

BOSTON PROPERTIES INC

Form 424B5

April 21, 2010

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CALCULATION OF REGISTRATION FEE

Title of Securities Being Registered	Proposed	
	Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share	\$ 400,000,000	\$ 28,520 ⁽¹⁾
Preferred Stock Purchase Rights ⁽²⁾	N/A	N/A

- (1) The registration fee of \$28,520 is calculated in accordance with Rules 457(o) and 457(r) under the Securities Act of 1933, as amended (the Securities Act). In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant initially deferred payment of all of the registration fee for Registration Statement No. 333-155309 filed by the registrant on November 12, 2008.
- (2) This prospectus supplement also relates to the rights to purchase shares of Series E Junior Participating Cumulative Preferred Stock of the registrant, which are attached to all shares of common stock issued, pursuant to the terms of the registrant's Shareholder Rights Agreement dated June 18, 2007. Until the occurrence of prescribed events, the rights are not exercisable, are evidenced by the certificates for the common stock and will be transferred with and only with such common stock.

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**Filed Pursuant to Rule 424(b)(5)
Registration Statement No. 333-155309**

PROSPECTUS SUPPLEMENT

(To Prospectus dated November 12, 2008)

\$400,000,000

Boston Properties, Inc.

Common Stock

We have entered into separate sales agency financing agreements with each of BNY Mellon Capital Markets, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Morgan Stanley & Co. Incorporated (collectively, the Sales Agents) relating to offers and sales of shares of our common stock. In accordance with the terms of the sales agency financing agreements, we may offer and sell up to \$400,000,000 of our common stock from time to time through the Sales Agents, as our agents for the offer and sale of the common stock.

The common stock will be offered at market prices prevailing at the time of sale. Each respective Sales Agent will be entitled to compensation not to exceed 2.0% of the gross sales price of all shares of common stock sold through it.

Our common stock is listed on the New York Stock Exchange under the symbol BXP. On April 20, 2010, the last reported sale price of our common stock as reported on the NYSE was \$77.00 per share.

Investing in our common stock involves risks that are described in documents incorporated by reference in this prospectus supplement and the accompanying prospectus. See the Risk Factors section on page S-3 of this prospectus supplement and beginning on page 16 of our most recent Annual Report on Form 10-K.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.

BNY Mellon Capital Markets, LLC

BofA Merrill Lynch

Morgan Stanley

The date of this prospectus supplement is April 21, 2010.

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You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, and the Sales Agents have not, authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. We are not, and the Sales Agents are not, making an offer to sell the shares in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement and the accompanying prospectus, including the documents incorporated herein by reference, is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates. When we or any of the Sales Agents deliver this prospectus supplement or the accompanying prospectus or make a sale pursuant to this prospectus supplement or the accompanying prospectus, neither we nor such Sales Agents are implying that the information is current as of the date of the delivery or sale.

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This prospectus supplement is a supplement to the accompanying prospectus. If information in this prospectus supplement is inconsistent with the prospectus, this prospectus supplement will apply and supersede the information in the prospectus. It is important for you to read and carefully consider all information contained in this prospectus supplement and the accompanying prospectus. You should also read and carefully consider the information in the documents to which we have referred you in Information Incorporated by Reference.

As used herein, the terms we, us, our, Boston Properties or the Company refer to Boston Properties, Inc., individually or together with its subsidiaries, including Boston Properties Limited Partnership and our predecessors.

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PROSPECTUS SUPPLEMENT SUMMARY

About Our Company

We are a fully integrated, self-administered and self-managed real estate investment trust, or REIT, and one of the largest owners and developers of Class A office properties in the United States. Our properties are concentrated in five markets Boston, Washington, DC, midtown Manhattan, San Francisco and Princeton, NJ. We conduct substantially all of our business through our subsidiary, Boston Properties Limited Partnership. We are the sole general partner and, as of February 19, 2010, the owner of approximately 85.8% of the economic interests in Boston Properties Limited Partnership.

At December 31, 2009, we owned or had interests in 146 commercial real estate properties aggregating approximately 37.7 million net rentable square feet, including five properties under construction, which aggregate an estimated total investment of approximately \$1.1 billion and approximately 2.0 million square feet, and structured parking for vehicles containing approximately 12.8 million square feet. At December 31, 2009, our properties consisted of:

140 office properties, including 120 Class A office properties (including three properties under construction) and 20 office/technical properties;

one hotel;

three retail properties; and

two residential properties (both of which are under construction).

At December 31, 2009, we owned or controlled undeveloped land parcels totaling approximately 510.1 acres, which will support approximately 12.7 million square feet of development. In addition, we have a noncontrolling interest in the Boston Properties Office Value-Added Fund, L.P., which we refer to as the Value-Added Fund, which is a strategic partnership with two institutional investors through which we have pursued the acquisition of value-added investments in assets within our existing markets. Our investments through the Value-Added Fund are not included in our portfolio information or any other portfolio level statistics. At December 31, 2009, the Value-Added Fund had investments in an office complex in San Carlos, California, an office property in Chelmsford, Massachusetts and office/technical properties in Mountain View, California.

Our principal executive office is located at 800 Boylston Street, Suite 1900, Boston, Massachusetts 02199-8103 and our telephone number is (617) 236-3300.

Recent Developments

As of December 31, 2009, we had \$862.5 million aggregate principal amount of Boston Properties Limited Partnership's 2.875% exchangeable senior notes due 2037 outstanding. These notes mature in 2037, but the holders may require us to repurchase the notes on February 15, 2012. Since December 31, 2009, we have repurchased approximately \$143.2 million principal amount of these notes for approximately \$142.6 million. During the first quarter of 2010, we repurchased approximately \$53.6 million principal amount of these notes, which had an aggregate carrying value of approximately \$50.8 million, resulting in the recognition of a loss on extinguishment of approximately \$2.2 million. Since March 31, 2010, we have repurchased approximately \$89.6 million principal amount of these notes, which had an aggregate carrying value of approximately \$85.3 million, resulting in the recognition of a loss on extinguishment of approximately \$4.3 million.

On March 1, 2010, a joint venture in which we have a 60% interest refinanced at maturity its mortgage loan collateralized by 125 West 55th Street located in New York City. The mortgage loan totaling \$200.0 million bore interest at a fixed rate of 5.75% per annum. The new mortgage loan totaling \$207.0 million bears interest at a fixed rate of 6.09% per annum and matures on March 10, 2015. In addition, on February 25, 2010, the joint venture repaid the mezzanine loans outstanding totaling \$63.5 million utilizing available cash and cash contributions from the joint venture's partners on a pro rata basis. The mezzanine loans bore interest at a weighted-average fixed rate of approximately 7.81% per annum and were scheduled to mature on March 1, 2010.

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On April 1, 2010, we acquired a 30% interest in a joint venture entity that owns 500 North Capitol Street, NW located in Washington, DC. 500 North Capitol Street is an approximately 180,000 net rentable square foot office property which is fully-leased to a single tenant through March 2011. On April 1, 2010, the joint venture entity refinanced at maturity the mortgage loan collateralized by the property totaling approximately \$26.8 million. The new mortgage loan totaling \$22.0 million bears interest at a variable rate equal to the greater of (1) the prime rate, as defined in the loan agreement, or (2) 5.75% per annum. The loan currently bears interest at 5.75% per annum and matures on March 31, 2013. Our investment in the joint venture totaling approximately \$1.9 million was financed with cash contributions to the venture totaling approximately \$1.4 million and the issuance to the seller of 5,906 common units of limited partnership interest in Boston Properties Limited Partnership. The joint venture currently expects that it will remove the property from service and redevelop the property following the expiration of the lease in March 2011.

On April 9, 2010, a joint venture in which we have a 60% interest completed the refinancing of its mortgage loan collateralized by Two Grand Central Tower located in New York City. The mortgage loan totaling \$190.0 million bore interest at a fixed rate of 5.10% per annum and was scheduled to mature on July 11, 2010. The new mortgage loan totaling \$180.0 million, bears interest at a fixed rate of 6.00% per annum and matures on April 10, 2015. In connection with the refinancing, the joint venture repaid \$10.0 million of the previous mortgage loan utilizing cash contributions from the joint venture's partners on a pro rata basis.

On April 16, 2010, a joint venture in which we have a 51% interest refinanced its mortgage loan collateralized by Metropolitan Square located in Washington, DC. The previous mortgage loan totaling approximately \$123.6 million bore interest at a fixed rate of 8.23% per annum and was scheduled to mature on May 1, 2010. The new mortgage loan totaling \$175.0 million bears interest at a fixed rate of 5.75% per annum and matures on May 5, 2020.

