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OPEN SPACE RESTRICTION COVENANT
(TRACT III)

This COVENANT, made effective as of this 29th day of October, 1997, by BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, having its office c/o Boston Properties, Inc., 8 Arlington Street, Boston, Massachusetts 02116 (the "Grantor").

The following are facts relevant to the execution of this Covenant:

A. The Grantor is the owner in fee of a parcel of land in Cambridge, Massachusetts, containing 34,402 square feet, more or less ("Tract III"), which is shown as "Tract III" on a plan entitled "Property Line Plan, Tract III of Parcel 3, Cambridge, MA," prepared by Allen & Major Associates, Inc., and dated October 23, 1997 (the "Property Line Plan"), to be recorded with the Middlesex South District Registry of Deeds concurrently herewith, and also shown as "Tract III" on a plan entitled "Master Easement Plan, Tract III of Parcel 3, Cambridge, MA," sheets E-1 through E-3, prepared by Allen & Major Associates, Inc. and dated October 23, 1997 (the "Easement Plan"), to be recorded concurrently herewith with said deeds and a print of said Easement Plan is attached as an Exhibit to an original counterpart of the Easement Agreement (hereinafter defined) to be filed with the Middlesex South Registry District of the Land Court concurrently herewith. The Grantor intends to improve Tract III by constructing thereon a fifteen (15) story residence hotel (the "Hotel").

B. Contained within Tract III is a parcel of land containing 7,341 square feet, more or less, which is shown as the "Public Open Space Easement Area" on sheet E-2 of the Easement Plan (the "Tract III Open Space Area").

C. Pursuant to the provisions of Article II, Paragraph 4 of that certain Parcel 3 Easement Agreement (Master Utility and Access Easements) (hereinafter the "Easement Agreement") dated of even date herewith by and between the Grantor and the Cambridge Redevelopment Authority (the "CRA") to be concurrently recorded with said Deeds and filed with said Registry, Grantor has agreed to dedicate of record the Tract III Open Space Area as public open space for the benefit of the general public and to use the Tract III Open Space Area for the purpose of installing and maintaining grass, walkways, shrubs and other forms of landscaping and public amenities.

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SEE PLAN IN RECORD BOOK 27840 PAGE 018

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D. Dedication of the Tract III Open Space Area to such public benefit comports with the requirements of Section 14.42 of the Zoning Ordinance for the City of Cambridge (the "Zoning Ordinance"), which requires that a minimum of 100,000 square feet within the Cambridge Center Mixed Use Development District (the "MXD District") which is contained within the "Kendall Square Urban Renewal Project" established by the CRA pursuant to Urban Renewal Plan dated August 30, 1965, as amended by Revised Amendment No. 1, dated October, 1977, as further amended by Amendment No. 2, dated May 19, 1981 and as further amended by Amendment No. 3, dated June 11, 1993, and as further amended by Amendment No. 4, approved by the CRA on April 15, 1997, be reserved or dedicated as public open space. The restrictions on the Tract III Open Space Area hereby imposed by the Grantor are intended to satisfy, in part, the aforesaid public open space requirement of the Zoning Ordinance.

NOW THEREFORE, the Grantor, hereby imposes the following restrictions on the Tract III Open Space Area, and assumes the following obligations in connection therewith:

(a) The Tract III Open Space Area shall be used only: (1) to provide light and air to the surrounding buildings and improvements; (2) for scenic, recreational, or similar purposes; (3) for subsurface utility services (including, without limitation, gas, electric, telephone and cable), water service and stormwater drainage; (4) for pedestrian ingress and egress to and from the Hotel and other improvements that may be constructed from time to time on Parcel A shown on the Property Line Plan; and (5) for such other purposes as are specified in the Easement Agreement. The Tract III Open Space Area shall be open and available to the community use of residents and lessees of, and visitors to, the MXD District, seven days a week, during the period commencing one hour after sunrise and ending one hour before sunset; provided that Grantor may (i) after 15 days' prior written notice to the City Manager of the City of Cambridge, or his successor or designee, adopt reasonable rules and regulations for purposes of safety and security to persons and property, with respect to the use and operation of the Tract III Open Space Area, which rules and regulations may, inter alia, modify the days and hours during which the Tract III Open Space Area shall be open and available for community use as aforesaid; and (ii) adopt such additional rules and regulations as may be approved by said City Manager, or his successor designee, which approval shall not be unreasonably withheld or delayed. The notice to said City Manager hereinabove required must set forth the proposed rules and regulations, a brief explanation of the reason for such rules and regulations, the proposed effective date of such rules and

