not knowingly cause the occurrence of an Excess Ownership Position, an Excess Charter Ownership Position or an Excess Regulatory Ownership Position on any day during the term of any Transaction for the purpose, in whole or in part, of causing the occurrence of an Early Valuation Date.

Party A further represents and warrants to Party B, as of each Trade Date hereunder (without giving effect to Section 10 hereof and based on the number of Shares specified by Party B, in the most recent Placement Notice provided to Party A, as one Share less than the number of Shares that would result in an Excess Charter Ownership Position), based upon advice of counsel and reasonable internal inquiry in the ordinary course of Party A's business, that were Party A to receive, on such Trade Date, a number of Shares equal to the Capped Number of all Transactions then outstanding upon full Physical Settlement of all such Transactions, then an Excess Charter Ownership Position would not occur on such Trade Date.

If the Early Valuation Date for a Transaction occurs on a date that is not during an Unwind Period for such Transaction, then such Early Valuation Date shall be a Valuation Date for a Physical Settlement of such Transaction, and the number of Settlement Shares for such Settlement shall be the Number of Shares on such Early Valuation Date; *provided* that Party A may in its sole discretion permit Party B to elect Cash Settlement or Net Share Settlement in respect of such Transaction.

If the Early Valuation Date for a Transaction occurs during an Unwind Period for such Transaction, then (i) (A) the last Unwind Date of such Unwind Period shall be deemed to be such Early Valuation Date, (B) a Settlement shall occur in respect of such Unwind Period, and the Settlement Method elected by Party B in respect of such Settlement shall apply, and (C) the number of Settlement Shares for such Settlement shall be the number of Unwound Shares for such Unwind Period on such Early Valuation Date, and (ii) (A) such Early Valuation Date shall be a Valuation Date for an additional Physical Settlement of such Transaction (*provided* that Party A may in its sole discretion elect that the Settlement Method elected by Party B for the Settlement described in clause (i) of this sentence shall apply) and (B) the number of Settlement Shares for such additional Settlement shall be the number of Remaining Shares on such Early Valuation Date.

Notwithstanding the foregoing, in the case of a Nationalization or Merger Event, if at the time of the related Relevant Settlement Date the Shares have changed into cash or any other property or the right to receive cash or any other property, the Calculation Agent shall adjust the nature of the Shares as it determines appropriate to account for such change such that the nature of the Shares is consistent with what shareholders receive in such event.

ISDA Event:	(i) Any Event of Default or Termination Event, other than an Event of Default or Termination Event that also constitutes a Bankruptcy Termination Event, that gives rise to the right of either party to designate an Early Termination Date pursuant to Section 6 of the Agreement or (ii) the announcement of any event or transaction on or following the first Trading Day of the Forward Hedge Selling Period for such Transaction that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Delisting or Change in Law, in each case, as determined by the Calculation Agent.
Amendment to Merger Event:	Section 12.1(b) of the Equity Definitions is hereby amended by deleting the remainder of such Section beginning with the words “in each case if the Merger Date is on or before” in the fourth to last line thereof.
Hedging Event:	In respect of any Transaction, the occurrence of any of the following on or following the first Trading Day of the Forward Hedge Selling Period: (i) (x) A Loss of Stock Borrow in connection with which Party B does not refer the Hedging Party to a satisfactory Lending Party within the required time period as provided in Section 12.9(b)(iv) of the Equity Definitions or (y) a Hedging Disruption, (ii) (A) an Increased Cost of Stock Borrow or (B) an Increased Cost of Hedging in connection with which, in the case of sub-clause (A) or (B), Party B does not elect, and so notify the Hedging Party of its election, in each case, within the required time period to either amend such Transaction pursuant to Section 12.9(b)(v)(A) or Section 12.9(b)(vi)(A) of the Equity Definitions, as applicable, or pay an amount determined by the Calculation Agent that corresponds to the relevant Price Adjustment pursuant to Section 12.9(b)(v)(B) or Section 12.9(b)(vi)(B) of the Equity Definitions, as applicable, or (iii) the occurrence of a Market Disruption Event during an Unwind Period and the continuance of such Market Disruption Event for at least eight Scheduled Trading Days.
Remaining Shares:	For any Transaction, on any day, the Number of Shares for such Transaction as of such day (or, if such day occurs during an Unwind Period for such Transaction, the Number of Shares for such Transaction as of such day <i>minus</i> the Unwound Shares for such Transaction for such Unwind Period on such day).
Unwound Shares:	For any Transaction, for any Unwind Period in respect of such Transaction on any day, the aggregate number of Shares with respect to which Party A has unwound its commercially reasonable hedge position in respect of such Transaction in connection with the related Settlement as of such day.

Acknowledgements:

Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgements:	Applicable
Transfer:	Notwithstanding anything to the contrary in the Agreement, Party A may assign, transfer and set over all (but not less than all) rights, title and interest, powers, privileges and remedies of Party A under any Transaction, in whole or in part, to an affiliate of Party A (x) that has a

long-term issuer rating that is equal to or better than A- by Standard and Poor's Rating Group, Inc. (or its successor) or A3 by Moody's Investor Service, Inc. (or its successor) at the time of such transfer or assignment, or (y) whose obligations hereunder will be guaranteed by Party A or Party A's ultimate or direct parent, pursuant to the terms of a customary guarantee in a form used by Party A generally for similar transactions; *provided* that Party B shall not (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) of the Agreement, nor (2) receive a payment, nor is there a material likelihood that it would receive a payment, from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount, in either case as a result of such transfer or assignment, (iii) each of Party A and such transferee is a "dealer" within the meaning of section 1.1001-4(b)(1) of the U.S. Treasury Regulations and (iv) no Event of Default or Potential Event of Default shall have occurred with respect to either party solely as a result of such transfer and assignment.

