

December 29, 2011

Securities Exchange Act of 1934  
Section 13(e)  
Section 14(e)  
Rule 13e-4  
Rule 14e-5

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U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Boston Properties Limited Partnership - Exchangeable Notes Redemption Right**

Ladies and Gentlemen:

We are writing on behalf of our client, Boston Properties Limited Partnership, a Delaware limited partnership ("Boston Properties"), in connection with (1) the right (the "Put Option") of each holder of its 2.875% Exchangeable Senior Notes due 2037 (the "Securities") to require Boston Properties to repurchase any or all of the Securities held by such holder on February 15, 2012 (the "Put Repurchase Date"), as provided for under terms of the Indenture and Supplemental Indenture relating to the Securities (collectively, the "Indenture"), for a cash amount equal to the principal amount of such Securities plus any accrued and unpaid interest up to, but not including, the date of repurchase (the "Put Option Price") and (2) the right (the "Redemption Right") of Boston Properties to redeem the Securities on or after February 20, 2012 at a redemption price equal to the principal amount of such Securities plus any accrued and unpaid interest up to, but not including, the date of redemption (the "Redemption Price").

We hereby respectfully request, on behalf of Boston Properties, that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that, based on the facts and circumstances described in this letter, it will not recommend any enforcement action to the Commission under Rules 14e-5(a) and 13e-4(l)(6) under the Securities Exchange Act of 1934, as

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amended (the "Exchange Act") as a result of Boston Properties's purchases or arrangements to purchase the Securities upon its exercise of the Redemption Right at any time permitted by the terms of the Indenture provided that the offers and purchases by Boston Properties of the Securities pursuant to the Put Option are conducted in the manner described in this letter.

## **I. Background**

Boston Properties is a domestic real estate company. Boston Properties is the entity through which Boston Properties, Inc., a Delaware corporation (the "Company"), a self-administered and self-managed real estate investment trust, conducts substantially all of its business and owns (either directly or through subsidiaries) substantially all of its assets. The Company is the sole general partner of Boston Properties and, as of September 30, 2011, the Company owned approximately 88.0% of the economic interests in Boston Properties. In February 2007, Boston Properties issued \$862,500,000 aggregate principal amount of the Securities in a transaction that was exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"). In March 2007, Boston Properties and the Company filed a Registration Statement on Form S-3 (File No. 333-141257) to register the resale of the Securities and the shares of common stock, par value \$0.01, of the Company (the "Common Stock") that may be issued on the exercise of the holders' option to exchange the Securities under the terms of the Indenture. Boston Properties has informed us that, as of the date of this letter, \$576,194,000 aggregate principal amount of the Securities are outstanding.

Both the Company and Boston Properties have been subject to the reporting provisions of the Exchange Act for many years and expect to remain subject to such reporting provisions through the Put Repurchase Date. Accordingly, both the Company and Boston Properties were required to file, and have filed, Form 10-Ks for the fiscal year ended December 31, 2010.

### **A. Put Option Relating to the Securities**

As discussed above, the holders of the Securities have the right to require Boston Properties to purchase the Securities on the Put Repurchase Date at the Put Option Price. A holder may exercise the Put Option by delivering a repurchase notice, in the form set forth on the reverse of the Note evidencing the Securities that was issued in February 2007, to the Trustee for the Securities (the "Trustee") at any time during the 21 business day period (the "Put Option Period") that extends from the date that is 25 business days prior to the Put Repurchase Date until the close of business on the fifth business day prior to the Put Repurchase Date (i.e., on or after January 10, 2012 but not later than February 8, 2012). A holder that has delivered a

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repurchase notice may withdraw the repurchase notice by means of a written notice of withdrawal delivered at any time prior to 10:00 A.M., Eastern Time, on the fourth business day prior to the Put Repurchase Date (i.e., February 9, 2012). Pursuant to the Indenture, Boston Properties is required to deliver notice (the "Company Put Notice") to the Trustee and each holder that has delivered a repurchase notice within 10 business days of the receipt of such repurchase notice or, if a shorter period, at least two business days prior to the Put Repurchase Date setting forth the following:

- (i) the Put Option Price and the exchange rate for the Securities;
- (ii) the name and address of the paying agent and the exchange agent;
- (iii) that Securities as to which a repurchase notice has been given may be exchanged in accordance with the Indenture only if the applicable repurchase notice has been withdrawn in accordance with the terms of the Indenture;
- (iv) that Securities must be surrendered to the paying agent to collect payment;
- (v) that the Put Option Price for any Securities as to which a repurchase notice has been given and not withdrawn will be paid promptly following the later of the Put Repurchase Date and the time of surrender of such Securities as described in subclause (iv) above;
- (vi) the procedures the holder must follow to exercise the Put Option and a brief description of those rights;
- (vii) briefly, the exchange rights of the Securities;
- (viii) the procedures for withdrawing a repurchase notice;
- (ix) that, unless Boston Properties defaults in making payment on Securities for which a repurchase notice has been submitted, interest on the Securities in respect of which a repurchase notice has been delivered and not withdrawn will cease to accrue on the Put Repurchase Date; and
- (x) the CUSIP number of the Securities.