On April 19, 2010, Boston Properties Limited Partnership completed the issuance and sale of \$700 million of 5.625% senior unsecured notes due 2020. The notes were priced at 99.891% of the principal amount to yield 5.638% to maturity. The notes will mature on November 15, 2020, unless earlier redeemed. The net proceeds from the offering, after deducting underwriting discounts and offering expenses, are estimated to be approximately \$693.5 million. We intend to use the net proceeds from the sale of the notes for general business purposes, which may include investment opportunities and debt reduction.

The Offering

Common stock offered by us	Up to \$400,000,000.
Use of proceeds	We will contribute the net proceeds from this offering to our subsidiary, Boston Properties Limited Partnership, in exchange for common units of Boston Properties Limited Partnership. Boston Properties Limited Partnership will use the net proceeds for general business purposes, which may include investment opportunities and debt reduction. See "Use of Proceeds" on page S-4 of this prospectus supplement for additional information.
NYSE symbol	BXP
Transfer Agent and Registrar	Computershare Trust Company, N.A.

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RISK FACTORS

You should carefully consider the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, including (i) our Annual Report on Form 10-K for the year ended December 31, 2009 and (ii) documents we file with the Securities and Exchange Commission after the date of this prospectus supplement and which are deemed incorporated by reference in this prospectus supplement before making an investment decision. These risks are not the only ones facing our company. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Our business, financial condition or results of operations could be materially adversely affected by the materialization of any of these risks. The trading price of our securities could decline due to the materialization of any of these risks, and you may lose all or part of your investment.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference, contain forward-looking statements within the meaning of the federal securities laws. We caution investors that any such forward-looking statements are based on beliefs and assumptions made by, and information currently available to, our management. When used, the words anticipate, believe, estimate, expect, intend, may, might, plan, project, result, should, will and similar expressions which do not relate solely to history are intended to identify forward-looking statements. Such statements are subject to risks, uncertainties and assumptions and are not guarantees of future performance, which may be affected by known and unknown risks, trends, uncertainties and factors that are beyond our control. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected by the forward-looking statements. We caution you that while forward-looking statements reflect our good-faith beliefs when we make them, they are not guarantees of future performance and are impacted by actual events when they occur after we make such statements. Accordingly, investors should use caution in relying on forward-looking statements, which are based on results and trends at the time they are made, to anticipate future results or trends.

Some of the risks and uncertainties that may cause our actual results, performance or achievements to differ materially from those expressed or implied by forward-looking statements include, among others, the following:

the continuing impact of the recent, severe economic recession (including the related high unemployment and constrained credit), which is having and may continue to have a negative effect on the following, among other things:

the fundamentals of our business, including overall market occupancy and rental rates;

the financial condition of our tenants, many of which are financial, legal and other professional firms, our lenders, counterparties to our derivative financial instruments and institutions that hold our cash balances and short-term investments, which may expose us to increased risks of default by these parties;

our ability to obtain debt financing on attractive terms or at all, which may adversely impact our ability to pursue acquisition and development opportunities and refinance existing debt and our future interest expense; and

the value of our real estate assets, which may limit our ability to dispose of assets at attractive prices or obtain or maintain debt financing secured by our properties or on an unsecured basis;

general risks affecting the real estate industry (including, without limitation, the inability to enter into or renew leases, dependence on tenants' financial condition, and competition from other developers, owners and operators of real estate);

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failure to manage effectively our growth and expansion into new markets and sub-markets or to integrate acquisitions and developments successfully;

the ability of our joint venture partners to satisfy their obligations;

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risks and uncertainties affecting property development and construction (including, without limitation, construction delays, cost overruns, inability to obtain necessary permits and public opposition to such activities);

risks associated with the availability and terms of financing and the use of debt to fund acquisitions and developments, including the risk associated with interest rates impacting the cost and/or availability of financing;

risks associated with interest rate contracts and the effectiveness of such arrangements;

risks associated with downturns in the national and local economies, increases in interest rates, and volatility in the securities markets;

risks associated with actual or threatened terrorist attacks;

costs of compliance with the Americans with Disabilities Act and other similar laws;

potential liability for uninsured losses and environmental contamination;

risks associated with our potential failure to qualify as a REIT under the Internal Revenue Code of 1986, as amended;

possible adverse changes in tax and environmental laws;

the impact of newly adopted accounting principles on our accounting policies and on period-to-period comparisons of financial results;

risks associated with possible state and local tax audits;

risks associated with our dependence on key personnel whose continued service is not guaranteed; and

the other risk factors identified in our most recently filed Annual Report on Form 10-K, including those described under the caption Risk Factors.

The risks set forth above are not exhaustive. Other sections of this prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference, may include additional factors that could adversely affect our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all risk factors, nor can it assess the impact of all risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. Investors should also refer to our most recent Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q for future periods and Current Reports on Form 8-K as we file them with the Securities and Exchange Commission, and to other materials we may furnish to the public from time to time through Forms 8-K or otherwise, for a discussion of risks and uncertainties that may cause actual results, performance or achievements to differ materially from those expressed or implied by forward-looking statements. We expressly disclaim any responsibility to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events, or otherwise, and you should

not rely upon these forward-looking statements after the date of this prospectus supplement.

USE OF PROCEEDS

We will contribute the net proceeds from this offering to our subsidiary, Boston Properties Limited Partnership, in exchange for an equal number of common units of Boston Properties Limited Partnership. Boston Properties Limited Partnership intends to use the net proceeds for general business purposes, which may include investment opportunities and debt reduction.

Pending the uses described above, we may invest the net proceeds in short-term, interest-bearing, investment-grade securities.

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SUPPLEMENTAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

This summary supplements and should be read together with the general discussion of the tax considerations relating to the ownership and disposition of common stock described in the accompanying prospectus under the title "United States Federal Income Tax Considerations." To the extent any information set forth under the title "United States Federal Income Tax Considerations" in the accompanying prospectus is inconsistent with this supplemental information, this supplemental information will apply and supersede the information in the accompanying prospectus. This supplemental information is provided on the same basis and subject to the same qualifications as are set forth in the first four paragraphs under the title "United States Federal Income Tax Considerations" in the accompanying prospectus as if those paragraphs were set forth in this prospectus supplement.

Part Cash, Part Stock Dividends

Because we intend to qualify as a REIT, we must satisfy certain annual distribution requirements imposed by the Internal Revenue Code. Under IRS Revenue Procedure 2010-12, a REIT may distribute taxable dividends that are partially payable in cash and partially payable in our common stock in order to meet the annual REIT distribution requirements. Under the IRS guidance, up to 90% of any such taxable dividend declared on or before December 31, 2012, with respect to a taxable year ending on or before December 31, 2011 could be payable in our common stock. Taxable U.S. stockholders receiving such dividends will be required to include as dividend income the fair market value of the stock received plus any cash or other property received in the distribution, to the extent of the REIT's current and accumulated earnings and profits for U.S. federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash received. If a U.S. stockholder sells the stock it received as a dividend, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of the stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, a REIT may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. Through April 21, 2010, we have paid all of our dividends in cash. However, there can be no assurance that we will continue to pay dividends in cash.

BLPL's Classification as a Partnership may be affected by Proposed Legislation

Congress is considering legislative proposals to treat all or part of certain income allocated to a partner by a partnership in respect of certain services provided to or for the benefit of the partnership ("carried interest revenue") as ordinary income for U.S. federal income tax purposes. Under the proposed legislation, carried interest revenue could be treated as non-qualifying income for purposes of the "qualifying income" exception to the publicly-traded partnership rules. Although the proposed legislation provides an exception for certain partnerships if 50% or more of its interests are owned by a REIT, it is not clear whether that exception would apply to Boston Properties Limited Partnership. Furthermore, it is not clear what form any final legislation may take. If a final bill is enacted that treats carried interest revenue as non-qualifying income for purposes of the "qualifying income" exception, this could result in Boston Properties Limited Partnership being taxable as a corporation for U.S. federal income tax purposes if interests in Boston Properties Limited Partnership are treated as publicly traded and if the amount of any such carried interest revenue plus any other non-qualifying income earned by Boston Properties Limited Partnership exceeds 10% of its gross income in any taxable year.

Withholding of Foreign Accounts

Congress recently passed legislation that imposes withholding taxes on payments of dividends and sales proceeds made to "foreign financial institutions" and certain foreign non-financial entities unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner. If the payee is a foreign financial institution, it must enter into an agreement with the United States Treasury requiring, among other things, that it undertakes to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent them from complying with these reporting and other requirements. The legislation would apply to payments made after December 31, 2012. Prospective investors should consult their tax advisors regarding this legislation.