Notwithstanding the foregoing or any other provision of this Master Confirmation or any Supplemental Confirmation to the contrary requiring or allowing Party A to purchase, sell, receive or deliver any Shares or other securities to or from Party B, Party A may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Party A obligations in respect of any Transaction and any such designee may assume such obligations. Party A shall be discharged of its obligations to Party B only to the extent of any such performance.

Calculation Agent:

Party A; *provided* that, following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Party A is the sole Defaulting Party, Party B shall have the right to select a leading dealer in the market for U.S. corporate equity derivatives reasonably acceptable to Party A to replace Party A as Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. All calculations and determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner; *provided* that following any determination or calculation by the Calculation Agent hereunder, upon a written request by Party B, the Calculation Agent will, within a commercially reasonable period of time following such request, provide to Party B by e-mail to the e-mail address provided by Party B in such written request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation, as the case may be; *provided* that Party A shall not be required to disclose any proprietary or confidential models of Party A or any information that is proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.

Party B Payment Instructions:

To be provided by Party B

Party A Payment Instructions:

To be provided by Party A

The Office of Party B for the Transaction is:

Inapplicable, Party B is not a Multibranch Party

The Office of Party A for the

Transaction is: [•]

Party B's Contact Details for Purpose of Giving Notice: To be provided by Party B

Party A's Contact Details for Purpose of Giving Notice: [•]

3. Effectiveness. The effectiveness of each Supplemental Confirmation and the related Transaction on the Effective Date for such Supplemental Confirmation shall be subject to the satisfaction (or waiver by Party A) of the following conditions:

(a) the representations and warranties of Party B and the Operating Partnership contained in the Sales Agreement, and any certificate delivered pursuant thereto by Party B or the Operating Partnership, shall be true and correct on such Effective Date as if made as of such Effective Date;

(b) each of Party B and the Operating Partnership shall have performed all of the obligations required to be performed by it under the Sales Agreement on or prior to such Effective Date;

(c) all of the conditions set forth in Article V of the Sales Agreement shall have been satisfied;

(d) the effective date of the effective Placement Notice (as defined in the Sales Agreement) shall have occurred as provided in the Sales Agreement;

(e) all of the representations and warranties of Party B hereunder and under the Agreement shall be true and correct on such Effective Date as if made as of such Effective Date; and

(f) Party B shall have performed all of the obligations required to be performed by it hereunder and under the Agreement on or prior to such Effective Date, including without limitation its obligations under Section 6 hereof.

Notwithstanding the foregoing or any other provision of this Master Confirmation or any Supplemental Confirmation, if, in respect of any Transaction, (x) on or prior to 9:30 a.m., New York City time, on any Forward Hedge Settlement Date (as defined in the Sales Agreement) in connection with Party A establishing its commercially reasonable hedge position, Party A, in its sole judgment, is unable, after using commercially reasonable efforts, to borrow and deliver for sale the full Number of Shares or (y) in Party A's sole judgment, it would incur a stock loan cost of more than a rate equal to the Maximum Stock Loan Rate for such Transaction with respect to all or any portion of such full Number of Shares, the effectiveness of the related Supplemental Confirmation and such Transaction shall be limited to the number of Shares Party A is so able to borrow in connection with establishing its commercially reasonable hedge position for such Transaction at a cost of not more than a rate equal to the Maximum Stock Loan Rate for such Transaction, which, for the avoidance of doubt, may be zero.

4. Additional Mutual Representations and Warranties. In addition to the representations and warranties in the Agreement, each party represents and warrants to the other party, as of the date hereof and as of each date (a "Placement Date") when a Placement Notice with respect to a Forward (as defined in the Sales Agreement) is delivered or the date of any Acceptance thereof, Trade Date and Forward Hedge Settlement Date (as defined in the Sales Agreement), that it is an "eligible contract participant", as defined in the U.S. Commodity Exchange Act (as amended), and an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933 (as amended) (the "**Securities Act**"), and is entering into each Transaction hereunder as principal and not for the benefit of any third party.

5. Additional Representations and Warranties of Party B. In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Party B represents and warrants to Party A, and agrees with Party A, as of the date hereof and as of each Placement Date, Trade Date and Forward Hedge Settlement Date (as defined in the Sales Agreement), that:

(a) without limiting the generality of Section 13.1 of the Equity Definitions, it acknowledges that Party A is not making any representations or warranties with respect to the treatment of any Transaction, including without limitation ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, ASC Topic 480, *Distinguishing Liabilities from Equity*, ASC 815-40, *Derivatives and Hedging – Contracts in Entity's Own Equity* (or any successor issue statements) or under the Financial Accounting Standards Board's Liabilities & Equity Project;

(b) it shall not take any action to reduce or decrease the number of authorized and unissued Shares below the sum of (i) the aggregate Capped Number across all Transactions *plus* (ii) the total number of Shares issuable upon settlement (whether by net share settlement or otherwise) of any other transaction or agreement to which it is a party;

(c) it will not repurchase any Shares if, immediately following such repurchase, the aggregate Number of Shares across all Transactions would be equal to or greater than 9.0% of the number of then-outstanding Shares and it will notify Party A promptly upon the public announcement by Party B or consummation by Party B of any repurchase of Shares in an amount that, taken together with the amount of all repurchases since the date of the last such notice (or, if no such notice has been given, since the Trade Date), exceeds 0.5% of the number of then-outstanding Shares;