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Boston Properties will purchase in cash any Securities with respect to which the Put Option has been validly exercised and which have not been subsequently withdrawn in accordance with the terms of the Indenture on the Put Repurchase Date.

Boston Properties will treat the Put Option as an issuer tender offer subject to Section 14(e) of the Exchange Act and Rules 13e-4 and 14e-5 and Regulation 14E under the Exchange Act and will file a Schedule TO relating to the Put Option on or before the commencement of the Put Option Period in accordance with Rule 13e-4.

#### **B. Exchange Features of the Securities**

Holders of the Securities have the right to exchange their Securities prior to February 20, 2012 in certain circumstances (including upon Boston Properties's exercise of the Redemption Right) and at any time on or after February 20, 2012 and prior to the close of business on the trading day immediately preceding the stated maturity of February 15, 2037.

The current exchange rate of the Securities is 7.0430 shares of Common Stock per \$1,000 principal amount of the Securities, and the exercise of the Redemption Right by Boston Properties has no impact on the exchange rate of the Securities. Generally, upon exchanging the Securities, holders have the right to receive (1) an amount in cash equal to the lesser of the aggregate principal amount of the Securities being exchanged and the value of the Common Stock into which such Securities are exchangeable based on market sales prices and (2) to the extent that the value of the Common Stock into which such Securities are exchangeable exceeds the aggregate principal amount of the Securities being exchanged, an amount in cash or shares of Common Stock, at Boston Properties's option, with a value equal to the amount of such excess. Based on the closing price of the Common Stock on December 13, 2011, the exchange value of the Securities (approximately \$651.76 per \$1,000 of aggregate principal amount) is significantly less than the aggregate principal amount of the Securities.

#### **C. Redemption Right Relating to the Securities**

As described above, Boston Properties has the Redemption Right with respect to the Securities beginning on or after February 20, 2012. In order to exercise the Redemption Right, Boston Properties must give notice to each holder of the Securities not less than 30 days nor more than 60 days prior to the redemption date (e.g., if Boston Properties wants to redeem the Securities on February 20, 2012, it would have to give notice on or after December 22, 2011 but not later than January 21, 2012). If Boston Properties exercises the Redemption Right, all Securities with

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respect to which the Redemption Right is exercised that remain outstanding on the redemption date (i.e., all of such Securities that have not previously been repurchased by Boston Properties and with respect to which the holders have not exercised the Put Option or the exchange feature of such Securities) will be redeemed by Boston Properties at the Redemption Price upon the terms set forth in the Indenture. Boston Properties has sole discretion as to whether and when to exercise the Redemption Right, provided that it complies with the terms of the Indenture regarding the Redemption Right, and the Redemption Right is mandatory (i.e., it applies equally to all holders of Securities with respect to which the Redemption Right was exercised that remain outstanding on the redemption date and the holders do not have the right to have any of such Securities included or excluded from the redemption). The Redemption Price and the Put Option Price are economically equivalent, as both are equal to the aggregate principal amount of the Securities redeemed or put plus any accrued and unpaid interest up to the redemption or repurchase date. The Securities outstanding as of the date of this letter accrue interest amounting, in the aggregate, to approximately \$45,000 per day. Accordingly, Boston Properties would like to have the ability to exercise the Redemption Right at the earliest possible time under the Indenture. Absent the relief requested in this letter, as discussed below, Boston Properties could be precluded from exercising the Redemption Right until the Put Option Period expires (i.e., February 9, 2011) or redeeming Securities pursuant to the Redemption Right until the expiration of ten business days after the end of the Put Option Period (i.e., on or after February 24, 2012), thereby preventing the Company from retiring the Securities at the earliest possible time under the Indenture. Given the 30-day notice period required to exercise the Redemption Right, if Boston Properties was not able to exercise the Redemption Right until after the Put Option Period expires with respect to all of the Securities outstanding as of the date of this letter, then Boston Properties would not be able to complete the redemption until March 10, 2012. As a result, holders of the Securities who had not exercised the Put Option would not receive their entire principal as a result of the exercise of the Redemption Right, and thereby have the inherent risk of non-repayment removed, until this later date, at the earliest. In addition, Boston Properties would be required to pay more than \$900,000 in additional accrued interest, which it would not be required to pay if it was able to redeem the Securities on February 20, 2012 and otherwise would inure to the benefit of equity investors in Boston Properties and the Company. As a result, Boston Properties would like to have the ability to exercise the Redemption Right at the earliest possible time under the Indenture. Boston Properties does not expect its exercise of the Redemption Right to impact the trading price of the Common Stock, except to the extent investors substantively view the redemption of the Securities as positively or negatively impacting the value of the Common Stock, and any such exercise will not be undertaken for the purpose of impacting the trading price of the Common Stock.

