

OPEN SPACE RESTRICTION COVENANT
(Nine Cambridge Center)

This COVENANT made effective the 25th day of September, 1989, by DAVID BARRETT, EDWARD H. LINDE and MORTIMER B. ZUCKERMAN, as TRUSTEES OF NINE CAMBRIDGE CENTER TRUST (the "Grantor"), under Declaration of Trust dated October 15, 1982, recorded with Middlesex South District Registry of Deeds (hereinafter "Deeds") in Book 14771, Page 52, having its office c/o Boston Properties, 8 Arlington Street, Boston, Massachusetts.

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 43,707 sq. ft., or 1.00 acre, more or less, and shown as "Tract I" on a plan (the "Tract Plan") entitled "Plan of Land in Cambridge, MA prepared for Goody, Clancy & Associates", dated July 30, 1982, revised March 25, 1983, Scale 1" = 40', prepared by Allen & Demurjian, Inc., Engineers and Land Surveyors, Boston, Massachusetts, which is recorded with Deeds as Plan 1463 of 1983.

B. The Grantor has leased Tract I to THE WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH (the "Institute") pursuant to that certain Ground Lease dated December 19, 1983 (the "Ground Lease") between the Grantor, as landlord, and the Institute, as tenant, notice of which Ground Lease has been recorded with Deeds in Book 15370, Page 215 and registered with the Middlesex South District Registry of the Land Court as Instrument No. 653023 on

1-15

Certificate of Title No. 169692. Pursuant to the Ground Lease, the Institute has constructed and presently occupies a building and ancillary improvements (the "Building") known as Nine Cambridge Center upon Tract I.

C. The Grantor and the Institute, together with the Cambridge Redevelopment Authority and Cambridge Center Associates, have previously entered into that certain Operating and Easement Agreement dated December 19, 1983 and recorded with Deeds in Book 15370, Page 221 and registered with the Middlesex South District Registry of the Land Court as Instrument No. 653024. Pursuant to Paragraph 1 of the Agreement, following construction of the plaza area of the Building fronting on Main Street as shown and so designated on the Tract Plan, the Grantor agreed to take all action as may be required to dedicate said plaza area as public open space for the benefit of the general public.

D. The plaza area to be dedicated as public open space pursuant to this Covenant contains approximately 10,930 square feet, more or less, as described in Exhibit A attached hereto and made a part hereof, and more particularly shown as "Open Space Easement" on a plan ("Easement Plan") entitled "Open Space Easement Plan in Cambridge, Massachusetts, scale = 1" = 20', July 11, 1989, revised September 1, 1989 prepared for Boston Properties, prepared by Allen, Demurjian, Major & Nitsch, Inc., 806 Massachusetts Avenue, Cambridge, Massachusetts," which

Easement Plan is to be recorded with Deeds and registered with the Middlesex South District Registry of the Land Court concurrently herewith.

E. Dedication of the 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, and as further amended by Amendment No. 2, dated May 19, 1981), be reserved or dedicated as public open space. The restrictions on the 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 Open Space Area and assumes the following obligations in connection therewith:

(a) The Open Space Area shall be used only: (1) to provide light and air to the Building, (2) for scenic, recreational, or similar purposes, and (3) for pedestrian access to and from the Building and to and from stairs or elevators, if any, providing access to any and all levels of any parking garage abutting Tract I to the north and east (the "Garage"). The 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, except that the Open Space Area shall be open and available 24 hours per day for any lawful and permitted use by the Grantor and owner and lessees of the Building and for any access provided to the Garage provided that no such use or access shall affect the public open space benefit hereby imposed upon the Open Space Area; and provided further that the 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 Open Space Area, which rules and regulations may, inter alia, modify the days and hours during which the 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 or 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, to discuss such rules and regulations. The Grantor shall use reasonable efforts to so

consult 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 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 Open Space Area shall be a burden on Tract I and shall run to the benefit of, and shall be enforceable by, the City of Cambridge.

(d) The Grantor covenants and agrees to keep 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 Open Space Area. Upon written request therefor, the Grantor shall promptly furnish 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.