(d) it is not entering into this Master Confirmation or any Supplemental Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares), or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) for the purpose of inducing the purchase or sale of the Shares (or any security convertible into or exchangeable for Shares) by others;

(e) it is not aware of any material non-public information regarding itself or the Shares; it is entering into this Master Confirmation (and any Supplemental Confirmation) and will provide any Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 or any other provision of the federal securities laws; it has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting any Transaction; and it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and any Supplemental Confirmations under Rule 10b5-1 under the Exchange Act ("**Rule 10b5-1**");

(f) to its knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Party A or its affiliates owning or holding (however defined) Shares; *provided* that Party B makes no such representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Party A or its affiliates or subsidiaries;

(g) as of any Trade Date and as of the date of any payment or delivery by Party B or Party A hereunder, it is not and will not be "insolvent" (as such term is defined under Section 101(32) of the Bankruptcy Code);

(h) it is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(i) it: (i) is an "institutional account" as defined in FINRA Rule 4512(c); and (ii) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and will exercise independent judgment in evaluating any recommendations of Party A or its associated persons;

(j) ownership positions held by Party A or any of its affiliates solely in its capacity as a nominee or fiduciary do not constitute "Beneficial Ownership" or "Constructive Ownership" by Party A, and Party A shall not be deemed or treated as having "ownership" of such positions for purposes of Party B's Amended and Restated Certificate of Incorporation; and

(k) IT UNDERSTANDS THAT THE TRANSACTIONS ARE SUBJECT TO COMPLEX RISKS WHICH MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS.

6. Additional Covenants of Party B.

(a) Party B acknowledges and agrees that any Shares delivered by Party B to Party A on any Settlement Date or Net Share Settlement Date will be (i) newly issued, (ii) approved for listing or quotation on the Exchange, subject to official notice of issuance, and (iii) registered under the Exchange Act, and, when delivered by Party A (or an affiliate of Party A) to securities lenders from whom Party A (or an affiliate of Party A) borrowed Shares in connection with hedging its exposure to any Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether any such stock loan is effected by Party A or an affiliate of Party A. Accordingly, Party B agrees that any Shares so delivered will not bear a restrictive legend and will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System. In addition, Party B represents and agrees that any such Shares shall be, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance.

(b) Party B agrees that Party B shall not enter into or alter any hedging transaction relating to the Shares corresponding to or offsetting any Transaction. Without limiting the generality of the provisions set forth opposite the caption “Unwind Activities” in Section 2 of this Master Confirmation, Party B acknowledges that it has no right to, and agrees that it will not seek to, control or influence Party A’s decision to make any “purchases or sales” (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) under or in connection with any Transaction, including, without limitation, Party A’s decision to enter into any hedging transactions.

(c) Party B acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a “plan” as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Party B or any officer, director, manager or similar person of Party B is aware of any material non-public information regarding Party B or the Shares.

(d) Party B shall promptly provide notice thereof to Party A (i) upon the occurrence of any event that would constitute an Event of Default or a Termination Event in respect of which Party B is a Defaulting Party or an Affected Party, as the case may be, and (ii) upon announcement of any event that, if consummated, would constitute an Extraordinary Event or Potential Adjustment Event.

(e) Neither Party B nor any of its “affiliated purchasers” (as defined by Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall take any action that would cause any purchases of Shares by Party A or any of its Affiliates in connection with any Cash Settlement or Net Share Settlement of any Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 if such purchases were made by Party B. Without limiting the generality of the foregoing, during any Unwind Period, except with the prior written consent of Party A, Party B will not, and will cause its affiliated purchasers (as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or announce or commence any tender offer relating to, any Shares (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for the Shares.

(f) Party B will not be subject to any “restricted period” (as such term is defined in Regulation M promulgated under the Exchange Act (“**Regulation M**”)) in respect of Shares or any security with respect to which the Shares are a “reference security” (as such term is defined in Regulation M) during any Unwind Period.

(g) Party B shall: (i) prior to the opening of trading in the Shares on any day on which Party B makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction, notify Party A of such public announcement; (ii) promptly notify Party A following any such announcement that such announcement has been made; (iii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Party A with written notice specifying (A) Party B’s average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date for the Merger Transaction that were not effected through Party A or its affiliates and (B) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full

calendar months preceding such announcement date. Such written notice shall be deemed to be a certification by Party B to Party A that such information is true and correct. In addition, Party B shall promptly notify Party A of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Party B acknowledges that any such notice may result in a Regulatory Disruption, a Trading Condition or, if such notice relates to an event that is also an ISDA Event, an Early Valuation, or may affect the length of any ongoing Unwind Period; accordingly, Party B acknowledges that its delivery of such notice must comply with the standards set forth in Section 6(c) above. “**Merger Transaction**” means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act. For the avoidance of doubt, a Merger Transaction or the announcement thereof shall not give either party the right to designate an Early Valuation Date and/or to accelerate or preclude an election by Party B of Physical Settlement, unless such Merger Transaction or the announcement thereof is also an ISDA Event.

(h) Party B shall promptly execute any Supplemental Confirmation delivered to Party B by Party A.

7. Termination on Bankruptcy. The parties hereto agree that, notwithstanding anything to the contrary in the Agreement or the Equity Definitions, each Transaction constitutes a contract to issue a security of Party B as contemplated by Section 365(c)(2) of the Bankruptcy Code and that each Transaction and the obligations and rights of Party B and Party A thereunder (except for any liability as a result of breach of any of the representations or warranties provided by Party B in Section 4 or Section 5 above) shall immediately terminate, without the necessity of any notice, payment (whether directly, by netting or otherwise) or other action by Party B or Party A, if, on or prior to the final Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date of any Transaction, an Insolvency Filing occurs or any other proceeding commences with respect to Party B under the Bankruptcy Code (a “**Bankruptcy Termination Event**”).