regulations and an offer to meet with said City Manager, or his successor or designee, at least 10 days prior to the implementation of such proposed rules and regulations.

(b) No such rules and regulations shall be valid if they are at variance with the requirements of the Zoning Ordinance that the Tract III Open Space Area be open and available to the community use of the residents, lessees and visitors to the MXD District for reasonable amounts of time on a regular basis.

(c) The aforesaid restriction regarding the use and enjoyment of the Tract III Open Space Area shall be a burden on Tract III, and shall run to the benefit of, and shall be enforceable by, the City of Cambridge. The Tract III Open Space Area shall be subject to and burdened by the "Telephone, Electric and Cable Easement" and "Access and Utility Easement #1", each as defined in the Easement Agreement.

(d) The Grantor covenants and agrees to keep in effect, or cause to be kept in effect, at all times, general liability insurance naming the City of Cambridge and the CRA as parties insured, with limits of not less than \$1,000,000/\$5,000,000 against claims for injury to or death of one or more than one person, not less than \$500,000 for property damage and not less than \$50,000 for medical payments (or such greater limits as said City Manager, or his successor or designee, or the CRA, or its successor public body, may reasonably request from time to time) due to alleged incidents occurring on or about the Tract III Open Space Area or the other areas to be open and available for community use pursuant to the terms hereof. Upon request therefor, the Grantor shall promptly furnish, or cause to be furnished promptly, to the CRA and the City of Cambridge evidence, reasonably satisfactory to the CRA and the City of Cambridge, that the aforesaid insurance is being maintained.

(e) The Grantor covenants and agrees to maintain, or cause to be maintained, the Tract III Open Space Area and all improvements thereto (including, without limitation, landscaping) in an attractive, good, clean and sanitary condition, free of debris, and all pedestrian paths and passageways located on the Tract III Open Space Area shall be maintained sufficiently free of snow and ice to provide adequate and safe pedestrian access.

(f) This Covenant shall terminate automatically without the requirement of the execution or recordation of any further instrument of termination, upon the earlier of (i) the date on which the Hotel building improvements to be constructed upon Tract III, or any substantial part

thereof, no longer exist by reason of casualty or taking; or (ii) forty (40) years from the date hereof.

(g) Subject to the provisions of the preceding paragraph (f), this Covenant may not be amended, modified or terminated except by a majority vote of the City Council of the City of Cambridge and with the approval of the Grantor, its successors-in-title and assigns.

(h) The rights and obligations of the Grantor hereunder (including, without limitation, the right to adopt rules and regulations pursuant to the terms hereof) shall be appurtenant to and a burden upon the Tract III Open Space Area and Tract III and shall run to the benefit of, and be enforceable by, the City of Cambridge.

IN WITNESS WHEREOF, the undersigned has caused this Covenant to be duly executed, under seal, on the day and year first above written.

**BOSTON PROPERTIES
LIMITED PARTNERSHIP**

By: **Boston Properties, Inc.,
its sole general partner**

By: 

Name: Michael A. Cantalupo

Title: Vice President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Suffolk, ss.

November 3, 1997

Then personally appeared the above-named Michael A. Cantalupo, the Vice President of Boston Properties, Inc., the general partner of Boston Properties Limited Partnership, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation and limited partnership, before me.



NOTARY PUBLIC

My Commission Expires:

JAMES L. BLACK, JR.
NOTARY PUBLIC
My Commission Expires July 13, 2001