5-15

(e) The Grantor covenants and agrees to maintain, or cause to be maintained, at its sole expense, the Open Space Area and all improvements thereto (including, without limitation, landscaping), in an attractive, good, clean and sanitary condition, free of debris and sufficiently free of snow and ice to provide adequate and safe pedestrian access as aforesaid.

(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 improvements constructed within the MXD District, in their entirety or any substantial part thereof, no longer exist by reason of casualty or taking; and (ii) forty (40) years from the date hereof.

(g) Subject to the foregoing provisions, 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 (which term as used herein shall include successors and assigns) hereunder (including, without limitation, the right to adopt rules and regulations pursuant to the terms hereof) shall be appurtenant to and a burden upon Tract I and shall run to the benefit of, and be enforceable by, the City of Cambridge.

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

NINE CAMBRIDGE CENTER TRUST

By: David Barrett
David Barrett, as Trustee,
not individually, and
without personal liability

By: Edward H. Linde
Edward H. Linde, as Trustee,
not individually, and
without personal liability

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Boston, Massachusetts
September 25, 1989

Then personally appeared the above-named David Barrett, Trustee as aforesaid of Nine Cambridge Center Trust, and acknowledged the foregoing instrument to be his free act and deed, as Trustee, before me

FRANK D. BURT, NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 4, 1991

Frank D. Burt
Notary Public
My Commission Expires: _____

The undersigned, THE WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH, being the tenant under a certain Ground Lease dated December 19, 1983 (the "Ground Lease"), from David Barrett, Edward H. Linde and Mortimer B. Zuckerman, as Trustees of Nine Cambridge Center Trust, u/d/t dated October 15, 1982, recorded with Middlesex South District Registry of Deeds in Book 14771, Page 52, as landlord, to The Whitehead Institute for Biomedical Research, as tenant, a notice of which Ground Lease has been recorded with the Middlesex South District Registry of Deeds in Book 15370, Page 215, and registered with the Middlesex South District Registry of the Land Court as Instrument No. 653023 on Certificate of Title No. 169692, for itself and its successors and assigns, hereby joins in and consents to this Open Space Restriction Covenant and the rights granted herein and obligations imposed hereby, and does hereby subordinate the Ground Lease and the tenant's interest thereunder to the rights granted herein and

7-15

obligations imposed hereby, all with the same force and effect as if this Open Space Restriction Covenant (Nine Cambridge Center) had been executed, delivered, recorded and registered prior to the execution, delivery, recordation and registration of the Ground Lease.

Further, the undersigned hereby acknowledges and confirms that certain of the obligations of Grantor contained in the Open Space Restriction Covenant (Nine Cambridge Center), such as maintenance of the condition of the Open Space Area and insurance thereon, are the obligations of the undersigned pursuant to the Ground Lease.

SIGNED AND SEALED as of this 25th day of September, 1989.

THE WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH

By: John Pratt
Name: John Pratt
Title: Vice President
Hereunto duly authorized

[Corporate Seal]

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Boston, Massachusetts
September 25, 1989

Then personally appeared the above-named John Pratt, Vice President of The Whitehead Institute for Biomedical Research, a Delaware corporation, and acknowledged the foregoing instrument to be the free act and deed of said Corporation, before me

Alicia M. Colarte
Notary Public

My Commission Expires: _____

Alicia M. Colarte, Notary Public
My Commission Expires
February 18, 1994

8-15

EXHIBIT ALEGAL DESCRIPTIONOPEN SPACE EASEMENT

A certain parcel of registered and unregistered land situated on the northerly side of Main Street and the easterly side of Galileo Galilei Way in the City of Cambridge, in the County of Middlesex, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the northerly sideline of Main Street, in the City of Cambridge at the southeasterly corner of the premises; thence

N 84° 25' 14" W by the northerly sideline of Main Street a distance of Ninety-Five and Fifty-Two Hundredths feet (95.52) to a point of curvature; thence

Northwesterly and curving to the right along the arc of a curve, forming the intersection of Main Street and Galileo Galilei Way, having a radius of Fifty feet (50.00), a length of Eighty-Three and Seven Hundredths feet (83.07) to a point of tangency on Galileo Galilei Way; thence