8. Additional Provisions.

(a) Party A acknowledges and agrees that Party B’s obligations under the Transactions are not secured by any collateral and that neither this Master Confirmation nor any Supplemental Confirmations are not intended to convey to Party A rights with respect to the transactions contemplated hereby that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Party B; *provided* that nothing herein shall limit or shall be deemed to limit Party A’s right to pursue remedies in the event of a breach by Party B of its obligations and agreements with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement; *provided further* that nothing herein shall limit or shall be deemed to limit Party A’s rights in respect of any transaction other than the Transactions to which this Master Confirmation relates.

(b) [Reserved]

(c) The parties hereto intend for:

(i) each Transaction to be a “securities contract” as defined in Section 741(7) of the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 555 and 561 of the Bankruptcy Code;

(ii) the rights given to Party A pursuant to “Early Valuation” in Section 2 above to constitute “contractual rights” to cause the liquidation of a “securities contract” and to set off mutual debts and claims in connection with a “securities contract”, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code;

(iii) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to any Transaction to constitute “margin payments” and “transfers” under a “securities contract” as defined in the Bankruptcy Code;

(iv) all payments for, under or in connection with any Transaction, all payments for Shares and the transfer of Shares to constitute “settlement payments” and “transfers” under a “securities contract” as defined in the Bankruptcy Code; and

(v) any or all obligations that either party has with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement to constitute property held by or due from such party to margin, guaranty or settle obligations of the other party with respect to the transactions under the Agreement (including the Transactions) or any other agreement between such parties.

(d) Notwithstanding any other provision of the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event will Party B be required to deliver in the aggregate in respect of all Settlement Dates, Net Share Settlement Dates or other dates on which Shares are delivered in respect of any amount owed under a Transaction a number of Shares greater than 1.25 times the Number of Shares for such Transaction as of the Trade Date for such Transaction, subject to adjustment from time to time in accordance with the provisions of this Master Confirmation, the relevant Supplemental Confirmation or the Equity Definitions (the “**Capped Number**”). Party B represents and warrants to Party A (which representation and warranty shall be deemed to be repeated on each day that any Transaction is outstanding) that the aggregate Capped Number of the Transactions is equal to or less than the number of authorized but unissued Shares that are not reserved for future issuance in connection with transactions in the Shares (other than the Transactions) on the date of the determination of the Capped Number (such Shares, the “**Available Shares**”). In the event Party B shall not have delivered the full number of Shares otherwise deliverable as a result of this Section 8(d) (the resulting deficit, the “**Deficit Shares**”), Party B shall be continually obligated to deliver Shares, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, when, and to the extent that, (A) Shares are repurchased, acquired or otherwise received by Party B or any of its subsidiaries after the applicable Trade Date (whether or not in exchange for cash, fair value or any other consideration), (B) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (C) Party B additionally authorizes any unissued Shares that are not reserved for other transactions (such events as set forth in clauses (A), (B) and (C) above, collectively, the “**Share Issuance Events**”). Party B shall promptly notify Party A of the occurrence of any of the Share Issuance Events (including the number of Shares subject to clause (A), (B) or (C) and the corresponding number of Shares to be delivered) and, as promptly as reasonably practicable, deliver such Shares thereafter. Party B shall not, until Party B’s obligations under each Transaction have been satisfied in full, use any Shares that become available for potential delivery to Party A as a result of any Share Issuance Event for the settlement or satisfaction of any transaction or obligation other than the Transactions or reserve any such Shares for future issuance for any purpose other than to satisfy Party B’s obligations to Party A under the Transactions.

(e) The parties intend for this Master Confirmation and each Supplemental Confirmation to constitute a “Contract” as described in the letter dated October 6, 2003 submitted on behalf of Goldman, Sachs & Co. to Paula Dubberly of the staff of the Securities and Exchange Commission (the “**Staff**”) to which the Staff responded in an interpretive letter dated October 9, 2003.

(f) The parties intend for each Transaction (taking into account purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction) to comply with the requirements of Rule 10b5-1(c)(1)(i)(A) under the Exchange Act and for this Master Confirmation and each Supplemental Confirmation to constitute a binding contract or instruction satisfying the requirements of 10b5-1(c) and to be interpreted to comply with the requirements of Rule 10b5-1(c).

(g) [Reserved]

(h) Party B acknowledges that:

(i) during the term of any Transaction, Party A and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to any Transaction;

(ii) Party A and its affiliates may also be active in the market for the Shares and derivatives linked to the Shares other than in connection with hedging activities in relation to any Transaction, including acting as agent or as principal and for its own account or on behalf of customers;

(iii) Party A shall make its own determination as to whether, when or in what manner any hedging or market activities in Party B’s securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price and the Settlement Price of any Transaction;

(iv) any market activities of Party A and its affiliates with respect to the Shares may affect the market price and volatility of the Shares, as well as the Forward Price and the Settlement Price of any Transaction, each in a manner that may be adverse to Party B; and

(v) each Transaction is a derivatives transaction; Party A may purchase or sell shares for its own account at an average price that may be greater than, or less than, the price received by Party B under the terms of any Transaction.