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Medicare Tax

In addition to the discussion under "Taxation of Stockholders and Potential Tax Consequences of Their Investment in Shares of Common Stock or Preferred Stock" in the accompanying prospectus, for taxable years beginning after December 31, 2012, a U.S. person that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, is subject to a 3.8% tax on the lesser of (1) the U.S. person's net investment income for the relevant taxable year and (2) the excess of the U.S. person's modified gross income for the taxable year over a certain threshold (which in the case of individuals will be between \$125,000 and \$250,000, depending on the individual's circumstances). Net investment income generally would include dividends on our common stock and net gain from the disposition of our common stock. If you are a U.S. person that is an individual, estate or trust, you are urged to consult your tax advisors regarding the applicability of the Medicare tax to your income and gains in respect of your investment in the common stock.

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PLAN OF DISTRIBUTION

We have entered into separate sales agency financing agreements, each dated as of April 21, 2010, with each of the Sales Agents under which we may issue and sell up to an aggregate of \$400,000,000 of our common stock from time to time through the Sales Agents, as our agents for the offer and sale of the shares, for a period of up to three years. The sales, if any, of the common stock under a sales agency financing agreement will be made in at the market offerings as defined in Rule 415 of the Securities Act of 1933, including sales made directly on the New York Stock Exchange, the existing trading market for our common stock, or sales made to or through a market maker or through an electronic communications network. In addition, our common stock may be offered and sold by such other methods, including privately negotiated transactions, as we and any Sales Agent agree to in writing.

From time to time during the term of the sales agency financing agreements, we may deliver an issuance notice to one of the Sales Agents specifying the length of the selling period (not to exceed 10 trading days), the amount of common stock to be sold (the aggregate sales price of such shares not to exceed \$150,000,000 during any selling period without such Sales Agent's prior written consent) and the minimum price below which sales may not be made. Upon receipt of an issuance notice from us, and subject to the terms and conditions of the respective sales agency financing agreements, each Sales Agent agrees to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such shares on such terms. We or any such Sales Agent may suspend the offering of our common stock at any time upon proper notice to the other, upon which the selling period will immediately terminate. Settlement for sales of our common stock will occur on the third trading day following the date on which any sales were made, unless we agree otherwise with the relevant Sales Agent. The obligation of any Sales Agent under its respective sales agency financing agreement to sell shares pursuant to any issuance notice is subject to a number of conditions, which such Sales Agent reserves the right to waive in its sole discretion.

We will pay each respective Sales Agent commissions not to exceed an aggregate of 2.0% of the gross sales price of all shares sold through it as agent under its sales agency financing agreement. We have also agreed to reimburse the Sales Agents for their reasonable documented out-of-pocket expenses, including fees and expenses of counsel, in connection with the sales agency financing agreements; provided that we are not required to reimburse the Sales Agents for more than \$100,000 of such fees and expenses of counsel.

Sales of our common stock as contemplated by this prospectus supplement will be settled through the facilities of the Depository Trust Company or by such other means as we and the Sales Agents may agree upon.

In connection with the sale of our common stock hereunder, the Sales Agents may each be deemed to be an underwriter within the meaning of the Securities Act of 1933, and the compensation paid to the Sales Agents may be deemed to be underwriting commissions or discounts. We have agreed to indemnify the Sales Agents against certain civil liabilities, including liabilities under the Securities Act of 1933.

The Sales Agents have determined that our common stock is an actively-traded security excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by Rule 101(c)(1) under that Act. If a Sales Agent or we have reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied, that party will promptly notify the other and sales of common stock under the sales agency financing agreement will be suspended until that or other exemptive provisions have been satisfied in the judgment of the Sales Agent and us.

The offering of our common stock pursuant to any sales agency financing agreement will terminate upon the earlier of (1) the sale of the maximum aggregate amount of our common stock subject to the sales agency financing agreements, (2) the third anniversary of the date of such sales agency financing agreement or (3) the termination of such sales agency financing agreement by either us or the respective Sales Agent at any time in the respective party's sole discretion.

We have agreed not to directly or indirectly sell, offer to sell, contract to sell, grant any option to sell or otherwise dispose of, our common stock or securities convertible into or exchangeable for our common stock, warrants or any rights to purchase or acquire our common stock for a period beginning on the first trading day prior to the delivery of any issuance notice to any of the Sales Agents and ending on the first trading day following the settlement date for our common stock sold pursuant to the applicable issuance notice, without the prior written consent of such respective Sales Agent. This consent may be given at any time without public notice. The restriction described in this paragraph does not apply to:

common stock we offer or sell pursuant to the sales agency financing agreement;

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common stock we issue upon the exercise of an option or a warrant or the conversion of a security outstanding before the first trading day prior to the delivery of any issuance notice to any of the Sales Agents;

the grant of options to purchase shares of common stock or the issuance of common stock, units of limited partnership in Boston Properties Limited Partnership or any securities convertible into or exchangeable for our common stock that we issue to employees, officers, directors, advisors or consultants pursuant to any current or future director or employee equity or benefit plan;

common stock purchased or sold under any current or future dividend reinvestment and stock purchase plan;

common stock or units of limited partnership in Boston Properties Limited Partnership issued upon redemption or exchange of units of limited partnership in Boston Properties Limited Partnership; or

common stock or any or securities convertible into or exchangeable for our common stock we issue in full or partial consideration in connection with future acquisitions or strategic investments.

Certain of the Sales Agents and their affiliates have engaged in, and may in the future engage in, commercial banking, derivatives, financial advisory and investment banking transactions and services and other commercial transactions or services in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

Certain affiliates of the Sales Agents are lenders and/or agents under our \$1.0 billion unsecured credit facility and our mortgage indebtedness and construction loan facilities and those of our unconsolidated joint ventures and other affiliates. Certain of the Sales Agents and their affiliates have acted, and may in the future act, as counterparties to rate lock agreements, interest rate swaps or other hedging transactions entered into by us or our unconsolidated joint ventures and other affiliates. We also lease space in our properties to certain of the Sales Agents and their affiliates.

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LEGAL MATTERS

Goodwin Procter LLP, Boston, Massachusetts, will pass upon certain matters relating to this offering for us. Certain legal matters will be passed upon for the Sales Agents by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York.

EXPERTS

The financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in the accompanying prospectus as supplemented by this prospectus supplement by reference to Boston Properties, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2009 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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Prospectus

BOSTON PROPERTIES, INC.

Common Stock

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Warrants

Boston Properties, Inc. and selling security holders of Boston Properties Inc. may from time to time offer to sell common stock, preferred stock, stock purchase contracts and warrants under this prospectus. The preferred stock of Boston Properties, Inc. may either be sold separately or represented by depositary shares and may be convertible into common stock or preferred stock of another series. Each time we or selling security holders sell securities, we will provide a prospectus supplement that will contain specific information about the terms of any securities offered, the specific manner in which the securities will be offered and the identity of any selling security holders. The prospectus supplement may add to, update or change the information in this prospectus. You should read this prospectus and any prospectus supplement carefully before you invest in our securities.

We or our selling security holders may offer securities directly to investors, through agents designated from time to time by us, or to or through underwriters or dealers. If any agents, underwriters, or dealers are involved in the sale of securities, their names, and any applicable purchase price, fee, commission, or discount arrangement with, between, or among them, will be set forth, or will be calculable from the information set forth, in an accompanying prospectus supplement. We will not receive any of the proceeds from the sale of securities by the selling security holders.

The common stock of Boston Properties, Inc. is listed on the New York Stock Exchange under the symbol BXP. On November 11, 2008, the last reported sale price of our common stock on the New York Stock Exchange was \$58.35 per share.

Investing in our securities involves various risks. See Risk Factors beginning on page 3 as well as the risk factors contained in documents we file with the Securities and Exchange Commission and which are incorporated by reference in this prospectus.

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

Prospectus dated November 12, 2008.

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PROSPECTUS SUMMARY

About this Prospectus

This prospectus is part of a shelf registration statement that we have filed under the Securities Act of 1933, as amended (the Securities Act), with the Securities and Exchange Commission (the SEC). By using a shelf registration statement, we and/or our selling security holders are registering an unspecified amount of common stock, preferred stock, stock purchase contracts and warrants, and may sell such securities, at any time and from time to time, in one or more offerings.

As used in this prospectus and the registration statement on Form S-3 of which this prospectus is a part, unless the context otherwise requires, the terms we, us, our, Boston Properties and the Company refer to Boston Properties, Inc., a Delaware corporation organized in 1997, individually or together with its subsidiaries, including Boston Properties Limited Partnership, a Delaware limited partnership, and our predecessors.

Boston Properties Limited Partnership is the entity through which Boston Properties, Inc. conducts substantially all of its business and owns substantially all of its assets. We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus or a prospectus supplement is accurate as of any date other than the date on the front of the document.

About our Company

We are a fully integrated self-administered and self-managed real estate investment trust, or REIT, and one of the largest owners and developers of Class A office properties in the United States. Our properties are concentrated in five markets Boston, midtown Manhattan, Washington, D.C., San Francisco and Princeton, NJ. We conduct substantially all of our business through our subsidiary, Boston Properties Limited Partnership. We are the sole general partner and the owner of approximately 84.1% of the economic interests in Boston Properties Limited Partnership as of September 30, 2008.

