

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

AMB PROPERTY CORPORATION  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

<TABLE>  
<S> MARYLAND <C> 94-3281941  
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION) I.R.S. EMPLOYER IDENTIFICATION NUMBER  
</TABLE>

505 MONTGOMERY STREET  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 394-9000  
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

DAVID S. FRIES, ESQ.  
MANAGING DIRECTOR AND GENERAL COUNSEL  
AMB PROPERTY CORPORATION  
505 MONTGOMERY STREET  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 394-9000  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

COPIES TO:  
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505 MONTGOMERY STREET, SUITE 1900  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 391-0600

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. [ ]

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. [X]

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement of the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

CALCULATION OF REGISTRATION FEE

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TITLE OF SHARES TO BE REGISTERED	AMOUNT TO BE REGISTERED	OFFERING PRICE PER SHARE (2)	AGGREGATE OFFERING PRICE (3)	AMOUNT OF REGISTRATION
FEE				
Common Stock, par value \$.01 per share.....	2,542,163 (1)	\$21.53	\$54,732,769.39	
\$15,215.71				

</TABLE>

- (1) Including an indeterminate number of shares which may be issued by AMB Property Corporation with respect to such shares of common stock by way of a stock dividend, stock split or in connection with a stock combination, recapitalization, merger, consolidation or otherwise.
- (2) Based upon the average of the high and low prices of the common stock reported on the New York Stock Exchange on December 1, 1998 pursuant to Rule 457(c) of the Securities Act of 1933, as amended.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 of the Securities Act of 1933, as amended.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT SELL THESE SECURITIES AND THE SELLING STOCKHOLDERS MAY NOT RESELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IT IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED DECEMBER 3, 1998

PROSPECTUS

AMB PROPERTY CORPORATION

2,542,163 SHARES OF COMMON STOCK  
\$0.01 PAR VALUE PER SHARE

If holders of up to 2,542,163 common Units of limited partnership interest in AMB Property, L.P. tender their Units for cash redemption, we may instead elect to exchange the tendered Units on a one-for-one basis for shares of our common stock, subject to adjustment. This prospectus relates to the possible issuance of up to 2,542,163 shares of common stock that we may issue from time to time to the selling stockholders named in this prospectus upon exchange of their Units and also relates to the possible offer and sale of those shares from time to time by the selling stockholders. This registration does not necessarily mean that we will issue any of the shares or that the selling stockholders will offer or sell any of the shares.

We are filing the registration statement of which this prospectus is a part pursuant to a contractual obligation. We will not receive any proceeds from the issuance of the shares of common stock to the selling stockholders or from the sale of the shares by the selling stockholders but we have agreed to pay certain registration expenses. We will acquire Units of limited partnership interest in AMB Property, L.P. in exchange for any shares that we may issue to unit holders pursuant to this prospectus.

To facilitate maintenance of our qualification as a Real Estate Investment Trust (a "REIT") for federal income tax purposes, subject to certain exceptions, we prohibit the ownership, actually or constructively, by any single person of more than 9.8% (by value or number of shares, whichever is more restrictive) of the issued and outstanding shares of our common stock and more than 9.8% (by value or number of shares, whichever is more restrictive) of the issued and outstanding shares of our Series A Preferred Stock. We will also prohibit, subject to certain exceptions, the ownership, actually or constructively, of any shares of our Series B Preferred Stock and any shares of our Series C Preferred Stock by any single person so that no such person, taking into account all of our stock so owned by such person, may own in excess of 9.8% of our issued and outstanding capital stock.

Our common stock is listed on the New York Stock Exchange under the symbol "AMB." On December 2, 1998, the last reported sales price of our common stock on the New York Stock Exchange was \$21 1/2 per share.

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INVESTING IN OUR COMMON STOCK INVOLVES CERTAIN RISKS. SEE "RISK FACTORS" BEGINNING ON PAGE 5.  
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NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OF THESE SECURITIES OR DETERMINED THAT THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is December , 1998

Neither AMB Property Corporation nor the selling stockholders have authorized any person to give any information or to make any representation not contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus as if we had authorized it. This prospectus is not an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates and this prospectus is not an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make such offer or solicitation. You should not assume that the information contained in this prospectus is correct on any date after the date of this prospectus, even though this prospectus is delivered or shares are sold pursuant to this prospectus on a later date.

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AMB and its logo are registered service marks of AMB Property Corporation. Strategic Alliance Programs(TM), Development Alliance Program(TM), UPREIT Alliance Program(TM), Institutional Alliance Program(TM), Customer Alliance Program(TM) and Management Alliance Program(TM) are registered trademarks of the Company.

read and copy any document we file with the SEC at the SEC's public reference rooms at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the SEC's regional offices at Seven World Trade Center, 13th Floor, New York, New York 10048, and Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. The SEC also maintains a web site that contains reports, proxy and information statements, and other information regarding registrants that file electronically with the SEC (<http://www.sec.gov>). You can inspect reports and other information we file at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

We have filed a registration statement of which this prospectus is a part and related exhibits with the SEC under the Securities Act of 1933, as amended (the "Securities Act"). The registration statement contains additional information about us. You may inspect the registration statement and exhibits without charge at the office of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549, and you may obtain copies from the SEC at prescribed rates.