9. Indemnification. Party B agrees to indemnify and hold harmless Party A, its affiliates and its assignees and their respective directors, officers, employees, agents and controlling persons (Party A and each such person being an “**Indemnified Party**”) from and against any and all losses (excluding, for the avoidance of doubt, financial losses resulting from the economic terms of any Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, incurred by or asserted against such Indemnified Party arising out of any breach of any covenant or representation made by Party B in this Master Confirmation, any Supplemental Confirmation or the Agreement. Party B will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a nonappealable judgment by a court of competent jurisdiction to have resulted from Party A’s willful misconduct, gross negligence or bad faith in performing the services that are subject of any Transaction. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Party B shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Party B will reimburse any Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Party B. Party B also agrees that no Indemnified Party shall have any liability to Party B or any person asserting claims on behalf of or in right of Party B in connection with or as a result of any matter referred to in this Master Confirmation or any Supplemental Confirmation except to the extent that any losses, claims, damages, liabilities or expenses incurred by Party B result from the gross negligence, willful misconduct or bad faith of the Indemnified Party. The provisions of this Section 9 shall survive the completion of the Transactions contemplated by this Master Confirmation and any Supplemental Confirmation and any assignment and/or delegation of any Transaction made pursuant to the Agreement or this Master Confirmation (or any Supplemental Confirmation) shall inure to the benefit of any permitted assignee of Party A. For the avoidance of doubt, any payments due as a result of this provision may not be used to set off any obligation of Party A upon settlement of any Transaction.

10. Beneficial Ownership. Notwithstanding anything to the contrary in the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event shall Party A be entitled to receive, or be deemed to receive, Shares to the extent that, (i) upon such receipt of such Shares, the “beneficial ownership” (within the meaning of Section 13(d) of the Exchange Act and the rules promulgated thereunder) of Shares by Party A, any other person that would have beneficial ownership of such Shares (any such person, an “**Additional Owner**,” which shall include without limitation any of Party’s affiliates’ business units subject to aggregation with Party A for purposes of the “beneficial ownership” test under Section 13(d) of the Exchange Act), or any “group” (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which Party A or any Additional Owner is a member (any such group, a “**Party A Group**”), would be equal to or greater than 4.5% of the outstanding Shares (such condition, an “**Excess Ownership Position**”), (ii) the receipt of such Shares would result in a violation of any restriction on ownership and transfer set forth in Section 4(C) of Party B’s Amended and Restated Certificate of Incorporation, taking into account any waivers that are then in effect (such condition, the “**Excess Charter Ownership Position**”) or (iii) upon such receipt of such Shares, Party A, any Party A Group or any Additional Owner (any of Party A, any Party A Group or any Additional Owner, a “**Party A Person**”) under any state or federal bank holding company or banking laws, or any federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares (“**Applicable Laws**”), would own, beneficially own, constructively own, control, hold the power to vote or otherwise meet a relevant definition of ownership in excess of a number of Shares equal to (x) the lesser of (A) the maximum number of Shares that would be permitted under Applicable Laws and (B) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Party A Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval

has not been received or that would give rise to any consequences under the constitutive documents of Party B) or any contract or agreement to which Party B is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (such condition described in clause (iii), an “**Excess Regulatory Ownership Position**”). If any delivery owed to Party A hereunder is not made, in whole or in part, as a result of this provision, (i) Party B’s obligation to make such delivery shall not be extinguished and Party B shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Party A gives notice to Party B that such delivery would not result in (x) any Party A Person directly or indirectly so beneficially owning in excess of 9.0% of the outstanding Shares or (y) the occurrence of an Excess Charter Ownership Position or Excess Regulatory Ownership Position and (ii) if such delivery relates to a Physical Settlement, notwithstanding anything to the contrary herein, Party A shall not be obligated to satisfy the portion of its payment obligation corresponding to any Shares required to be so delivered until the date Party B makes such delivery. Upon request of Party A, Party B shall promptly confirm to Party A the number of Shares then outstanding and Party A shall then promptly advise Party B with respect to any limitations under this Section 10 applicable to any anticipated delivery of Shares hereunder; provided, however, that neither a failure by Party B to notify Party A of the number of Shares then outstanding nor a failure of Party A to advise Party B with respect to any applicable limitations shall be deemed a default hereunder and notwithstanding such failure the remainder of this Section 10 shall continue to apply. For the avoidance of doubt, any delivery of Shares made by Party B to Party A that Party A was not entitled to receive under the terms of this Section 10 shall not be deemed to satisfy any of the delivery obligations of Party B hereunder and Party A shall promptly return such Shares to Party B, pending which Party A shall be deemed to hold any such Shares solely as custodian for the benefit of Party B.

11. Non-Confidentiality. The parties hereby agree that (i) effective from the date of commencement of discussions concerning any Transaction, Party B and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of such Transaction and all materials of any kind, including opinions or other tax analyses, provided by Party A and its affiliates to Party B relating to such tax treatment and tax structure; *provided* that the foregoing does not constitute an authorization to disclose the identity of Party A or its affiliates, agents or advisers, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information, and (ii) Party A does not assert any claim of proprietary ownership in respect of any description contained herein or therein relating to the use of any entities, plans or arrangements to give rise to a particular United States federal income tax treatment for Party B.

12. Restricted Shares. If Party B is unable to comply with the covenant of Party B contained in Section 6 above or Party A otherwise determines in its reasonable opinion that any Shares to be delivered to Party A by Party B under any Transaction may not be freely returned by Party A to securities lenders as described in the covenant of Party B contained in Section 6 above, then delivery of any such Settlement Shares (the “**Unregistered Settlement Shares**”) shall be effected pursuant to Annex B hereto, unless waived by Party A

13. Use of Shares. Party A acknowledges and agrees that, except in the case of a Private Placement Settlement, Party A shall use any Shares delivered by Party B to Party A on any Settlement Date with respect to any Transaction to return to securities lenders to close out borrowings created by Party A in connection with its hedging activities related to exposure under such Transaction or otherwise in compliance with applicable law.