At September 30, 2008, we owned or had interests in a portfolio of 146 commercial real estate properties aggregating approximately 48.5 million net rentable square feet, including 14 properties under construction totaling approximately 4.4 million net rentable square feet, and structured parking for approximately 32,542 vehicles containing approximately 10.3 million square feet. At September 30, 2008, our properties consisted of:

142 office properties, including 122 Class A office properties (including 14 properties under construction) and 20 office/technical properties;

one hotel; and

three retail properties.

At September 30, 2008, we owned or controlled undeveloped land parcels totaling approximately 583.0 acres. In addition, we have a minority interest in the Boston Properties Office Value-Added Fund, L.P. which we refer to as the Value-Added Fund, which is a strategic partnership with two institutional investors through which we have pursued the acquisition of value-added investments in assets within our existing markets. Our investments through the Value-Added Fund are not included in our portfolio information or any other portfolio level statistics. At September 30, 2008, the Value-Added Fund had investments in 26 buildings comprised of an office property in Chelmsford, Massachusetts and office complexes in San Carlos, California and Mountain View, California.

Our principal executive office is located at 800 Boylston Street, Suite 1900, Boston, Massachusetts 02199-8103 and our telephone number is (617) 236-3300.

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RISK FACTORS

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

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the information incorporated by reference into this prospectus, and any accompanying prospectus supplement, contain forward-looking statements within the meaning of the federal securities laws. We caution investors that any forward-looking statements presented in this prospectus or any of the documents incorporated by reference, or which management may make orally or in writing from time to time, are based on beliefs and assumptions made by, and information currently available to, management. When used, the words anticipate, believe, estimate, expect, intend, may, might, plan, project, result, should, will and similar expressions which do not relate to matters are intended to identify forward looking statements. Such statements are subject to risks, uncertainties and assumptions and are not guarantees of future performance, which may be affected by known and unknown risks, trends, uncertainties and factors that are beyond our control. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected by the forward-looking statements. We caution you that while forward-looking statements reflect our good-faith beliefs when we make them, they are not guarantees of future performance and are impacted by actual events when they occur after we make such statements. We expressly disclaim any responsibility to update our forward looking statements, whether as a result of new information, future events, or otherwise. Accordingly, investors should use caution in relying on forward looking statements, which are based on results and trends at the time they are made, to anticipate future results or trends.

Some of the risks and uncertainties that may cause our actual results, performance or achievements to differ materially from those expressed or implied by forward-looking statements include, among others, the following:

the impact of the current credit crisis and global economic slowdown, which is having and may continue to have a negative effect on the following, among other things:

the fundamentals of our business, including overall market occupancy and rental rates;

the financial condition of our tenants, many of which are financial, legal and other professional firms, our lenders, counterparties to our derivative financial instruments and institutions that hold our cash balances and short-term investments, which may expose us to increased risks of default by these parties;

our ability to obtain debt financing on attractive terms or at all, which may adversely impact our ability to pursue acquisition and development opportunities and refinance existing debt and our future interest expense; and

the value of our real estate assets, which may limit our ability dispose of assets at attractive prices or obtain or maintain debt financing secured by our properties or on an unsecured basis;

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general risks affecting the real estate industry (including, without limitation, the inability to enter into or renew leases, dependence on tenants' financial condition, and competition from other developers, owners and operators of real estate);

failure to manage effectively our growth and expansion into new markets and sub-markets or to integrate acquisitions and developments successfully;

the ability of our joint venture partners to satisfy their obligations;

risks and uncertainties affecting property development and construction (including, without limitation, construction delays, cost overruns, inability to obtain necessary permits and public opposition to such activities);

risks associated with the availability and terms of financing and the use of debt to fund acquisitions and developments, including the risk associated with interest rates impacting the cost and/or availability of financing;

risks associated with interest rate hedging contracts and the effectiveness of such arrangements;

risks associated with downturns in the national and local economies, increases in interest rates, and volatility in the securities markets;

risks associated with actual or threatened terrorist attacks;

costs of compliance with the Americans with Disabilities Act and other similar laws;

potential liability for uninsured losses and environmental contamination;

risks associated with Boston Properties, Inc.'s potential failure to qualify as a REIT under the Internal Revenue Code of 1986, as amended;

possible adverse changes in tax and environmental laws;

the impact of newly adopted accounting principles on our accounting policies and on period-to-period comparisons of financial results;

risks associated with possible state and local tax audits;

risks associated with our dependence on key personnel whose continued service is not guaranteed; and

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the other risk factors identified in each of our most recently filed Annual Report on Form 10-K and Quarterly Report on Form 10-Q, including those described under the caption "Risk Factors," and our other reports filed from time to time with the SEC and any prospectus supplement.

The risks included herein are not exhaustive and you should be aware that there may be other factors which could adversely affect our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. Investors should also refer to our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are incorporated herein by reference and for future periods as we file them with the SEC, and to other materials we may furnish to the public from time to time through Forms 8-K or otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the information requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance with the Exchange Act, we file annual, quarterly, and current reports, proxy statements, and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may call the SEC at

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1-800-SEC-0330 for further information on the operation of the Public Reference Room. Our SEC filings are also available to the public from the SEC's website at <http://www.sec.gov>. In addition, you may read our SEC filings at the offices of the New York Stock Exchange (the "NYSE"), which is located at 20 Broad Street, New York, New York 10005. Our SEC filings are available at the NYSE because our common stock is listed and traded on the NYSE under the symbol of BXP.

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

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede the information already incorporated by reference. Our SEC file number is 1-13087. We are incorporating by reference the documents listed below, which we have already filed with the SEC:

our Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 29, 2008;

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008 filed on May 12, 2008, August 11, 2008 and November 10, 2008, respectively;

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

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

our Current Reports on Forms 8-K and 8-K/A filed on January 29, 2008, May 28, 2008, June 12, 2008, July 23, 2008, August 12, 2008, August 13, 2008, August 14, 2008 (two Form 8-Ks), August 20, 2008, September 16, 2008 and October 24, 2008 (one Form 8-K and one Form 8-K/A).

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

Boston Properties, Inc.

The Prudential Center

800 Boylston Street, Suite 1900

Boston, Massachusetts 02199-8103

Attention: Investor Relations

(617) 236-3300

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This prospectus is part of a registration statement we filed with the SEC. We have incorporated exhibits into the registration statement. You should read the exhibits carefully for provisions that may be important to you.

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

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The following table sets forth Boston Properties, Inc.'s historical ratio of earnings to fixed charges for the periods indicated:

	Nine Months Ended September 30, 2008	Year Ended December 31, 2007	Year Ended December 31, 2006	Year Ended December 31, 2005	Year Ended December 31, 2004	Year Ended December 31, 2003
Ratio of Earnings to Fixed Charges	1.99	4.98	4.35	2.52	1.94	2.06

The ratio of earnings to fixed charges was computed by dividing earnings by fixed charges. Earnings consist of income before minority interests in property partnerships, income from unconsolidated joint ventures, minority interest in Boston Properties Limited Partnership, gains on sales of real estate and other assets, discontinued operations, cumulative effect of a change in accounting principle and preferred dividend, plus gains on sales of real estate and other assets, amortization of interest capitalized, distributions from unconsolidated joint ventures, and fixed charges, minus interest capitalized and preferred distributions. Fixed charges consist of interest expensed, which includes credit enhancement fees and amortization of loan costs, and interest capitalized.

RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED DISTRIBUTIONS

The following table sets forth Boston Properties, Inc.'s historical ratios of earnings to combined fixed charges and preferred distributions for the periods indicated:

	Nine Months Ended September 30, 2008	Year Ended December 31, 2007	Year Ended December 31, 2006	Year Ended December 31, 2005	Year Ended December 31, 2004	Year Ended December 31, 2003
Ratio of Earnings to Combined Fixed Charges and Preferred Distributions	1.97	4.82	4.05	2.32	1.84	1.92

The ratio of earnings to combined fixed charges and preferred distributions was computed by dividing earnings by combined fixed charges and preferred distributions. Earnings consist of income before minority interests in property partnerships, income from unconsolidated joint ventures, minority interest in Boston Properties Limited Partnership, gains on sales of real estate and other assets, discontinued operations, cumulative effect of a change in accounting principle and preferred dividend, plus gains on sales of real estate and other assets, amortization of interest capitalized, distributions from unconsolidated joint ventures, and combined fixed charges and preferred distributions, minus interest capitalized and preferred distributions. Combined fixed charges and preferred distributions consist of interest expensed, which includes credit enhancement fees and amortization of loan costs, interest capitalized, and preferred distributions.