#### INCORPORATION OF CERTAIN DOCUMENTS 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 to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document which is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces this information. We incorporate by reference the following documents we filed with the SEC:

- Annual Report on Form 10-K for the year ended December 31, 1997;
- Quarterly Reports on Form 10-Q for the quarters ended March 31, 1998, June 30, 1998 and September 30, 1998;
- Current Report on Form 8-K filed on January 13, 1998;
- Current Report on Form 8-K filed on July 9, 1998;
- Current Report on Form 8-K filed on December 2, 1998;
- the description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on October 28, 1997;
- the reports and financial statements for the Boston Industrial Portfolio, the Jamesburg Property, Orlando Central Park, Totem Lake Malls, Dallas Warehouse Portfolio (Garland Industrial Portfolio), Twin Cities Office/Showroom Portfolio (Minnetonka Industrial Portfolio), Crysen Corridor Warehouse, Cabot Industrial Portfolio, Cabot Business Park, Manhattan Village Shopping Center, Wesleyan Plaza and Silicon Valley R&D Portfolio from our Registration Statement on Form S-11 (No. 333-58107); and

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- all documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") after the date of this prospectus and prior to the termination of the offering.

To receive a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents), call or write AMB Property Corporation, 505 Montgomery Street, San Francisco, CA, Attention: Secretary (415/394-9000).

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Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to "we," "us," "our" or the "Company" mean AMB Property Corporation and its subsidiaries, including AMB Property, L.P. (which we refer to as the "Operating Partnership") and its subsidiaries and, with respect to the period prior to the Company's initial public offering, the Company's predecessor, AMB Institutional Realty Advisors, Inc., and certain real estate investment funds, trusts, corporations and partnerships that prior to the Company's initial public offering owned properties that they contributed to the Operating Partnership. In some instances, in order to avoid confusion between AMB Property Corporation and the Operating Partnership, we refer to AMB Property Corporation alone as the "Company." When we refer to our "Charter" we mean the Company's Articles of Incorporation, as supplemented by the Articles Supplementary establishing the terms of our 8 1/2% Series A Cumulative Redeemable Preferred Stock (the "Series A Preferred Stock"), the Articles Supplementary establishing the terms of our 8 5/8% Series B Cumulative Redeemable Preferred Stock (the "Series B Preferred Stock") and the Articles Supplementary establishing the terms of our 8.75% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock"). When we refer to "Units" we

mean the Operating Partnership's common units and preferred units, including the 8 1/2% Series A Cumulative Redeemable Preferred Units (the "Series A Preferred Units"), the 8 5/8% Series B Cumulative Redeemable Preferred Units (the "Series B Preferred Units") and any 8 3/4% Series C Cumulative Redeemable Preferred Units (the "Series C Preferred Units"), and other partnership interests of the Operating Partnership of different classes and series with rights, preferences and privileges that the Company may determine in its capacity as general partner of the Operating Partnership.

#### FORWARD LOOKING STATEMENTS

Some of the information included and incorporated by reference in this prospectus contains forward-looking statements, such as those pertaining to our (including certain of our subsidiaries') capital resources, portfolio performance and results of operations. Likewise, the pro forma financial statements and other pro forma information incorporated by reference in this prospectus also contain forward-looking statements. In addition, all statements regarding anticipated growth in our funds from operations and anticipated market conditions, demographics and results of operations are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. There is no assurance that the events or circumstances reflected in forward-looking statements will be achieved or will occur. You can identify forward-looking statements by the use of forward-looking terminology such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "pro forma," "estimates" or "anticipates" or the negative of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions. Forward-looking statements are necessarily dependent on assumptions, data or methods that may be incorrect or imprecise and we may not be able to realize them. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements: defaults on or non-renewal of leases by tenants, increased interest rates and operating costs, our failure to obtain necessary outside financing, difficulties in identifying properties to acquire and in effecting acquisitions, our failure to successfully integrate acquired properties and operations, risks and uncertainties affecting property development and construction (including construction delays, cost overruns, our inability to obtain necessary permits and public opposition to these activities), our failure

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to qualify and maintain our status as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"), environmental uncertainties, risks related to natural disasters, financial market fluctuations, changes in real estate and zoning laws and increases in real property tax rates. Our success also depends upon economic trends generally, including interest rates, income tax laws, governmental regulation, legislation, population changes and certain other matters discussed below under "Risk Factors." We caution you not to place undue reliance on forward-looking statements, which reflect our analysis only.

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#### RISK FACTORS

Before you invest in our common stock, you should be aware that purchasing or owning our common stock involves various risks, including those described below. You should consider carefully these risk factors together with all of the other information included in this prospectus before you decide to purchase shares of our common stock.