N 10° 46' 14" E by the easterly sideline of Galileo Galilei Way a distance of Twenty-Five and Fifty Eight Hundredths feet (25.58) to the building corner of the Whitehead Institute; thence

S 84° 20' 03" E a distance of Twenty-Three and Fifteen Hundredths feet (23.15) to a point; thence

N 11° 52' 15" E a distance of Five and Seventy-Eight Hundredths feet (5.78) to a point of curvature; thence

Northeasterly and curving to the left along the arc of a curve, having a radius of Six and Fifty-Nine Hundredths feet (6.59), a length of Four and Eighty-One Hundredths feet (4.81) to a point of tangency; thence

S 46° 30' 58" E a distance of Four and Eighteen Hundredths feet (4.18) to a point of curvature; thence

Easterly and curving to the left along the arc of a curve having a radius of Fourteen and Sixty-Two Hundredths feet (14.62), a length of Thirteen and Forty-One Hundredths feet (13.41) to a point of reverse curvature; thence

Northerly and curving to the right along the arc of a curve having a radius of Thirty-Eight and Seventy-Four Hundredths feet (38.74), a length of Six and Sixty-Eight Hundredths feet (6.68) to a point; thence

Legal Description: 361-33
Page 2 of 2

- S 51° 00' 49" E a distance of Twenty-One and Seventy-Six Hundredths feet (21.76) to a point of curvature; thence
Easterly and curving to the left along the arc of a curve having a radius of Twenty-Six and Thirty Hundredths feet (26.30), a length of Thirty-Two and Ten Hundredths feet (32.10) to a point; thence
- N 61° 46' 33" E a distance of Twelve and Twelve Hundredths feet (12.12) to a point; thence
- S 83° 56' 23" E a distance of Two and Fifty-Four Hundredths feet (2.54) to a point; thence
- S 06° 20' 01" W a distance of Ninety Hundredths feet (0.90) to a point; thence
- S 84° 11' 53" E a distance of Ten and Thirty-One Hundredths feet (10.31) to the building corner of the Whitehead Institute. The last twelve course run by the southerly face of the Whitehead Institute; thence
- S 84° 25' 14" E a distance of Twenty-One and No Hundredths feet (21.00) to a point; thence
- S 05° 34' 46" W a distance of Eighty feet (80.00) to the point of beginning.

The above described easement contains an area of 10,930 square feet, more or less, in Cambridge, Massachusetts, and is more particularly shown as Open Space Easement on a plan entitled "Open Space Easement Plan in Cambridge, Massachusetts", Scale 1 inch = 20 feet, dated July 11, 1989, revised September 1, 1989, prepared for Boston Properties, prepared by Allen, Demurjian, Major & Nitsch, Inc., 806 Massachusetts Avenue, Cambridge, Massachusetts. A portion of the above described parcel is also shown as a portion of Lot 28 and unregistered land on Land Court Case 30711F.

10.S3638

RECORDED
MAY 11 1990
OFFICE OF THE CLERK
SOUTH BRANFORD, CT

10-15

FOR REGISTRY USE ONLY

OPEN SPACE EASEMENT PLAN

IN
CAMBRIDGE, MA.

SCALE: 1"=40' JULY 11, 1989
REV. SEPT. 11, 1993

PREPARED FOR

BOSTON PROPERTIES
100 WASHINGTON STREET
BOSTON, MA

PREPARED BY

ALLEN
DEMURJIAN
MAJOR &
NITSCH, INC.