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USE OF PROCEEDS

Boston Properties, Inc. is required by the terms of the partnership agreement of Boston Properties Limited Partnership to contribute the net proceeds of any sale of common stock, preferred stock, stock purchase contracts, depositary shares or warrants to Boston Properties Limited Partnership in exchange for securities of Boston Properties Limited Partnership with economic interests that are substantially similar to the securities issued by Boston Properties, Inc.

Unless we provide otherwise in a supplement to this prospectus, following our contribution of the net proceeds to Boston Properties Limited Partnership, we intend to use the net proceeds from our sale of the securities covered by this prospectus for one or more of the following:

the acquisition, development, and improvement of properties;

the repayment of debt;

capital expenditures;

working capital; and

other general corporate purposes.

We will not receive any of the proceeds of the sale by selling security holders of the securities covered by this prospectus.

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DESCRIPTION OF COMMON STOCK

The following is a summary of the material terms and provisions of Boston Properties, Inc. common stock. It may not contain all the information that is important to you. You can access complete information by referring to the certificate of incorporation and bylaws of Boston Properties, Inc., the shareholder rights plan of Boston Properties, Inc. and the Delaware General Corporation Law, and the following summary is qualified by reference to such documents and the applicable provision of the Delaware General Corporate Law. The shareholder rights plan, certificate of incorporation and bylaws are incorporated by reference into this prospectus.

General

Under the certificate of incorporation, we have the authority to issue 250,000,000 shares of common stock, par value \$0.01 per share. On September 30, 2008, there were:

119,851,868 shares of our common stock issued and outstanding;

20,195,785 common units of partnership interest in Boston Properties Limited Partnership issued and outstanding (other than the common units held by Boston Properties, Inc.), each of which is redeemable for one share of our common stock (if we elect to issue common stock rather than pay cash upon such redemption);

946,369 long term incentive units of partnership interest in Boston Properties Limited Partnership issued and outstanding (excluding 1,085,861 long term incentive units granted under our 2008 Outperformance Plan, which have not yet been earned) pursuant to the Long-Term Incentive Plan, each of which, upon the satisfaction of certain conditions, is convertible into one common unit; and

1,113,044 Series Two preferred units of partnership interest in Boston Properties Limited Partnership issued and outstanding, each of which is currently convertible into approximately 1.312336 common units (or a total of 1,460,688 common units).

We may issue common stock from time to time. Our board of directors must approve the amount of stock we sell and the price for which it is sold. Holders of our common stock do not have any preferential rights or preemptive rights to buy or subscribe for capital stock or other securities that we may issue. However, each outstanding share of our common stock currently has attached to it one preferred stock purchase right issued under our shareholder rights plan, which is summarized below. Our common stock does not have any redemption or sinking fund provisions or any conversion rights.

All of our common stock, when issued, will be duly authorized, fully paid and nonassessable. This means that the full price for our outstanding common stock will have been paid at the time of issuance and that any holder of our common stock will not later be required to pay us any additional money for our common stock.

Dividends

Subject to the preferential rights of any other shares of our stock and the provisions of our certificate of incorporation regarding excess stock, holders of our common stock may receive dividends out of assets that we can legally use to pay dividends when and if they are authorized and declared by our board of directors. In the event we are liquidated, dissolved or our affairs are wound up, each common stockholder shares in the same proportion as other common stockholders out of assets that we can legally use to pay distributions after we pay or make adequate provision for all of our known debts and liabilities.

Voting Rights

Subject to the provisions of our certificate of incorporation regarding excess stock, holders of common stock will have the exclusive power to vote on all matters presented to our stockholders, including the election of directors, except as otherwise provided by Delaware law or as provided with respect to any other shares of our

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stock. Holders of our common stock are entitled to one vote per share. There is no cumulative voting in the election of our directors. Generally, all matters to be voted on by stockholders must be approved by a majority, or, in the case of the election of directors, by a plurality, of the votes present in person or represented by proxy and entitled to vote at a meeting at which a quorum is present, subject to any voting rights granted to holders of any then outstanding preferred stock.

Other Rights

Subject to the provisions of our certificate of incorporation regarding excess stock, all shares of our common stock have equal dividend, distribution, liquidation and other rights, and have no preference, appraisal or exchange rights, except for any appraisal rights provided by Delaware law.

Delaware law generally requires that we obtain the approval of a majority of the outstanding shares of our common stock that are entitled to vote before we may consolidate or merge with another corporation. However, Delaware law does not require that we seek approval of our stockholders to enter into a merger in which we are the surviving corporation following the merger if:

our certificate of incorporation is not amended in any respect by the merger;

each share of our stock outstanding prior to the merger is to be an identical share of stock following the merger; and

any shares of common stock (together with any other securities convertible into shares of common stock) to be issued or delivered as a result of the merger represent in the aggregate no more than 20% of the number of shares of our common stock outstanding immediately prior to the merger.

Restrictions on Ownership

For us to qualify as a real estate investment trust under the Internal Revenue Code, no more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals during the last half of a taxable year. To assist us in meeting this requirement, we may take actions including the automatic conversion of shares in excess of this ownership restriction into excess stock to limit the ownership of our outstanding equity securities, actually or constructively, by one person or entity. See *Limits on Ownership of Common Stock* beginning on page 24.

Transfer Agent

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Preferred Stock

Under our certificate of incorporation, we have authority to issue up to 50,000,000 shares of preferred stock. We do not have any preferred stock outstanding as of the date of this prospectus. We may issue preferred stock from time to time, in one or more series, as authorized by our board of directors. Prior to issuance of shares of each series, our board of directors is required by the Delaware General Corporation Law and our certificate of incorporation to fix for each series, subject to the provisions of our certificate of incorporation regarding excess stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption, as are permitted by Delaware law. The preferred stock will, when issued, be fully paid and nonassessable and will have no preemptive rights. Our board of directors could authorize the issuance of preferred stock with terms and conditions that could have the effect of discouraging a takeover or other transaction that holders of our common stock might believe to be in their best interests or in which holders of some, or a majority, of our common stock might receive a premium for their shares over the then market price of our common stock.

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Under our certificate of incorporation we have authority to issue up to 150,000 shares of Series E junior participating cumulative preferred stock. None of the Series E junior participating cumulative preferred stock is issued or outstanding. Shares of our Series E junior participating cumulative preferred stock may be issued under our shareholder rights plan, which is summarized below.

Shareholder Rights Plan

In 1997, our board of directors adopted a shareholder rights plan and entered into a shareholder rights agreement with Computershare Trust Company, N.A. (as successor to BankBoston, N.A.), as rights agent. In 2007, our board of directors determined it was in the best interests of our stockholders to extend the benefits afforded by this shareholder rights plan by entering into a new shareholder rights agreement with Computershare Trust Company, N.A., as rights agent. The rights may discourage, delay or prevent hostile takeovers. They are not intended, however, to interfere with any merger or other business combination approved by our board of directors.

Under our shareholder rights plan, one preferred stock purchase right is attached to each outstanding share of our common stock. We refer to these preferred stock purchase rights as the rights. Each share of common stock issued in the future will also receive a right until any of the rights become exercisable. Until a right is exercised, the holder of a right does not have any additional rights as a stockholder. These rights will expire on June 29, 2017, unless previously redeemed or exchanged by us as described below. These rights trade automatically with our common stock and will separate from the common stock and become exercisable only under the circumstances described below.

In general, the rights will separate from our common stock and become exercisable when the first of the following events happens:

- (1) ten calendar days after a public announcement that a person or a group of affiliated or associated persons has acquired beneficial ownership of more than 15% of the sum of our outstanding common stock and excess stock, the date of such public announcement being referred to as a stock acquisition date; or
- (2) ten business days, or such other date determined by our board of directors, after the beginning of a tender offer or exchange offer that would result in a person or group beneficially owning more than 15% of the sum of our outstanding common stock and excess stock.

Under our shareholder rights plan, shares of our common stock that may be issued upon redemption of outstanding common units of limited partnership interest in Boston Properties Limited Partnership are not included in the definition of beneficial ownership.

However, if a person who became a limited partner of Boston Properties Limited Partnership at the time of our initial public offering acquires beneficial ownership of more than 15% of the sum of our common stock and excess stock, the rights will not become exercisable unless the acquisition results in that person acquiring a percentage of the outstanding shares of our outstanding common stock plus outstanding common units of limited partnership interest of Boston Properties Limited Partnership that is greater than the percentage of outstanding shares of common stock plus outstanding common units of limited partnership interest of Boston Properties Limited Partnership that such person held at the completion of our initial public offering. In addition, no group of which Messrs. Zuckerman or E. Linde, any of their respective heirs, legatees or devisees, or any other person whose beneficial ownership of shares of our common stock would be attributed to Mr. Zuckerman and Mr. E. Linde, respectively, under the Internal Revenue Code, will be deemed to beneficially own any of our securities owned by that person. Common units of limited partnership interest of Boston Properties Limited Partnership held by Boston Properties, Inc. are excluded in making these calculations.