#### THE EXCHANGE OF COMMON LIMITED PARTNERSHIP UNITS FOR COMMON STOCK AND THE REDEMPTION OF COMMON UNITS FOR CASH ARE TAXABLE TRANSACTIONS

The exchange of the common Units held by a limited partner of the Operating Partnership for shares of our common stock, or a redemption of such units for cash, will be treated for tax purposes as a sale of the common Units by the limited partner. A limited partner will recognize gain or loss for income tax purposes in an amount equal to the difference between the "amount realized" by the limited partner in the exchange or redemption and the limited partner's adjusted tax basis in the common Units exchanged or redeemed. Generally, the amount realized by a limited partner on an exchange or redemption will be the fair market value of the exchanged shares received in the exchange, or the amount of cash received in the redemption, plus the amount of the Operating Partnership's liabilities allocable to the common Units being exchanged or redeemed. However, in the event that the Company elects to cause the Operating Partnership to pay a limited partner cash for a portion of his or her common Units, under certain circumstances, the limited partner may recognize gain only to the extent the cash received for such common Units, plus the amount of any reduction of Operating Partnership liabilities allocable to the limited partner, exceed the limited partner's basis in all of his or her common Units prior to such payment. The recognition of any loss resulting from an exchange of common Units for shares of common stock or a redemption of common Units for cash is subject to a number of limitations set forth in the Code. It is possible that

the amount of gain realized or even the tax liability resulting from the gain could exceed the value of the shares of common stock received upon the exchange. In addition, the ability of a limited partner to sell a substantial number of shares of common stock in order to raise cash to pay tax liabilities associated with the exchange of Units may be restricted and, as a result of stock price fluctuations, the price the holder receives for the shares of common stock may not equal the value of the Units at the time of exchange.

#### AN INVESTMENT IN COMMON STOCK IS DIFFERENT FROM AN INVESTMENT IN LIMITED PARTNERSHIP UNITS

If a limited partner exchanges his or her common Units for shares of common stock, he or she will become one of our stockholders rather than a limited partner in the Operating Partnership. Although the nature of an investment in our common stock is similar to an investment in limited partnership Units, there are also differences between ownership of limited partnership Units and ownership of our common stock. These differences include:

- form of organization;
- permitted investments;
- policies and restrictions;
- management structure;
- compensation and fees;
- investor rights; and
- federal income taxation.

See "Redemption/Exchange of Units for Common Stock -- Comparison of Ownership of Common Units and Common Stock."

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#### GENERAL REAL ESTATE RISKS

##### There are Factors Outside of Our Control that Affect the Performance and Value of Our Properties

Real property investments are subject to varying degrees of risk. The yields available from equity investments in real estate depend on the amount of income earned and capital appreciation generated by the related properties as well as the expenses incurred in connection with the properties. If our properties do not generate income sufficient to meet operating expenses, including debt service and capital expenditures, our ability to pay distributions to holders of our common stock could be adversely affected. Income from, and the value of, our properties may be adversely affected by the general economic climate, local conditions such as oversupply of industrial or retail space or a reduction in demand for industrial or retail space, the attractiveness of our properties to potential tenants, competition from other properties, our ability to provide adequate maintenance and insurance and an increase in operating costs. In addition, revenues from properties and real estate values are also affected by factors such as the cost of compliance with regulations, the potential for liability under applicable laws (including changes in tax laws), interest rate levels and the availability of financing. Our income would be adversely affected if a significant number of tenants were unable to pay rent or if we were unable to rent our industrial or retail space on favorable terms. Certain significant expenditures associated with an investment in real estate (such as mortgage payments, real estate taxes and maintenance costs) generally do not decline when circumstances cause a reduction in income from the property.

##### We May Be Unable to Renew Leases or Relet Space as Leases Expire

We are subject to the risks that leases may not be renewed, space may not be relet, or the terms of renewal or reletting (including the cost of required renovations) may be less favorable than current lease terms. Leases on a total of approximately 40.0% of the leased square footage of our properties as of September 30, 1998 will expire on or prior to December 31, 2000, with leases on 15.0% of the leased square footage of our properties as of September 30, 1998 expiring during the 12 months ending September 30, 1999. In addition, numerous properties compete with our properties in attracting tenants to lease space, particularly with respect to retail centers. The number of competitive commercial properties in a particular area could have a material adverse effect on our ability to lease space in our properties and on the rents that we are able to charge. Our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock could be adversely affected if we are unable to promptly relet or renew the leases for all or a substantial portion of expiring leases, if the rental rates upon renewal or reletting is significantly lower than expected, or if our reserves for these purposes prove inadequate.

## Real Estate Investments are Illiquid

Because real estate investments are relatively illiquid, our ability to vary our portfolio promptly in response to economic or other conditions is limited. The limitations in the Code and related regulations on a REIT holding property for sale may affect our ability to sell properties without adversely affecting distributions to our stockholders. The relative illiquidity of our holdings, Code prohibitions and related regulations could impede our ability to respond to adverse changes in the performance of our investments and could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

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## A Significant Number of Our Properties are Located in California

Our properties located in California as of September 30, 1998 represented approximately 22.4% of the aggregate square footage of our properties as of September 30, 1998 and approximately 30.1% of our Annualized Base Rent. Annualized Base Rent means the monthly contractual amount under existing leases at September 30, 1998, multiplied by 12. This amount excludes expense reimbursements and rental abatements. Our revenue from, and the value of, our properties located in California may be affected by a number of factors, including local real estate conditions (such as oversupply of or reduced demand for commercial properties) and the local economic climate. Business layoffs, downsizing, industry slowdowns, changing demographics and other factors may adversely impact the local economic climate. A downturn in either the California economy or in California real estate conditions could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. Certain of our properties are also subject to possible loss from seismic activity.