ENGINEERS, ARCHITECTS & LAND SURVEYORS
806 MASSACHUSETTS AVENUE
CAMBRIDGE, MA

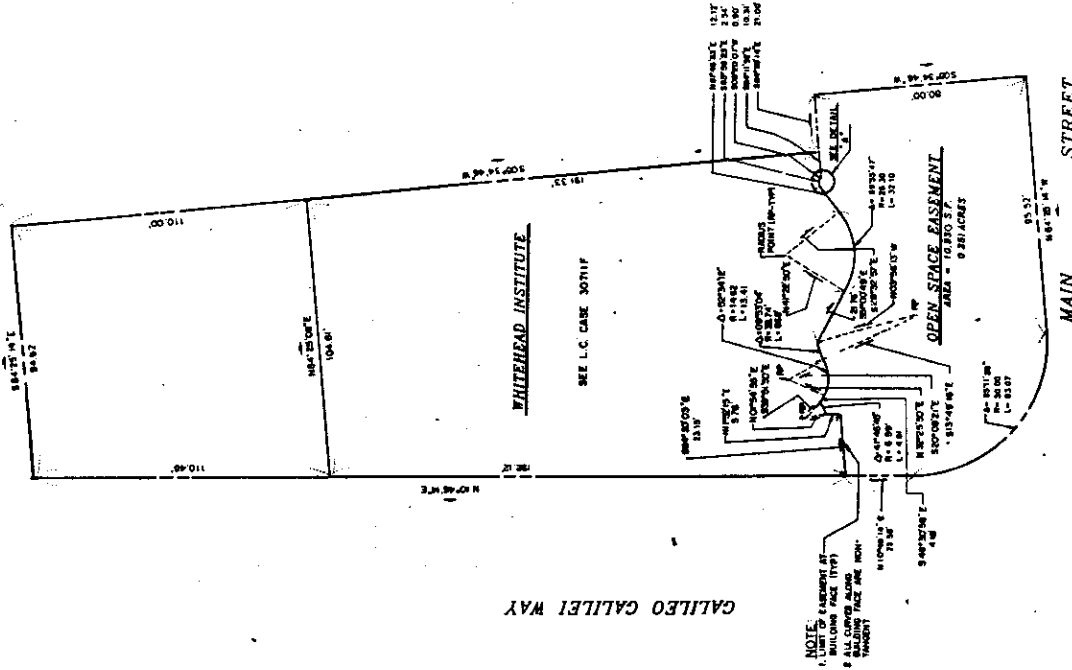
I HEREBY CERTIFY THAT:
TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF,
THIS PLAN CONFORMS WITH THE RULES
AND REGULATIONS OF THE REGISTRY
OF DEEDS DATED JANUARY 1, 1976

DATE Aug. 9, 1989

[Signature]
DORIS C. ALLEN P.L.S. No. 12345



30-15



LEGEND
PROPERTY LINE
EASING

11-15

DEED

DAVID BARRETT, EDWARD H. LINDE AND MORTIMER B. ZUCKERMAN, as TRUSTEES of NINE CAMBRIDGE CENTER TRUST under Declaration of Trust dated October 15, 1982 and recorded with Middlesex South Registry of Deeds in Book 14771, Page 52 (the "Grantor"), and with a mailing address c/o Boston Properties, 8 Arlington Street, Boston, Massachusetts 02116, in consideration of \$1,870,000 paid, grants unto WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH, a Delaware corporation, with a principal place of business at Nine Cambridge Center, Cambridge, Massachusetts 02142 (the "Grantee"), with QUITCLAIM COVENANTS, the land in the City of Cambridge, Middlesex County, Massachusetts described as follows:

A parcel of land, together with all of the Grantor's rights, if any, in all buildings and other improvements thereon, situated in Cambridge, Middlesex County, Massachusetts, shown as Tract I on a plan entitled "Plan of Land in Cambridge, MA., Prepared for Goody, Clancy & Assoc.", dated July 30, 1982, revised March 25, 1983, Scale 1" = 40', prepared by Allen & Demurjian, Inc., Engineers and Land Surveyors, Boston, Massachusetts, which land is more particularly bounded and described as follows:

Beginning at a point which point is N. 52° -34' -18"E. Two Hundred Eight and 95/100 (208.95) feet from the intersection of the westerly line of Vassar Street and southerly line of Main Street; thence running

- N.10° -46' -14"E. by land now or formerly of Cambridge Redevelopment Authority, Three Hundred Twenty-Eight and 15/100 (328.15) feet to a point; thence turning and running
- S.84° -25' -14"E. by land now or formerly of Cambridge Redevelopment Authority, Ninety-Four and 62/100 (94.62) feet to a point; thence turning and running
- S.05° -34' -46"W. by land now or formerly of Cambridge Redevelopment Authority, Three Hundred One and 33/100 (301.33) feet to a point; thence turning and running
- S.84° -25' -14"E. by land now or formerly of Cambridge Redevelopment Authority, Twenty-One and 00/100 (21.00) feet to a point; thence turning and running