14. Rule 10b-18. In connection with bids and purchases of Shares in connection with any Net Share Settlement or Cash Settlement of any Transaction, Party A shall use commercially reasonable efforts to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases and taking into account any applicable Securities and Exchange Commission no-action letters as appropriate, and subject to any delays between the execution and reporting of a trade of the Shares on the Exchange and other circumstances beyond Party A’s control.

15. Governing Law. Notwithstanding anything to the contrary in the Agreement, this Master Confirmation, any Supplemental Confirmation and all matters arising in connection with the Agreement, this Master Confirmation or any Supplemental Confirmation shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without reference to its choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law).

16. **Set-Off.** Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under any Transaction against any delivery or payment obligations owed to it by the other party, whether arising under the Agreement, under any other agreement between parties hereto, by operation of law or otherwise.

17. **Staggered Settlement.** Notwithstanding anything to the contrary herein, Party A may, by prior notice to Party B, satisfy its obligation to deliver any Shares or other securities on any date due (an “**Original Delivery Date**”) by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

18. **Waiver of Right to Trial by Jury.** EACH OF PARTY A AND PARTY B HEREBY IRREVOCABLY WAIVES (ON SUCH PARTY’S OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF SUCH PARTY’S STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS MASTER CONFIRMATION OR ANY SUPPLEMENTAL CONFIRMATION OR THE ACTIONS OF PARTY A, PARTY B OR THEIR AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

19. **Jurisdiction.** THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

20. **Counterparts.** This Master Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation by signing and delivering one or more counterparts.

21. **Delivery of Cash.** For the avoidance of doubt, nothing in this Master Confirmation or any Supplemental Confirmation shall be interpreted as requiring Party B to deliver cash or other assets in respect of the settlement of any Transaction, except in circumstances where the required cash or other asset settlement thereof is permitted for classification of the contract as equity by ASC 815-40, *Derivatives and Hedging – Contracts in Entity’s Own Equity*, as in effect on the Trade Date.

22. **Adjustments.** For the avoidance of doubt, whenever the Calculation Agent, the Hedging Party or the Determining Party is called upon to make an adjustment pursuant to the terms of this Master Confirmation, any Supplemental Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent, the Hedging Party or the Determining Party, as applicable, shall do so in good faith and in a commercially reasonable manner and shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position at the time of the event.

23. **Ownership Limit.** Party B represents and undertakes to Party A that Party A, solely in its capacity as “Forward Purchaser” or “Forward Seller” (each as defined in the Underwriting Agreement) and solely with respect to its entering into and consummating the transactions contemplated by this Master Confirmation, any Supplemental Confirmation and the Sales Agreement, will not, either individually or collectively with any other Forward Purchasers or Forward Sellers, be subject to the ownership limitations set forth in Section 4(C) Party B’s Amended and Restated Certificate of Incorporation.

24. **Other Forwards.** Party B agrees that it shall not (x) cause to occur, or permit to exist, any Forward Hedge Selling Period at any time there is (1) a “Forward Hedge Selling Period” (or equivalent concept) relating to any other issuer forward sale or similar transaction (including, without limitation, any “Transaction” under (as and defined under) any substantially identical master forward confirmation) with any financial institution other than Party A (an “**Other Forward Transaction**”), (2) any “Unwind Period” (or equivalent concept) hereunder or under any Other Forward Transaction or (3) any other period in which Party B directly or indirectly issues and sells Shares pursuant to an underwriting agreement (or similar agreement including, without limitation, any sales agency financing agreement) (such period, a “**Selling Period**”) that Party B enters into with any financial institution other than Party A, or (y) cause to occur, or permit to exist, any Unwind Period at any time there is (1) an “Unwind Period” (or equivalent concept) under any Other Forward Transaction, (2) a “Forward Hedge Selling Period” (or equivalent concept) under any Other Forward Transaction or (3) any Selling Period.

25. [Matters Relating to Agent].¹ Agent is acting as agent for Party A in connection with this Master Confirmation, any Supplemental Confirmation and the Agreement. As such all delivery of funds, assets, notices, demands and communications of any kind relating to this Master Confirmation, any Supplemental Confirmation or the Agreement and any Transaction between Party A and Party B shall be transmitted exclusively through Agent. Agent has no obligation by way of issuance, endorsement, guarantee or otherwise with respect to the performance of either Party A or Party B under this Master Confirmation, any Supplemental Confirmation or the Agreement.]

26. Tax Matters.

(a) For the purpose of Section 3(f) of the Agreement:

(i) Party A makes the following representations:

A. [•]

(ii) Party B makes the following representations:

A. It is a “U.S. person” (as that term is used in Treasury Regulation section 1.1441-4(a)(3)(ii)) for U.S. federal income tax purposes.

B. It is a real estate investment trust for U.S. federal income tax purposes and is organized under the laws of the State of Delaware, and is an exempt recipient under Treasury Regulation section 1.6049-4(c)(1)(ii)(J).

(b) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.

“Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “FATCA Withholding Tax”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

(c) 871(m) Protocol. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by ISDA and as may be amended, supplemented, replaced or superseded from time to time shall be incorporated into and apply to the Agreement solely for purposes of this Master Confirmation as if set forth in full herein.