## Our Properties are Concentrated in the Industrial and Retail Sectors

Our properties are, and are likely to continue to be, concentrated predominantly in the industrial and retail commercial real estate sectors. This concentration may expose us to the risk of economic downturns in these sectors to a greater extent than if our portfolio also included other property types. As a result, economic downturns in these sectors could have an adverse effect on our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

## Some Potential Losses are Not Covered by Insurance

We carry comprehensive liability, fire, extended coverage and rental loss insurance covering all of our properties, with policy specifications and insured limits which we believe are adequate and appropriate under the circumstances given relative risk of loss, the cost of such coverage and industry practice. There are, however, certain losses that are not generally insured because it is not economically feasible to insure against them, including losses due to riots or acts of war. Certain losses such as losses due to floods or seismic activity may be insured subject to certain limitations including large deductibles or co-payments and policy limits. If an uninsured loss or a loss in excess of insured limits occurs with respect to one or more of our properties, we could lose the capital we invested in the properties, as well as the anticipated future revenue from the properties and, in the case of debt which is with recourse to us, we would remain obligated for any mortgage debt or other financial obligations related to the properties. Moreover, as the general partner of the Operating Partnership, we will generally be liable for all of the Operating Partnership's unsatisfied obligations other than non-recourse obligations. Any such liability could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

A number of our properties are located in areas that are known to be subject to earthquake activity, including California where, as of September 30, 1998, 148 industrial buildings aggregating 11.6 million rentable square feet (representing 19.3% of our properties based on aggregate square footage) and 11 retail centers aggregating 1.8 million rentable square feet (representing 3.1% of our properties based on aggregate square footage) are located. We carry replacement cost earthquake insurance on all of our properties located in areas historically subject to seismic activity, subject to coverage limitations and deductibles which we believe are commercially reasonable. This insurance

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coverage also applies to the properties managed by AMB Investment Management, Inc. ("AMB Investment Management"), with a single aggregate policy limit and deductible applicable to those properties and our properties. The Operating Partnership owns 100% of the non-voting preferred stock of AMB Investment Management. See "The Preferred Stock Subsidiaries." Through an annual analysis prepared by outside consultants, we evaluate our earthquake insurance coverage in light of current industry practice and determine the appropriate amount of earthquake insurance to carry. We may incur material losses in excess of insurance proceeds and we may not be able to continue to obtain insurance at commercially reasonable rates.

We are Subject to Risks and Liabilities In Connection With Properties Owned Through Joint Ventures, Limited Liability Companies and Partnerships

We have ownership interests in 19 joint ventures, limited liability companies or partnerships, including an interest in one unconsolidated entity. We may make additional investments through these ventures in the future and presently plan to do so with clients of AMB Investment Management who share certain approval rights over major decisions. Partnership, limited liability company or joint venture investments may involve risks such as the following:

- our partners, co-members or joint venturers might become bankrupt (in which event we and any other remaining general partners, members or joint venturers would generally remain liable for the liabilities of the partnership, limited liability company or joint venture);
- our partners, co-members or joint venturers might at any time have economic or other business interests or goals which are inconsistent with our business interests or goals;
- our partners, co-members or joint venturers may be in a position to take action contrary to our instructions, requests, policies or objectives, including our policy with respect to maintaining our qualification as a REIT; and
- agreements governing joint ventures, limited liability companies and partnerships often contain restrictions on the transfer of a joint venturer's, member's or partner's interest or "buy-sell" or other provisions which may result in a purchase or sale of the interest at a disadvantageous time or on disadvantageous terms.

We will, however, generally seek to maintain sufficient control of our partnerships, limited liability companies and joint ventures to permit us to achieve our business objectives. Our organizational documents do not limit the amount of available funds that we may invest in partnerships, limited liability companies or joint ventures. The occurrence of one or more of the events described above could have an adverse effect on our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

We may be Unable to Consummate Acquisitions on Advantageous Terms

We intend to continue to acquire industrial and retail properties. Acquisitions of industrial and retail properties entail risks that investments will fail to perform in accordance with expectations. Estimates of the costs of improvements necessary for us to bring an acquired property up to market standards may prove inaccurate. In addition, there are general investment risks associated with any new real estate investment. Further, we anticipate significant competition for attractive investment opportunities from other major

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real estate investors with significant capital including both publicly traded REITs and private institutional investment funds. We expect that future acquisitions will be financed through a combination of borrowings and proceeds from equity or debt offerings by us or the Operating Partnership (including issuances of limited partnership Units), which could have an adverse effect on our cash flow. We may not be able to acquire additional properties. Our inability to finance any future acquisitions on favorable terms or the failure of acquisitions to conform with our expectations or investment criteria could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

We may be Unable to Complete Renovation and Development on Advantageous Terms

The real estate development business, including the renovation and rehabilitation of existing properties, involves significant risks. These risks include the following:

- we may not be able to obtain financing on favorable terms for development projects and we may not complete construction on schedule or within budget, resulting in increased debt service expense and construction costs and delays in leasing such properties and generating cash flow;
- we may not be able to obtain, or we may experience delays in obtaining, all necessary zoning, land-use, building, occupancy and other required governmental permits and authorizations;
- new or renovated properties may perform below anticipated levels, producing cash flow below budgeted amounts;
- substantial renovation as well as new development activities, regardless of whether or not they are ultimately successful, typically require a substantial portion of management's time and attention which could divert management's time from our day-to-day operations; and



- activities that we finance through construction loans involve the risk that, upon completion of construction, we may not be able to obtain permanent financing or we may not be able to obtain permanent financing on advantageous terms.