12-15

S.05° -34' -46"W. by land now or formerly of Cambridge Redevelopment Authority, Eighty and 00/100 (80.00) feet to a point; thence turning and running

N.84° -25' -14"W. by land now or formerly of Cambridge Redevelopment Authority, Ninety-Five and 52/100 (92.52) feet to a point; thence turning and running

Westerly
Northwesterly
& Northerly by land now or formerly of Cambridge Redevelopment Authority, by a curve to the right, the radius of which is Fifty and 00/100 (50.00) feet, Eighty-Three and 07/100 (83.07) feet to the point of beginning.

Containing, according to said plan, a total of 43,707.02 square feet of land.

975
p 86

Included within Tract I is the registered land shown as Lot 27 and Lot 28 on Land Court Plan 30711F filed with Certificate of Title No. 169036.

The premises are conveyed to the Grantee subject to and with the benefit of all matters set forth in the deed of the premises to the Grantor dated December 19, 1983, and recorded with the Middlesex (South) Registry of Deeds in Book 15370, Page 184, and filed for registration with the Middlesex (South) Registry District of the Land Court as Document No. 653022, and all other matters of record to the extent the same are in force and applicable. The premises are also conveyed subject to unpaid real estate taxes, if any.

For Grantor's title see deed of Cambridge Redevelopment Authority dated December 19, 1983, recorded with said Registry of Deeds in Book 15370, Page 184 and filed with said Registry District as Document No. 653022, and noted on Certificate of Title No. 169692. BK p

WITNESS THE EXECUTION HEREOF under seal as of the 25th day of September, 1989. DK p

WITNESS:

Frank D. Burt
Frank D. Burt

David Barrett
David Barrett, as Trustee of
Nine Cambridge Center Trust,
and not individually
FOR SELF + CO TRUSTEE

[Signatures continued on next page]

13-15

WITNESS:

Frank D. Burt
Frank D. Burt

Edward H. Linde
Edward H. Linde, as Trustee
of Nine Cambridge Center
Trust, and not individually
for self & Co Trustee

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

September 25, 1989

Then personally appeared the above-named David Barrett,
Trustee of Nine Cambridge Center Trust and acknowledged the
foregoing to be his free act and deed, as such trustee as
aforesaid, before me,

Frank D. Burt
Notary Public
My Commission Expires:
FRANK D. BURT, NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 4, 1991

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

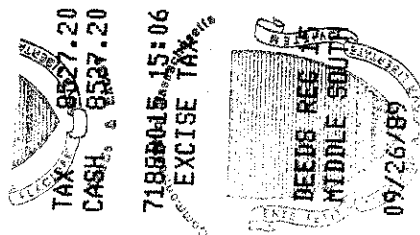
September 25, 1989

Then personally appeared the above-named Edward H. Linde,
Trustee of Nine Cambridge Center Trust and acknowledged the
foregoing to be his free act and deed, as such trustee as
aforesaid, before me,

Frank D. Burt
Notary Public
My Commission Expires:

FRANK D. BURT, NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 4, 1991

5712c



SEP 27 1989
SUFFOLK COUNTY
NOTARY PUBLIC

14-15

15-15

8 0 7 5 7 3

9

Alicia M. Colarte, Esq.
Choate, Hall & Stewart
Exchange Place
53 State Street
Boston, Mass. 02109

DOCUMENT 807573

SO. MIDDLESEX LAND COURT
REGISTRY DISTRICT
RECEIVED FOR REGISTRATION

ON 09/26/89 AT 02:38:37 45.00

NOTED ON:
CERT 0169692 BK 978 PG 142

NEW CERTIFICATE(S) CREATED:
CERT 0186351 BK 1062 PG 1

MASS. COMMISSION EXHIBITS
PUBLIC RECORDS DIVISION

* MASS. EXCISE TAX: 8527.20 *

MASS. COMMISSION EXHIBITS
PUBLIC RECORDS DIVISION

OK to Grantee