If the rights become exercisable, holders of the rights will be able to purchase from us a unit of preferred stock equal to one one-thousandth of a share of our Series E junior participating cumulative preferred stock at a

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cash exercise price of \$100 per unit, subject to adjustment. We have designated 200,000 shares of Series E junior participating cumulative preferred stock and have reserved these shares for issuance under our shareholder rights plan. However, all rights owned by any persons or groups triggering the event shall be void.

In the event that a stock acquisition date occurs, the rights (other than those held by the person or group triggering the stock acquisition date, whose rights will become null and void) will be exercisable for units of our Series E junior participating cumulative preferred stock having a market value of two times the exercise price of the rights.

In addition, if at any time following a stock acquisition date:

we enter into a merger or other business combination transaction in which we are not the surviving entity;

we enter into a merger or other business combination transaction in which all or part of our common stock is exchanged for stock or other securities of any other person or cash or any other property; or

we sell, transfer or mortgage 50% or more of our assets or earning power;
then each holder of a right, other than rights held by the person or group who triggered the event, will be entitled to receive, upon exercise, common stock of the acquiring company having a market value equal to two times the exercise price of the right.

At any time on or after the date on which the rights separate and become exercisable, our board of directors may, at its option, exchange all or any part of the then outstanding and exercisable rights for shares of our common stock or units of Series E junior participating cumulative preferred stock at an exchange ratio of one share or one unit per right. However, our board of directors generally will not be empowered to effect an exchange at any time after any person becomes the beneficial owner of 50% or more of our outstanding common stock.

We may redeem the rights in whole, but not in part, at a price of \$.001 per right at any time before the earlier of (1) the date that is ten calendar days after a stock acquisition date or (2) the expiration date of the rights plan. The rights will expire at the close of business on June 29, 2017 unless we redeem them before that date.

We may, in our sole discretion, amend any provision of the rights agreement until the rights become exercisable. After the rights become exercisable, we may, subject to specified limitations, amend the rights agreement only to cure any ambiguity, defect or inconsistency, to shorten or lengthen any time period, or to make changes that do not adversely affect the interests of the holders of the rights.

The above description of our shareholder rights plan is not intended to be a complete description. For a full description of the shareholder rights plan, you should read the shareholder rights agreement. The foregoing description of shareholder rights plan is qualified in its entirety by reference to the shareholder rights agreement. A copy of the shareholder rights agreement has been filed with the SEC and is incorporated herein by reference.

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DESCRIPTION OF PREFERRED STOCK

This section describes the general terms and provisions of shares of our preferred stock that we or selling security holders may offer by this prospectus. We may issue preferred stock in one or more series; each series of preferred stock will have its own rights and preferences. We will describe in a prospectus supplement (1) the specific terms of the series of any preferred stock offered through that prospectus supplement and (2) any general terms outlined in this section that will not apply to those shares of preferred stock. This summary of terms is not complete. For additional information before you buy any preferred stock you should read our certificate of incorporation and bylaws that are in effect on the date that we offer any preferred stock, as well as any applicable amendment to our certificate of incorporation designating the terms of a series of preferred stock.

General

Under our certificate of incorporation, we have the authority to issue up to 50,000,000 shares of preferred stock, par value \$0.01 per share. Prior to issuing shares of preferred stock of a particular series, our board of directors will determine or fix the terms of that series of preferred stock, as described below.

When we issue shares of preferred stock, they will be fully paid and nonassessable. This means the full purchase price for the outstanding preferred stock will be paid at issuance and that the purchasers of shares of preferred stock will not be required later to pay us any additional consideration for those shares. The preferred stock will have no preemptive rights to subscribe for any additional securities which we may issue in the future. This means that the purchasers of shares of preferred stock will not receive any rights, as a holder of preferred stock, to buy any portion of the securities which we may issue in the future. Because our board of directors has the power to establish the preferences and rights of each class or series of preferred stock, our board of directors may grant the holders of any series or class of preferred stock preferences, powers, and rights, voting or otherwise, senior to the rights of holders of shares of common stock. The issuance or possibility of issuance of preferred stock could have the effect of delaying or preventing a change in control of our company.

Terms

The preferred stock will have the dividend, liquidation, redemption, voting, and conversion rights described in this section unless we state otherwise in the applicable prospectus supplement. The liquidation preference is not indicative of the price at which the preferred stock will actually trade on or after the date of issuance. You should read the prospectus supplement relating to the particular series of the preferred stock for specific terms, including:

the title and liquidation preference of such preferred stock and the number of shares offered;

the initial offering price of such preferred stock;

the dividend rate or rates (or method of calculation), the dividend periods, the date(s) on which dividends will be payable and whether the dividends will be cumulative or noncumulative, and, if cumulative, the dates from which the dividends will start to cumulate;

procedures for any auction and remarketing, if any;

any listing of such preferred stock on any securities exchange;

any redemption or sinking fund provisions;

any conversion or exchange provisions;

any voting rights;

any other specific terms, preferences, rights, limitations, or restrictions of such preferred stock;

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discussion of federal income tax considerations applicable to such preferred stock;

relative ranking and preference of such preferred stock as to dividend rights and rights upon liquidation, dissolution, or winding up of our business;

any limitations on issuance of any series of preferred stock ranking senior to or on a parity with such series of preferred stock as to dividend rights and rights upon liquidation, dissolution, or winding up of our business; and

any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT.

Rank

Unless we state otherwise in the applicable prospectus supplement, each series of preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution, or winding up of our business, rank:

senior to our common stock and any of our other equity securities ranking junior to such series of preferred stock;

on a parity with all of our equity securities which according to their terms rank on a parity with such series of preferred stock; and

junior to all of our equity securities which according to their terms rank senior to such series of preferred stock.

The term "equity securities" does not include any convertible debt securities we may issue.

Dividends

As a holder of shares of preferred stock, you will be entitled to receive cash dividends, if declared by our board of directors, out of our assets that we can legally use to pay dividends. The prospectus supplement relating to a particular series of preferred stock will state the dividend rate or rates (or method of calculation) and dates on which the dividends will be payable for such series. We will pay dividends to the holders of record as they appear on our stock transfer books on the record dates fixed by our board of directors.

The applicable prospectus supplement will also state whether the dividends on any series of the preferred stock are cumulative or non-cumulative. Dividends, if cumulative, will accumulate from and after the dates stated in the applicable prospectus supplement. If our board of directors does not declare a dividend payable on a dividend payment date on any series of the preferred stock for which dividends are non-cumulative, then the holders of such series of the preferred stock will have no right to receive a dividend for the dividend period ending on such dividend payment date, and we will not be obligated to pay the dividend accrued for such period, even if our board of directors declares a dividend in the future.

We will not pay a dividend on any class or series of stock ranking as to dividends equal with or junior to a series of preferred stock unless:

if such series of preferred stock has a cumulative dividend, full cumulative dividends have been or contemporaneously are declared and paid (or declared and sufficient money is set apart for payment); or

if such series of preferred stock does not have a cumulative dividend, full dividends for the then current dividend period have been or contemporaneously are declared and paid (or declared and sufficient money is set apart for the payment).

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If at any time full dividends will not be paid (or declared and sufficient money set apart for payment) on all shares of preferred stock ranking equal as to dividends, then:

we will declare any dividends pro rata among all shares of preferred stock ranking equal as to dividends. This means that the dividends we declare per share on each series of such preferred stock,

which will not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend, will bear the same relationship to each other that the full accrued dividends per share on each such series of preferred stock bear to each other;

other than pro rata dividends, we will not declare or pay any dividends or set any money aside for payment of dividends, except dividends paid in the form of securities ranking junior to the preferred stock as to dividends and upon liquidation, or declare or make any distributions upon any security ranking junior to or equal with the preferred stock as to dividends or upon liquidation; and

we will not redeem, purchase, or otherwise acquire, or set aside money for a sinking fund for, any securities ranking junior to or equal with the preferred stock as to dividends or upon liquidation, except by conversion into or exchange for shares junior to the preferred stock as to dividends and upon liquidation.

Redemption

A series of preferred stock may be redeemable, in whole or in part, at our option and may be subject to mandatory redemption pursuant to a sinking fund, or otherwise, as we may describe in the applicable prospectus supplement.

If a series of preferred stock is subject to mandatory redemption, we will specify the following in the applicable prospectus supplement:

the date on which such mandatory redemption shall commence and the number of shares of such preferred stock that we will redeem each year after such date;

the redemption price; and

whether the redemption price will be paid in cash or other property together with an amount equal to all accrued and unpaid dividends, which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend, to the date of redemption.