(d) Tax documentation. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Party B shall provide to Party A a valid and duly executed U.S. Internal Revenue Service Form W-9 or appropriate W-8 (with any accompanying required documentation), or any successor thereto, and Party A shall provide to Party B a valid and duly executed U.S. Internal Revenue Service Form W-9 or any successor thereto (i) on or before the date of execution of this Master Confirmation; (ii) promptly upon reasonable demand by the other party; and (iii) promptly upon learning that any such tax form previously provided has become invalid, obsolete, or incorrect. Additionally, Party B or Party A shall, promptly upon reasonable request by the other party, provide such other tax forms and documents reasonably requested by such other party.

(e) Change of Account. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word “delivery” in the first line thereof: “to another account in the same legal and tax jurisdiction”.

¹ Include appropriate dealer agency or communications with employees provisions

27. Forward Placement Notices. Party B and Party A agree that, upon the effectiveness of any accepted Placement Notice relating to a Forward Transaction, in respect of the Transaction to which such accepted Placement Notice relates, each of the representations, warranties, covenants, agreements and other provisions of this Master Forward Confirmation and the Supplemental Confirmation for such Transaction (including, without limitation, Party A's right to designate an Early Valuation Date in respect of such Transaction and the termination of such Transaction following an Insolvency Filing) shall govern, and be applicable to, such Transaction as of the first Trading Day of the Forward Hedge Selling Period for such Transaction as if the Trade Date for such Transaction were such first Trading Day. Notwithstanding anything to the contrary in this Master Forward Confirmation, any Supplemental Confirmation, the Agreement or the Equity Definitions, if Party A designates an Early Valuation Date with respect to a Transaction (1) following the occurrence of an Event of Default or Termination Event, other than an Insolvency Filing, and such Early Valuation Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction or (2) prior to Party B's execution of the Supplemental Confirmation relating to such Transaction, then, for purposes of such Early Valuation Date, a Supplemental Confirmation relating to such Transaction reasonably completed by Party A (as if the Trade Date for such Transaction were the last day of the Forward Hedge Selling Period on which the Forward Seller sold Forward Hedge Shares for such Transaction) shall, notwithstanding the provisions under "Effectiveness" above, be deemed to be immediately effective.

28. [QFC Stay Rules. The parties acknowledge and agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement, Dealer shall be deemed a Regulated Entity and Counterparty shall be deemed an Adhering Party; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Covered Agreement, Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity"; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement," Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity." In the event that, after the date of this Agreement, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this Section 27. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Agreement" include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to Dealer Parent replaced by references to the covered affiliate support provider.

"**QFC Stay Rules**" means the regulations codified at 12 C.F.R. 252.2, 252.81-8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.]²

² Include as appropriate for each dealer

Party B hereby agrees (a) to check this Master Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Party A) correctly sets forth the terms of the agreement between Party A and Party B hereunder, by manually signing this Master Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to us.

Yours faithfully,

**[[•], as agent for
[DEALER]]**

By: _____
Authorized Representative

[DEALER]

By: _____
Authorized Representative

[Signature Page to Master Forward Confirmation]

Agreed and accepted by:

BOSTON PROPERTIES, INC.

By: _____

Name: Michael E. LaBelle

Title: Executive Vice President, Chief
Financial Officer and Treasurer

[Signature Page to Master Forward Confirmation]

[Goodwin Procter LLP Letterhead]

May 22, 2020

Boston Properties, Inc.
Prudential Center
800 Boylston Street, Suite 1900
Boston, MA 02199

Re: Securities Registered under Registration Statement on Form S-3

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3ASR (File No. 333-238607) (as amended or supplemented, the "Registration Statement") filed on May 22, 2020 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of any combination of securities of the types specified therein by Boston Properties, Inc., a Delaware corporation (the "Company"), or Boston Properties Limited Partnership, a Delaware limited partnership and the Company's operating partnership subsidiary (the "Operating Partnership"). The Registration Statement became effective upon filing with the Commission on May 22, 2020.

Reference is made to our opinion letter dated May 22, 2020 and included as Exhibit 5.1 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on May 22, 2020 by the Company with the Commission pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering of up to \$600,000,000 of shares (the "Total Shares") of the Company's common stock, par value \$0.01 per share ("Common Stock"), pursuant to (i) the Sales Agency Financing Agreements, dated as of May 22, 2020, listed on Schedule I hereto (collectively, the "Sales Agency Financing Agreements") and (ii) the Master Forward Confirmations, dated as of May 22, 2020, listed on Schedule I hereto (collectively, the "Master Forward Confirmations"). Pursuant to the Sales Agency Financing Agreements, the Total Shares may include (i) shares of Common Stock sold by the Company through the sales agents (the "Issuance Shares") and (ii) shares of Common Stock borrowed by the forward purchasers (or their affiliates) from third parties (the "Borrowed Shares") and sold by the forward sellers pursuant to one or more forward transactions by the Company (the "Forwards"). The Forwards are to be governed by the terms of the Master Forward Confirmations and related supplemental confirmations entered into for each Forward in accordance with the terms of the Sales Agency Financing Agreements pursuant to which the forward purchasers will agree to purchase from the Company (subject to the Company's right to elect cash settlement or net share settlement), a number of shares of Common Stock equal to the number of Borrowed Shares sold by the forward sellers pursuant to the Sales Agency Financing Agreements (the "Forward Settlement Shares")

and, together with the Issuance Shares, the “Shares”), subject to adjustment as set forth therein, for a purchase price equal to the price at which the Borrowed Shares were sold by the forward sellers, less certain commissions and subject to certain adjustments set forth therein.

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinion set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that the Issuance Shares and the Borrowed Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company’s board of directors or a duly authorized committee thereof prior to the date hereof (the “Minimum Price”) and that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the aggregate of (i) the maximum number of then unissued Issuance Shares that may be issued for the Minimum Price plus (ii) the number of Forward Settlement Shares subject to the Forwards that have not then settled.