These risks could have an adverse effect on our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### WE COULD INCUR MORE DEBT

We operate with a policy of incurring debt, either directly or through our subsidiaries, only if upon such incurrence our debt-to-total market capitalization ratio would be approximately 45% or less. The aggregate amount of indebtedness that we may incur under our policy varies directly with the valuation of our capital stock and the number of shares of capital stock outstanding. Accordingly, we would be able to incur additional indebtedness under our policy as a result of increases in the market price per share of our common stock or other outstanding classes of capital stock, and future issuance of shares of capital stock. In spite of the foregoing policy, our organizational documents do not contain any limitation on the amount of indebtedness that we may incur. Accordingly, our Board of Directors could alter or eliminate this policy and would do so, for example, if it were necessary for us to continue to qualify as a REIT. If we change this policy, we could become more highly leveraged, resulting in an increase in debt service that could adversely

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affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### DEBT FINANCING

##### Scheduled Debt Payments Could Adversely Affect Our Financial Condition

We are subject to risks normally associated with debt financing, including the risks that our cash flow will be insufficient to make distributions to our stockholders, that we will be unable to refinance existing indebtedness on our properties (which in all cases will not have been fully amortized at maturity) and that the terms of refinancing will not be as favorable as the terms of existing indebtedness.

As of September 30, 1998, we had total debt outstanding of approximately \$1.3 billion including:

- approximately \$701.6 million of secured indebtedness (including unamortized debt premiums of approximately \$15.9 million) with an average maturity of seven years and a weighted average interest rate of 7.9%;
- approximately \$205 million outstanding under our unsecured \$500 million credit facility (the "Credit Facility") with a maturity date of November 2000 and a weighted average interest rate of 6.53%; and
- \$400 million aggregate principal amount of unsecured senior debt securities with maturities in June 2008, 2015 and 2018 and a weighted average interest rate of 7.18%.

We are a guarantor of the Operating Partnership's obligations with respect to the senior debt securities referenced above. If we are unable to refinance or extend principal payments due at maturity or pay them with proceeds of other capital transactions, we expect that our cash flow will not be sufficient in all years to pay distributions to our stockholders and to repay all such maturing debt. Furthermore, if prevailing interest rates or other factors at the time of refinancing (such as the reluctance of lenders to make commercial real estate loans) result in higher interest rates upon refinancing, the interest expense relating to that refinanced indebtedness would increase. This increased interest expense would adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. In addition, if we mortgage one or more of our properties to secure payment of indebtedness and we are unable to meet mortgage payments, the property could be foreclosed upon or transferred to the mortgagee with a consequent loss of income and asset value. A foreclosure on one or more of our properties could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

##### Rising Interest Rates Could Adversely Affect Our Cash Flow

As of September 30, 1998, we had \$205.0 million outstanding under the Credit Facility. In addition, we may incur other variable rate indebtedness in the future. Increases in interest rates on this indebtedness could increase our interest expense, which would adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. Accordingly, we may in the future engage in

transactions to limit our exposure to rising interest rates.

#### We Are Dependent on External Sources of Capital

In order to qualify as a REIT under the Code, we are required each year to distribute to our stockholders at least 95% of our REIT taxable income (determined without regard to the dividends-paid deduction and by excluding any net capital gain). See "Certain Federal Income Tax Considerations -- Taxation of the Company -- Annual Distribution Requirements." Because of this distribution requirement, we may not be able to fund all future capital needs, including capital needs in connection with acquisitions, from cash retained from operations. As a result, to fund capital needs, we rely on third-party sources of capital, which we may not be able to obtain on favorable terms or at all. Our access to third-party sources of capital depends upon a number of factors, including general market conditions and the market's perception of our growth potential and our current and potential future earnings and cash distributions and the market price of the shares of our capital stock. Additional debt financing may substantially increase our leverage.

#### We Could Default on Cross-Collateralized and Cross-Defaulted Debt

As of September 30, 1998, we had 12 non-recourse secured loans which are cross-collateralized by five pools consisting of 19 properties. As of September 30, 1998, we had \$210.2 million outstanding on these loans. If we default on any of these loans, we will be required to repay the aggregate of all indebtedness, together with applicable prepayment charges, to avoid foreclosure on all the cross-collateralized properties within the applicable pool. Foreclosure on our properties, or our inability to refinance our loans on favorable terms, could adversely impact our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. In addition, our credit facilities and the senior debt securities of the Operating Partnership contain certain cross-default provisions which are triggered in the event that our other material indebtedness is in default. These cross-default provisions may require us to repay or restructure the credit facilities and the senior debt securities in addition to any mortgage or other debt which is in default, which could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### CONTINGENT OR UNKNOWN LIABILITIES COULD ADVERSELY AFFECT OUR FINANCIAL CONDITION

Our predecessors have been in existence for varying lengths of time up to 15 years. At the time of our formation we acquired the assets of these entities subject to all of their potential existing liabilities. There may be current liabilities or future liabilities arising from prior activities that we are not aware of and therefore are not disclosed in this prospectus. We assumed these liabilities as the surviving entity in the various merger and contribution transactions that occurred at the time of our formation. Existing liabilities for indebtedness generally were taken into account (directly or indirectly) in connection with the allocation of the Units and/or shares of our common stock in the formation transactions, but no other liabilities were taken into account for these purposes. We do not have recourse against our predecessors or any of their respective stockholders or partners or against any individual account investors, with respect to any unknown liabilities except to the extent

provided by the indemnity escrow agreement entered into in connection with the formation transactions. Unknown liabilities might include the following:

- liabilities for clean-up or remediation of undisclosed environmental conditions;
- claims of tenants, vendors or other persons dealing with our predecessors prior to the formation transactions that had not been asserted prior to the formation transactions;
- accrued but unpaid liabilities incurred in the ordinary course of business;
- tax liabilities; and
- claims for indemnification by the officers and directors of our predecessors and others indemnified by these entities.