If we are only permitted to pay the redemption price of a series of preferred stock from the net proceeds of the issuance of shares of our capital stock and the proceeds from such issuance are insufficient or no such issuance has occurred, then the terms of that series may provide that such preferred stock will automatically and mandatorily be converted into shares of our capital stock pursuant to conversion provisions which we will specify in the applicable prospectus supplement.

Even if the terms of a series of preferred stock permit us to redeem such shares of preferred stock in whole or in part, if any dividends, including accumulated dividends, on that series are past due, we will not:

redeem any preferred stock of that series unless we simultaneously redeem all outstanding shares of preferred stock of that series; and

purchase or otherwise acquire any preferred stock of that series, except by conversion into or exchange for shares of our capital stock ranking junior to such preferred stock as to dividends and upon liquidation.

The prohibitions regarding redemption discussed in the prior sentence will not restrict us from purchasing or acquiring preferred stock of any series to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to all holders of that series.

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If fewer than all of the outstanding shares of any series of preferred stock are to be redeemed, our board of directors will determine the number of shares to be redeemed. Except when such redemption is to preserve our status as a REIT, we may redeem the shares pro rata from the holders of record in proportion to the number of such shares held by them or for which such holder requested redemption, with adjustments to avoid redemption of fractional shares, or by any other equitable manner that we determine.

Unless we state otherwise in the applicable prospectus supplement, we will give notice of redemption by mailing a notice to each record holder of shares to be redeemed between 30 and 60 days prior to the date fixed for redemption. Each notice shall state:

the redemption date;

the number of shares and series of the preferred stock to be redeemed;

the redemption price;

the place or places where the holders of such preferred stock may surrender the certificates for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accrue on the redemption date; and

the date upon which the holder's conversion rights, if any, will terminate.

If we redeem fewer than all shares of any series of preferred stock, we will specify in the notice to each holder the number of shares to be redeemed from such holder. If we have given notice of redemption of any preferred stock and we have set aside the funds necessary for the payment of the redemption price, then beginning on the redemption date, the dividends on the preferred stock called for redemption will no longer accrue, and the holders will no longer have any rights as stockholders except to receive the redemption price.

Liquidation Rights

Unless we state otherwise in the applicable prospectus supplement, if we voluntarily or involuntarily liquidate, dissolve, or wind up our business, the holders of each series of preferred stock will be entitled to receive:

liquidating distributions, if any, in the amount or proportion stated in the applicable prospectus supplement; and

all accrued and unpaid dividends, which will not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend.

We will pay these amounts to the holders of shares of each series of the preferred stock, and all amounts owing on any other class or series of our capital stock ranking senior to or equally with such series of preferred stock as to distributions upon liquidation, out of our assets legally available for distribution to our stockholders before we make any distribution or payment to holders of any of our securities ranking junior to such series of preferred stock. After we pay the full amount of the liquidating distributions to the holders of preferred stock to which they are entitled, such holders will have no right or claim to any of our remaining assets.

If we voluntarily or involuntarily liquidate, dissolve or wind up our business and our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of each series of preferred stock and any other shares of our stock ranking senior to or equal with such series as to any such distribution, then we will only make pro rata distributions to the holders of all shares ranking equal as to distributions upon dissolution, liquidation or winding up of our business.

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If we have paid the full liquidation preference to all holders of preferred stock, we will distribute our remaining assets among the holders of any other classes or series of our capital stock ranking junior to the

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preferred stock upon liquidation, dissolution or winding up of our business, according to their respective rights and preferences. For such purposes, our consolidation with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of our property or business, will not be considered a liquidation, dissolution or winding up of our business.

Voting Rights

As a holder of preferred stock, you will not have any voting rights, except as we describe in this section or in the applicable prospectus supplement or as required by law.

Except as provided otherwise for any series of preferred stock, unless we receive the consent of a majority of all the outstanding shares of such series of preferred stock, we will not:

authorize or create, or increase the authorized or issued amount of, any class or series of shares of capital stock ranking senior to such series of preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution, or winding up of our business;

reclassify any authorized capital stock into such shares of capital stock ranking senior to such series of preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution, or winding up of our business;

create, authorize or issue any obligation or security convertible into or evidencing the right to purchase shares of capital stock ranking senior to such series of preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of our business; or

amend, alter or repeal our certificate of incorporation, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of such series of preferred stock or the holders of that stock.

As a holder of preferred stock, you may give your consent in person or by proxy, either in writing or at a meeting with each series voting separately as a class. We are not required to obtain your consent, as a holder of preferred stock, for the following actions because they will be deemed not to adversely affect any right, preference, or voting power of your series of preferred stock:

if upon the amendment, alteration, or repeal our certificate of incorporation, whether by merger, consolidation or otherwise, your series of preferred stock remains outstanding with its terms materially unchanged, taking into account that, upon the occurrence of such an event, we may not be the surviving entity;

any increase in the amount of the authorized preferred stock, or the creation or issuance of any other series of preferred stock, provided such series of preferred stock ranks equal with or junior to your series of preferred stock; or

any increase in the amount of authorized shares of a series of preferred stock, in each case ranking equal with or junior to the preferred stock of such series with respect to payment of dividends, or the distribution of our assets upon liquidation, dissolution or winding-up of our business.

The foregoing voting provisions will not apply if we redeem or call for redemption all shares of a series of preferred stock outstanding at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected. All outstanding shares of a series of preferred stock will be deemed to have been redeemed or called for redemption provided sufficient funds will have been deposited in trust to effect such redemption.

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Conversion or Exchange Rights

We will specify in the applicable prospectus supplement the terms and conditions, if any, upon which any series of preferred stock is convertible into common stock or preferred stock of a different series or exchangeable for other securities. Such terms will include:

the number of shares of common stock, preferred stock or other securities to be received on conversion or exchange of each share of such preferred stock;

the conversion or exchange price or rate or method of calculation;

the conversion or exchange period;

whether conversion or exchange is at our option and/or at the option of the holder of preferred stock;

any events resulting in adjustment of the conversion or exchange price or rate; and

rights of conversion or exchange in the event we call for redemption such series of preferred stock.

Restrictions on Ownership

For us to qualify as a real estate investment trust under the Internal Revenue Code, no more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals during the last half of a taxable year. To assist us in meeting this requirement, we may take actions including the automatic conversion of shares in excess of this ownership restriction into excess stock to limit the ownership of our outstanding equity securities, actually or constructively, by one person or entity. See **Limits on Ownership of Common Stock** beginning on page 24.

Transfer Agent

We will name the transfer agent and registrar for the preferred stock in the applicable prospectus supplement.

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DESCRIPTION OF STOCK PURCHASE CONTRACTS

We may issue stock purchase contracts, including contracts obligating holders to purchase from us and us to sell to the holders, a specified number of shares of common stock, preferred stock or depositary shares at a future date or dates. Alternatively, the stock purchase contracts may obligate us to purchase from holders, and obligate holders to sell to us, a specified or varying number of shares of common stock, preferred stock or depositary shares. The consideration per share of common stock or preferred stock or per depositary share may be fixed at the time the stock purchase contracts are issued or may be determined by a specific reference to a formula set forth in the stock purchase contracts. The stock purchase contracts may provide for settlement by delivery by us or on our behalf of shares of the underlying security, or they may provide for settlement by reference or linkage to the value, performance or trading price of the underlying security. The stock purchase contracts may be issued separately or as part of stock purchase units consisting of a stock purchase contract and debt securities, preferred stock or debt obligations of third parties, including U.S. treasury securities, other stock purchase contracts or common stock, or other securities or property, securing the holders' obligations to purchase or sell, as the case may be, the common stock, preferred stock, depositary shares or other security or property under the stock purchase contracts. The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and such payments may be unsecured or prefunded on some basis and may be paid on a current or on a deferred basis. The stock purchase contracts may require holders to secure their obligations thereunder in a specified manner and may provide for the prepayment of all or part of the consideration payable by holders in connection with the purchase of the underlying security or other property pursuant to the stock purchase contracts.

The securities related to the stock purchase contracts may be pledged to a collateral agent for our benefit pursuant to a pledge agreement to secure the obligations of holders of stock purchase contracts to purchase the underlying security or property under the related stock purchase contracts. The rights of holders of stock purchase contracts to the related pledged securities will be subject to our security interest therein created by the pledge agreement. No holder of stock purchase contracts will be permitted to withdraw the pledged securities related to such stock purchase contracts from the pledge arrangement.

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DESCRIPTION OF DEPOSITARY SHARES

General

We may issue receipts for depositary shares, each of which will represent a fractional interest of a share of a particular series of preferred stock, as specified in the applicable prospectus supplement. The shares of preferred stock of each series represented by depositary shares will be deposited under a separate deposit agreement among Boston Properties, Inc., the depositary named in the deposit agreement, and the holders of the depositary receipts. Immediately following our issuance and delivery of the preferred stock to the depositary, we will cause the depositary to issue, on our behalf, the depositary receipts. Subject to the terms of the applicable depositary agreement, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of a particular series of preferred stock represented by the depositary shares evidenced by the depositary receipts, to all the rights and preferences of preferred stock represented by the depositary shares, including dividend, voting, conversion, redemption and liquidation rights, in each case as designated by our board of directors and described in the applicable prospectus supplement.