The opinion set forth below is limited to the Delaware General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued, delivered and paid for in accordance with a Sales Agency Financing Agreement and/or a Master Forward Confirmation (and a related, duly authorized supplemental confirmation), as applicable, and in exchange for a price per share equal to or greater than the minimum price authorized by the Company’s board of directors or a duly authorized committee thereof (or in net share settlement of a Master Forward Confirmation (and a related, duly authorized supplemental confirmation)), will be validly issued, fully paid and nonassessable.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Company’s Current Report on Form 8-K dated May 22, 2020 which is incorporated by reference into the Registration Statement and to the references to our firm under the caption “Legal Matters” in the Registration Statement and Prospectus Supplement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Goodwin Procter LLP

GOODWIN PROCTER LLP

Schedule I

Sales Agency Financing Agreements:

1. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and BofA Securities, Inc., as sales agent and as forward seller, and Bank of America, N.A., as forward purchaser.
2. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and BNY Mellon Capital Markets, LLC, as sales agent and as forward seller, and The Bank of New York Mellon, as forward purchaser.
3. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and Deutsche Bank Securities Inc., as sales agent and as forward seller, and Deutsche Bank AG, London Branch, as forward purchaser.
4. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and Jefferies LLC, as sales agent, forward seller and forward purchaser.
5. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and J.P. Morgan Securities LLC, as sales agent and as forward seller, and JPMorgan Chase Bank, National Association, as forward purchaser.
6. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and Mizuho Securities USA LLC, as sales agent and as forward seller, and Mizuho Markets Americas LLC, as forward purchaser.
7. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and Morgan Stanley & Co. LLC, as sales agent, forward seller and forward purchaser.
8. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and Scotia Capital (USA) Inc., as sales agent and as forward seller, and The Bank of Nova Scotia, as forward purchaser.
9. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and SunTrust Robinson Humphrey, Inc., as sales agent.
10. Sales Agency Financing Agreement, dated as of May 22, 2020, among the Company, the Operating Partnership and TD Securities (USA) LLC, as sales agent and as forward seller, and The Toronto-Dominion Bank, as forward purchaser.

Master Forward Confirmations:

1. Master Forward Confirmation, dated as of May 22, 2020, among the Company, BofA Securities, Inc., as agent, and Bank of America, N.A., as dealer.
2. Master Forward Confirmation, dated as of May 22, 2020, among the Company, BNY Mellon Capital Markets, LLC, as agent, and The Bank of New York Mellon, as dealer.
3. Master Forward Confirmation, dated as of May 22, 2020, among the Company, Deutsche Bank Securities Inc., as agent, and Deutsche Bank AG, London Branch, as dealer.
4. Master Forward Confirmation, dated as of May 22, 2020, between the Company and Jefferies LLC, as agent and dealer.
5. Master Forward Confirmation, dated as of May 22, 2020, among the Company, J.P. Morgan Securities LLC, as agent, and JPMorgan Chase Bank, National Association, as dealer.
6. Master Forward Confirmation, dated as of May 22, 2020, among the Company, Mizuho Securities USA LLC, as agent, and Mizuho Markets Americas LLC, as dealer.
7. Master Forward Confirmation, dated as of May 22, 2020, between the Company and Morgan Stanley & Co. LLC, as agent and dealer.
8. Master Forward Confirmation, dated as of May 22, 2020, among the Company, Scotia Capital (USA) Inc., as agent, and The Bank of Nova Scotia, as dealer.
9. Master Forward Confirmation, dated as of May 22, 2020, among the Company, TD Securities (USA) LLC, as agent, and The Toronto-Dominion Bank, as dealer.

[Goodwin Procter LLP Letterhead]

May 22, 2020

Boston Properties, Inc.
Prudential Center
800 Boylston Street, Suite 1900
Boston, MA 02199

Re: Securities Registered under Registration Statement on Form S-3

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3ASR (File No. 333-238607) (as amended or supplemented, the "Registration Statement") filed on May 22, 2020 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of any combination of securities of the types specified therein by Boston Properties, Inc., a Delaware corporation (the "Company"), or Boston Properties Limited Partnership, a Delaware limited partnership and the Company's operating partnership subsidiary (the "Operating Partnership"). The Registration Statement became effective upon filing with the Commission on May 22, 2020.

Reference is made to our opinion letter dated May 22, 2020 and included as Exhibit 5.1 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on May 22, 2020 by the Company with the Commission pursuant to Rule 424 under the Securities Act that relates to the offering by the Company of 256,073 shares (the "Shares") of the Company's common stock, par value \$0.01 per share ("Common Stock"). The Shares may be issued from time to time by the Company to the extent that the holders of 256,073 common units of limited partnership interest (the "OP Units") in the Operating Partnership, in accordance with the terms of the Second Amended and Restated Agreement of Limited Partnership of Boston Properties Limited Partnership, dated as of June 29, 1998, as amended (the "Partnership Agreement"), tender the OP Units to the Operating Partnership for redemption and the Company exercises its contractual right to acquire such tendered OP Units in exchange for the Shares.

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinion set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares.

The opinion set forth below is limited to the Delaware General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when and to the extent issued in exchange for the OP Units as provided in the Partnership Agreement, will be validly issued, fully paid and nonassessable.

We hereby consent to the inclusion of this opinion as Exhibit 5.2 to the Company's Current Report on Form 8-K dated May 22, 2020 which is incorporated by reference into the Registration Statement and to the references to our firm under the caption "Legal Matters" in the Registration Statement and Prospectus Supplement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Goodwin Procter LLP

GOODWIN PROCTER LLP