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## II. Discussion

### A. Rule 14e-5(a)

If the Put Option was considered a tender offer, which Boston Properties is treating it as, Boston Properties would be subject to Rule 14e-5 under the Exchange Act. Rule 14e-5(a) prohibits a person making a tender offer for equity securities, including the issuer of the securities or one of its affiliates, from directly or indirectly purchasing or arranging to purchase any subject securities except as part of the tender offer. The prohibition on purchases outside a tender offer applies from the time of public announcement of the tender offer until the tender offer expires. As a result, if Boston Properties desired to exercise the Redemption Right at the earliest possible time provided for in the Indenture, Boston Properties's exercise of the Redemption Right could be considered an arrangement to purchase securities subject to a tender offer outside of the tender offer in violation of Rule 14e-5(a).

Rule 14e-5(a) is intended to prevent fraudulent and manipulative practices in tender offers involving purchases or arrangements to purchase securities outside of a tender offer. These practices include taking advantage of the market's response to the tender offer and offering different prices to holders outside of the offer. The Commission's adopting release relating to Rule 10b-13, the predecessor to Rule 14e-5(a), noted that purchases outside a tender offer "are often fraudulent or manipulative in nature and they can deceive the investing public as to the true state of affairs.... [B]y prohibiting a person who makes a cash tender offer or exchange offer from purchasing equity securities of the same class during the tender offer period otherwise than pursuant to the offer itself, the rule accomplishes the objective of safeguarding the interests of the persons who have tendered their securities in response to a cash tender offer or exchange offer; moreover once the offer has been made, the rule removes any incentive on the part of holders of substantial blocks of securities to demand from the person making a tender offer or exchange offer a consideration greater than or different from that currently offered to public investors."<sup>1</sup>

As discussed above, the Redemption Price and the Put Option Price are economically equivalent, except for any differences in accrued and unpaid interest due based solely on any differences in the date either is paid. Additionally, the terms governing the exercise of the Redemption Right, including the Redemption Price, are specified in the Indenture. Accordingly, we believe that Boston Properties's exercise of the Redemption Right prior to the expiration of the Put Option does not present the potential for manipulation of the price of the Securities. In view of the foregoing, it does not appear to us that the proposed transactions would entail any of the abuses

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intended to be addressed by Rule 14e-5(a). Additionally, permitting Boston Properties to exercise the Redemption Right prior to the expiration of the Put Option would enable holders of the Securities who had not exercised the Put Option to receive their entire principal from Boston Properties pursuant to the exercise of the Redemption Right, and thereby have the inherent risk of non-repayment removed, earlier than they otherwise would. This would also allow Boston Properties to potentially save up to \$900,000 in interest that it would not be required to pay, which would inure to the benefit of equity investors in Boston Properties and the Company.

In addition, we believe that the factual situation presented in this letter is nearly identical to that presented in *CenterPoint Energy, Inc.* (avail. Dec. 21, 2006), where the Staff took a no-action position under Rules 14e-5(a) and 13e-4(f)(6) under the Exchange Act similar to the no-action position that we are requesting pursuant to this letter. In *CenterPoint*, the structure of the security involved was substantially identical in all relevant respects; however, the company expected the exchange value of the security to exceed the redemption price for the put option and redemption right. As a result, the company expected holders not to elect to participate in either the put option or the redemption right and, instead, elect to exercise the exchange feature of the security. In contrast, Boston Properties does not expect holders to exercise the exchange feature of the Securities given the fact that the current exchange value is significantly less than the aggregate principal amount of the Securities. However, we do not believe that this difference should result in a different outcome than was reached in *CenterPoint*, as what we believe to be the key facts, as they relate to Rules 14e-5(a) and 13e-4(f)(6), are identical in both situations. Specifically, both situations involve the exercise of a redemption right at a redemption price that is economically equivalent to the price offered pursuant to the put option, which in both cases was being treated as an issuer tender offer, and in both situations the terms of the redemption right and the put option were fixed in connection with the issuance of the original security, several years before either could be exercised, and were contained in a publicly available indenture governing the security. In addition, as a result of the terms of the redemption rights and put options being contained in the indentures governing the terms of the securities, in both situations, the redemption right and put option were applicable in the same manner to all holders of the relevant securities. Accordingly, we believe that granting the relief requested would be consistent with the Staff's prior position in *CenterPoint*.