The summary of our depositary shares set forth below is not complete. You should refer to the applicable prospectus supplement, provisions of the deposit agreement and the depositary receipts that will be filed with the SEC as part of the offering of any depositary shares. To obtain copies of these documents, see [Where You Can Find More Information](#).

Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received with respect to the shares of the applicable series of the preferred stock proportionately to the record holders of the depositary receipts entitled to receive the distribution. Such distributions are subject to certain obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the depositary.

In the event of a non-cash distribution, the depositary will distribute property it receives to the record holders of depositary receipts entitled to the property unless the depositary determines that it cannot be made proportionately or it is not feasible to make such distribution, in which case the depositary may, with our approval, sell such property and distribute the net proceeds of such sale to holders of the depositary receipts entitled to receive the distribution. Such distributions by the depositary are subject to certain obligations of holders to file proofs, certificates, and other information and to pay certain charges and expenses to the depositary.

Withdrawal of Shares

Unless the related depositary shares have been called previously for redemption, upon surrender of the depositary receipts at the corporate trust office of the depositary, the holders thereof will be entitled to delivery at such office, to or upon such holder's order, of the number of whole or fractional shares of preferred stock and any money or other property represented by the depositary shares evidenced by such depositary receipts. Holders of depositary receipts will be entitled to receive whole or fractional shares of the related preferred stock on the basis of the proportion of preferred stock represented by each depositary share as specified in the applicable prospectus supplement, but holders of such preferred stock will not thereafter be entitled to receive depositary shares therefor. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the preferred stock to be withdrawn, the depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares.

Redemption

Whenever we redeem preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the preferred stock so redeemed, provided we have

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paid in full to the depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption. With respect to noncumulative preferred stock, dividends will be paid for the current dividend period only. The redemption price per depositary share will be equal to the redemption price and any other amounts per share payable with respect to the preferred stock. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected pro rata or by any other equitable method determined by us.

After the date fixed for redemption, the depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of the depositary receipts evidencing the depositary shares called for redemption will cease. However, the holders will have the right to receive any moneys payable upon redemption and any money or other property that the holders of such depositary receipts were entitled to at the time of redemption when they surrender their depositary receipts to the depositary.

Voting Rights

Upon receipt of notice of any meeting at which the holders of the preferred stock are entitled to vote, the depositary will mail the information contained in such notice to the record holders of the depositary receipts related to such preferred stock. Each record holder of depositary receipts on the record date will be entitled to instruct the depositary as to the exercise of the voting rights of the preferred stock related to such holder's depositary receipts. The record date for depositary receipts will be the same date as the record date for preferred stock. The depositary will vote the preferred stock related to such depositary receipts in accordance with such instructions, and we will agree to take all reasonable action that the depositary deems necessary to enable it to vote the preferred stock. The depositary will abstain from voting the preferred stock represented by such depositary shares to the extent it does not receive specific instructions from the holders of depositary receipts.

Liquidation Preference

In the event of our liquidation, dissolution or winding-up, whether voluntary or involuntary, each holder of a depositary receipt will be entitled to the fraction of the liquidation preference accorded the preferred stock represented by the depositary share evidenced by such depositary receipt, as set forth in the applicable prospectus supplement.

Conversion or Exchange of Preferred Stock

The depositary shares, as such, are not convertible into or exchangeable for common stock or any other securities or property. Nevertheless, if so specified in the applicable prospectus supplement relating to an offering of depositary shares, the depositary receipts may be surrendered by holders thereof to the depositary with written instructions to the depositary to instruct us to cause conversion or exchange of the preferred stock represented by the depositary shares into whole common stock, other preferred stock or other securities or property. Upon receipt of such instructions and any amounts payable in respect thereof, we will cause the conversion or exchange thereof utilizing the same procedures as those provided for delivery of preferred stock to effect such conversion or exchange. If the depositary shares evidenced by a depositary receipt are to be converted or exchanged in part only, one or more new depositary receipts will be issued for any depositary shares not to be converted or exchanged. No fractional shares will be issued upon conversion or exchange. If conversion or exchange will result in a fractional share being issued, we will pay in cash an amount equal to the value of the fractional interest based upon the closing price of the shares on the last business day prior to the conversion or exchange.

Amendment and Termination of the Deposit Agreement

The form of depositary receipt evidencing the depositary shares which represent the preferred stock and any provision of the deposit agreement may at any time be amended by agreement between the depositary and us.

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However, any amendment that materially and adversely alters the rights of the holders of depositary receipts will not be effective unless it has been approved by the existing holders of at least a majority of the depositary shares evidenced by outstanding depositary receipts.

We may terminate the deposit agreement upon not less than 30 days prior written notice to the depositary if (1) such termination is to preserve our status as a REIT or (2) a majority of each class of preferred stock affected by such termination consents to such termination. Upon termination of the deposit agreement, the depositary shall deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by such holder, such number of whole or fractional shares of preferred stock as are represented by the depositary shares evidenced by such depositary receipts. In addition, the deposit agreement will automatically terminate if:

all outstanding depositary shares have been redeemed;

there has been a final distribution in respect of the related share of preferred stock in connection with any liquidation, dissolution, or winding-up and such distribution has been distributed to the holders of depositary receipts evidencing the depositary shares representing such preferred stock; or

the related preferred stock shall have been converted into capital stock that is not represented by depositary shares.

Fees of Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the deposit agreement. In addition, we will pay the fees and expenses of the depositary in connection with the performance of its duties under the deposit agreement. However, holders of depositary receipts will pay the depositary's fees and expenses for any duties that holders request to be performed which are outside those expressly provided for in the deposit agreement.

Resignation and Removal of Depositary

The depositary may resign at any time by delivering to us notice of its resignation, and we may remove the depositary at any time. Any such resignation or removal will take effect upon the appointment of a successor depositary. A successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal. A successor depositary must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

Restrictions on Ownership

In order to safeguard us against an inadvertent loss of REIT status, the deposit agreement will contain provisions restricting the ownership and transfer of depositary shares. These restrictions will be described in the applicable prospectus supplement.

Miscellaneous

The depositary will forward to holders of depositary receipts any reports and communications from us which it receives with respect to the related shares of preferred stock. Neither we nor the depositary will be liable if it is prevented from or delayed in, by law or any circumstances beyond its control, performing its obligations under the deposit agreement. The obligations of the depositary and us under the deposit agreement will be limited to performing their duties thereunder in good faith and without gross negligence or willful misconduct. We and the depositary will not be obligated to prosecute or defend any legal proceeding in respect of any depositary receipts, depositary shares, or preferred stock represented thereby unless satisfactory indemnity is furnished. We and the depositary may rely on written advice of counsel or accountants, or information provided by persons

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presenting preferred stock represented thereby for deposit, holders of depositary receipts, or other persons believed to be competent to give such information, and on documents believed to be genuine and signed by a proper party.

If the depositary shall receive conflicting claims, requests, or instructions from any holders of depositary receipts, on the one hand, and us, on the other hand, the depositary shall be entitled to act on such claims, requests, or instructions received from us.

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DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of our preferred stock or our common stock. Warrants may be issued independently, together with any other securities offered by any prospectus supplement or through a dividend or other distribution to our and may be attached to or separate from such securities. We may issue warrants under a warrant agreement to be entered into between us and a warrant agent. We will name any warrant agent in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants of a particular series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. In the applicable prospectus supplement, we will describe the terms of the warrants and applicable warrant agreement, including, where applicable, the following:

the title of such warrants;

their aggregate number;

the price or prices at which we will issue them;

the designation, number and terms of the preferred stock or common stock that can be purchased upon exercise of them;

the designation and terms of the other securities, if any, with which such warrants are issued and the number of such warrants issued with each such security;

the date, if any, on and after which they and the related preferred stock or common stock, if any, will be separately transferable;

the price at which each share of preferred stock or common stock that can be purchased upon exercise of such warrants may be purchased;

the date on which the right to exercise them shall commence and the date on which such right shall expire;

the minimum or maximum amount of such warrants which may be exercised at any one time;

information with respect to book-entry procedures, if any;

a discussion of certain federal income tax considerations, and

any other terms of such warrants, including terms, procedures, and limitations relating to the transferability, exchange, and exercise of such warrants.

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LIMITS ON OWNERSHIP OF COMMON STOCK

Ownership Limits

For us to qualify as a real estate investment trust under the Internal Revenue Code, among other things, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals during the last half of a taxable year, and our outstanding stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. In order to protect us against the ri