Certain tenants may claim that the formation transactions gave rise to a right to purchase the premises that they occupy. We do not believe any such claims would be material. See "-- Government Regulations -- We Could Encounter Costly Environmental Problems" below regarding the possibility of undisclosed environmental conditions potentially affecting the value of our properties. Undisclosed material liabilities which are not covered by the indemnity escrow agreement that we entered into with our predecessors in connection with the formation transactions or undisclosed material liabilities in connection with

the acquisition of properties, entities and interests in properties or entities could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### CONFLICTS OF INTEREST

##### Some of Our Executive Officers are Involved in Other Real Estate Activities and Investments

Some of our executive officers own interests in real estate-related businesses and investments. These interests include minority ownership of Institutional Housing Partners, a residential housing finance company, and ownership of AMB Development, Inc. and AMB Development, L.P., developers which own property that we believe is not suitable for ownership by us. AMB Development, Inc. and AMB Development, L.P. have agreed not to initiate any new development projects following our initial public offering in November, 1997. These entities have also agreed that they will not make any further investments in industrial or retail properties other than those currently under development at the time of our initial public offering. AMB Institutional Housing Partners, AMB Development, Inc. and AMB Development, L.P. continue to use the name "AMB" pursuant to royalty-free license arrangements with us. The continued involvement in other real estate-related activities by some of our executive officers and directors could divert management's attention from our day-to-day operations. Most of our executive officers have entered into non-competition agreements with us pursuant to which they have agreed not to engage in any activities, directly or indirectly, in respect of commercial real estate, and not to make any investment in respect of industrial or retail real estate, other than through ownership of not more than 5% of the outstanding shares of a public company engaged in such activities or through the existing investments referred to in this prospectus. State law may limit our ability to enforce these agreements.

We could also, in the future, subject to the unanimous approval of the disinterested members of the Board of Directors with respect to such transaction, acquire property from executive officers, enter into leases with executive officers, and/or engage in other related

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activities in which the interests pursued by the executive officers may not be in the best interests of our stockholders.

##### Certain of Our Executive Officers and Directors May Have Conflicts of Interest with Us in Connection with Other Properties that They Own or Control

AMB Development, L.P. owns interests in 11 retail development projects in the U.S., each of which consists of a single free-standing Walgreens drugstore, and, together with other entities controlled by nine of our executive officers, a low income housing apartment building located in the San Francisco Bay Area. In addition, Messrs. Abbey, Moghadam and Burke, each a founder and director, own less than 1% interests in two partnerships which own office buildings in various markets; these interests have negligible value. Luis A. Belmonte, an executive officer, owns less than a 10% interest, representing an estimated value of \$75,000, in a limited partnership which owns an office building located in Oakland, California. David S. Fries, an executive officer, owns an approximate 1% interest in a limited partnership that owns an apartment complex in Orange County, California.

In addition, several of our executive officers individually own:

- less than 1% interests in the stocks of certain publicly-traded REITs and residential developers;
- certain interests in and rights to developed and undeveloped real property located outside the United States;
- interests in single-family homes and residential apartments in the San Francisco Bay Area;
- certain passive interests, that we do not believe are material, in real estate businesses in which such persons were previously employed; and
- certain other de minimis holdings in equity securities of real estate companies.

Thomas W. Tusher, a member of our Board of Directors, is a limited partner in a partnership in which Messrs. Abbey, Moghadam and Burke are general partners and which owns a 75% interest in an office building. Mr. Tusher owns a 20% interest in the partnership, valued as of September 30, 1998 at approximately \$1.2 million. Messrs. Abbey, Moghadam and Burke each have an approximately 26.7% interest in the partnership, each valued as of September 30, 1998 at approximately \$1.6 million.

We believe that the properties and activities set forth above generally do not directly compete with any of our properties. However, it is possible that a property in which an executive officer or director, or an affiliate of such

person, has an interest may compete with us in the future if we were to invest in a property similar in type and in close proximity to that property. In addition, the continued involvement by our executive officers and directors in such properties could divert management's attention from our day-to-day operations. We are prohibited from acquiring any properties from our executive officers or their affiliates without the approval of the disinterested members of the Board of Directors with respect to that transaction.

#### Our Role as General Partner of the Operating Partnership May Conflict with the Interests of Our Stockholders

As the general partner of the Operating Partnership, we have fiduciary obligations to the Operating Partnership's limited partners, the discharge of which may conflict with the interests of our stockholders. In addition, those persons holding limited partnership Units

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will have the right to vote as a class on certain amendments to the Third Amended and Restated Agreement of Limited Partnership of the Operating Partnership (the "Partnership Agreement") and individually to approve certain amendments that would adversely affect their rights. The limited partners may exercise these voting rights in a manner that conflicts with the interests of our stockholders. In addition, under the terms of the Partnership Agreement, holders of limited partnership Units will have certain approval rights with respect to certain transactions that affect all stockholders but which they may not exercise in a manner which reflects the interests of all stockholders. See "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Removal of the General Partner; Transferability of our Interests; Treatment of Units in Significant Transactions."