#### **B. Rule 13e-4(f)(6)**

Rule 13e-4 contains a number of requirements that apply to issuer tender offers. Pursuant to Rule 13e-4(a)(2), an issuer tender offer is "a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer of such class of equity security or by an

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affiliate of such issuer.” Because the Common Stock is registered under Section 12(b) of the Exchange Act and Boston Properties is an affiliate of the Company, a tender offer by Boston Properties for the Common Stock or any security convertible, with or without consideration, into the Common Stock would be subject to Rule 13e-4.<sup>2</sup> As a result of the exchange feature of the Securities, the Securities may be considered equity securities for purposes of Rule 13e-4 notwithstanding the fact that (1) the exchange feature of the Securities may remain out of the money through the Put Repurchase Date, which means that holders would not be entitled to any Common Stock upon exchange of the Securities, and (2) even if the exchange feature of the Securities was in the money, the holders would not have the right to receive any Common Stock because Boston Properties has the option to repay any excess over the aggregate principal amount of the Securities exchanged in either cash or shares of Common Stock. Accordingly, if the Put Option was deemed to be a tender offer for purposes of Rule 13e-4, which Boston Properties is treating it as, then the provisions of Rule 13e-4, including Rule 13e-4(f)(6), would apply to Boston Properties.

Like Rule 14e-5(a), Rule 13e-4(f)(6) prohibits an issuer from making any purchases, otherwise than pursuant to the tender offer, of any security that is the subject of the issuer tender offer. Unlike Rule 14e-5(a), the prohibition on purchases outside of a tender offer applies from the expiration of the tender offer and extends until ten business days following the termination of the tender offer.

If the Put Option was considered a tender offer, which Boston Properties is treating it as, Boston Properties’s redemption of the Securities upon its exercise of the Redemption Right at the earliest possible time permitted by the Indenture would not be consistent with Rule 13e-4(f)(6).

In addressing the restrictions imposed by Rule 13e-4(f)(6) (and, in particular, the restrictions applicable for the ten business days after termination of an issuer tender offer), the adopting release for Rule 13e-4 noted that the “provision is essentially an antimanipulation restriction” and that “[a] tender offer tends to peg the market price of the security which is the subject of the tender offer at or near the offering price, and the purpose of the prohibition ... is to prevent the issuer from supporting the market at that artificial price after termination of the tender offer.”<sup>3</sup> According to the proposing release relating to Rule 13e-4, the “Commission believes that a period of ten business days after a tender offer is sufficient to permit the impact of the offer on the market to subside before subsequent purchases are made.”<sup>4</sup> Similarly, the adopting release for Rule 13e-4 noted that “[t]he Commission continues to believe that this short ‘cooling-off’ period constitutes a reasonable means to ensure that the market impact of the tender offer on the



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issuer's securities is dissipated by market activity unaffected by additional purchases by the issuer."

For the reasons discussed above in connection with the discussion of Rule 14e-5(a), it does not appear to us that the exercise of the Redemption Right, which is a contractual provision of the Securities, would entail any of the abuses intended to be addressed by Rule 13e-4(f)(6).

### III. Request for Exemption or No-Action Position.

For the foregoing reasons, we hereby respectfully request, on behalf of Boston Properties, that the Staff confirm that, based on the facts and circumstances described in this letter, it will not recommend any enforcement action to the Commission under Rules 14e-5(a) and 13e-4(f)(6) under the Exchange Act as a result of Boston Properties's purchases or arrangements to purchase the Securities upon its exercise of the Redemption Right at any time provided that the offers and purchases by Boston Properties of the Securities pursuant to the Put Option are conducted in the manner described in this letter.

\* \* \*

As required by the Securities Act Release No. 6269, seven copies of this letter are being submitted herewith. If the Staff requires any additional information, please contact the undersigned at (617) 570-1966.

Respectfully submitted,



Daniel P. Adams

cc: Michael E. LaBelle (Boston Properties Limited Partnership)  
Eric G. Kevorkian (Boston Properties Limited Partnership)  
Ettore A. Santucci (Firm)

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<sup>1</sup> Exchange Act Release No. 8712 (Oct. 8, 1969).

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<sup>2</sup> Pursuant to Rule 3a11-1, the definition of “equity security” includes, among other things, any stock and any security convertible, with or without consideration, into stock.

<sup>3</sup> Securities Act Release No. 6108; Exchange Act Release No. 16112 (Aug. 16, 1979).

<sup>4</sup> Exchange Act Release No. 14234 (Dec. 8, 1977).