#### Our Directors, Executive Officers and Significant Stockholders Could Act in a Manner that is Not in the Best Interest of All Stockholders

As of November 30, 1998, our three largest stockholders, Ameritech Pension Trust, the City and County of San Francisco Employees' Retirement System and Southern Company System Master Retirement Trust, beneficially owned approximately 22.9% of our outstanding common stock (assuming the exchange of all Units into shares of common stock). In addition, our executive officers and directors beneficially owned 5.9% of our common stock as of the same date (assuming the exchange of all Units into shares of common stock, before issuance of any Performance Units to certain of our officers, as defined under the caption "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Performance Units"), and will have influence on our management and operation and, as stockholders, will have influence on the outcome of any matters submitted to a vote of the stockholders. This influence might be exercised in a manner that is inconsistent with the interests of other stockholders. Although there is no understanding or arrangement for these directors, officers and stockholders and their affiliates to act in concert, these parties would be in a position to exercise significant influence over our affairs if they choose to do so.

#### We Could Suffer Losses if We Fail to Enforce the Terms of Certain Agreements

As holders of shares of our common stock and, potentially, Performance Units, certain of our directors and officers could have a conflict of interest with respect to their obligations as directors and officers to vigorously enforce the terms of certain of the agreements relating to our formation transactions. The potential failure to enforce the material terms of those agreements could result in a monetary loss to us, which loss could have a material adverse effect on our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### OWNERSHIP OF COMMON STOCK

##### Limitations in Our Charter and Bylaws Could Prevent a Change in Control

Certain provisions of our Charter and Bylaws may delay, defer or prevent a change in control or other transaction that could provide the holders of our common stock with the opportunity to realize a premium over the then-prevailing market price for our common stock. To maintain our qualification as a REIT for federal income tax purposes, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year after the first taxable year for which a REIT election is made. See "Certain Federal Income Tax Considerations -- Taxation of the Company -- Requirements

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for Qualification as a REIT." Furthermore, after the first taxable year for which a REIT election is made, our common stock must be held by a minimum of 100 persons for at least 335 days of a 12-month taxable year (or a proportionate part of a short tax year). In addition, if we, or an owner of 10% or more of our

stock, actually or constructively owns 10% or more of one of our tenants (or a tenant of any partnership in which we are a partner), the rent received by us (either directly or through any such partnership) from that tenant will not be qualifying income for purposes of the REIT gross income tests of the Code. To facilitate maintenance of our qualification as a REIT for federal income tax purposes, we will prohibit the ownership, actually or by virtue of the constructive ownership provisions of the Code, by any single person of more than 9.8% (by value or number of shares, whichever is more restrictive) of the issued and outstanding shares of our common stock and more than 9.8% (by value or number of shares, whichever is more restrictive) of the issued and outstanding shares of our Series A Preferred Stock, and we will also prohibit the ownership, actually or constructively, of any shares of our Series B Preferred Stock and any shares of our Series C Preferred Stock by any single person so that no such person, taking into account all of our stock so owned by such person, may own in excess of 9.8% of our issued and outstanding capital stock. We refer to this limitation as the "ownership limit." Shares acquired or held in violation of the ownership limit will be transferred to a trust for the benefit of a designated charitable beneficiary. Any person who acquires shares in violation of the ownership limit will not be entitled to any distributions on the shares or be entitled to vote the shares or receive any proceeds from the subsequent sale of the shares in excess of the lesser of the price paid for the shares or the amount realized from the sale. A transfer of shares in violation of the above limits may be void under certain circumstances. See "Description of Capital Stock -- Restrictions on Ownership and Transfer of Capital Stock." The ownership limit may have the effect of delaying, deferring or preventing a change in control and, therefore, could adversely affect our stockholders' ability to realize a premium over the then-prevailing market price for the shares of our common stock in connection with such transaction. The Board of Directors has waived the ownership limit applicable to our common stock with respect to Ameritech Pension Trust, allowing it to own up to 14.9% of our common stock and, under some circumstances, allowing it to own up to 19.6%. However, we conditioned this waiver upon the receipt of undertakings and representations from Ameritech Pension Trust which we believed were reasonably necessary in order for us to conclude that the waiver would not cause us to fail to qualify as a REIT.

Our Charter authorizes us to issue additional shares of common stock and Series A Preferred Stock and to issue Series B Preferred Stock, Series C Preferred Stock and one or more other series of preferred stock and to establish the preferences, rights and other terms of any series of preferred stock that we issue. See "Description of Capital Stock." Although our Board of Directors has no intention to do so at the present time, it could establish a series of preferred stock that could delay, defer or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interests of our stockholders.

Our Charter, our Bylaws and Maryland law also contain other provisions that may delay, defer or prevent a transaction, including a change in control, that might involve payment of a premium price for our common stock or otherwise be in the best interests of our stockholders. Those provisions include the following:

- the provision in the Charter that directors may be removed only for cause and only upon a two-thirds vote of stockholders, together with Bylaw provisions authorizing the Board of Directors to fill vacant directorships;
- the provision in the Charter requiring a two-thirds vote of stockholders for any amendment of the Charter;
- the requirement in the Bylaws that the request of the holders of 50% or more of our common stock is necessary for stockholders to call a special meeting;
- the requirement of Maryland law that stockholders may only take action by written consent with the unanimous approval of all stockholders entitled to vote on the matter in question; and
- the requirement in the Bylaws of advance notice by stockholders for the nomination of directors or proposal of business to be considered at a meeting of stockholders.

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These provisions may impede various actions by stockholders without approval of our Board of Directors, which in turn may delay, defer or prevent a transaction involving a change of control.

We Could Change Our Investment and Financing Policies without a Vote of Stockholders

Subject to our fundamental investment policy to maintain our qualification as a REIT (unless a change is approved by the Board of Directors under certain circumstances), the Board of Directors will determine our investment and financing policies, our growth strategy and our debt, capitalization, distribution and operating policies. Although the Board of Directors has no

present intention to revise or amend these strategies and policies, the Board of Directors may do so at any time without a vote of stockholders. Accordingly, stockholders will have no control over changes in our strategies and policies (other than through the election of directors), and any such changes may not serve the interests of all stockholders and could adversely affect our financial condition or results of operations, including our ability to distribute cash to stockholders.

#### If We Issue Additional Securities, the Investment of Existing Stockholders Will Be Diluted

We have authority to issue shares of common stock or other equity or debt securities in exchange for property or otherwise. Similarly, we may cause the Operating Partnership to issue additional Units in exchange for property or otherwise. Existing stockholders will have no preemptive right to acquire any additional securities issued by us or the Operating Partnership and any issuance of additional equity securities could result in dilution of an existing stockholder's investment.

#### The Large Number of Shares Available for Future Sale Could Adversely Affect the Market Price of Our Common Stock

We can not predict the effect, if any, that future sales of shares of our common stock, or the availability of shares of our common stock for future sale, will have on its market price. Sales of a substantial number of shares of our common stock in the public market (or upon exchange of Units) or the perception that such sales (or exchanges) might occur could adversely affect the market price of our common stock. In connection with our initial public offering, we agreed that we would not, and each of our original executive officers and independent directors agreed that they would not, without the consent of Morgan Stanley & Co. Incorporated, offer, sell, contract to sell, pledge, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any (other than in connection with mergers, acquisitions, or similar transactions) shares of

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our common stock, or any securities convertible into or exercisable for shares of our common stock until, in the case of our original executive officers, November 21, 1999, and in our case and the case of our independent directors, November 21, 1998.

The shares of common stock issued in the transactions involved in our formation and all shares of common stock issuable upon the redemption of Units will be deemed to be "restricted securities" within the meaning of Rule 144 under the Securities Act and may not be transferred unless registered under the Securities Act or an exemption from registration is available, including any exemption from registration provided under Rule 144. In general, upon satisfaction of certain conditions, Rule 144 permits the holder to sell certain amounts of restricted securities one year following the date of acquisition of the restricted securities from us and, after two years, permits unlimited sales by persons unaffiliated with us. On November 26, 1998, 74,710,153 shares of common stock issued in our formation transactions became eligible for sale pursuant to Rule 144, subject to the volume limitations and other conditions imposed by Rule 144. Commencing generally on the first anniversary of the date of acquisition of common Units (or such other date agreed to by the Operating Partnership and the holders of the Units), the Operating Partnership may redeem common Units at the request of the holders for cash (based on the fair market value of an equivalent number of shares of common stock at the time of redemption) or, at the Company's option, exchange the common Units for an equal number of shares of common stock, subject to certain antidilution adjustments. The Operating Partnership has issued 4,447,839 common Units to date, including the 2,542,163 common Units held by the selling stockholders which became exchangeable for shares of common stock on November 26, 1998. We have reserved 5,750,000 shares of common stock for issuance under our Stock Option and Incentive Plan and, as of September 30, 1998, have granted to certain directors, officers and employees options to purchase 3,133,750 shares of common stock (net of forfeitures). To date we have granted 5,712 restricted shares of common stock. In addition, we may issue additional shares of common stock or Units in connection with the acquisition of properties. The registration statement of which this prospectus is a part covers the issuance of 2,542,163 shares of common stock upon the exchange of the common Units held by the selling stockholders and the resale of those shares. In connection with the issuance of common Units to other transferors of properties, and in connection with the issuance of any Performance Units, we have agreed to file registration statements covering the issuance of shares of common stock upon the exchange of the common Units. We have also filed a registration statement with respect to the shares of common stock issuable under our Stock Option and Incentive Plan. These registration statements and registration rights generally allow shares of common stock covered thereby, including shares of common stock issuable upon exchange of Units, including Performance Units, or the exercise of options or restricted shares of common stock, to be transferred or resold without restriction under the Securities Act. However, pursuant to the terms and conditions of the registration rights agreement that we entered into with the selling stockholders, prior to the date upon which the Units would be eligible

for resale under Rule 144(k) under the Securities Act, as such rule may be amended from time to time (or any similar rule or regulation hereafter adopted by the SEC), each of the selling stockholders generally is limited to resales of shares of common stock issued pursuant to this prospectus to the number of shares which otherwise would be eligible for resale by that selling stockholder pursuant to Rule 144, assuming the shares were issued on the same date as the respective Units were issued. See "Plan of Distribution." We may also agree to provide registration rights to any other person who may become an owner of Units. See "Description of Certain Provisions of the Partnership

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Agreement of the Operating Partnership -- Common Limited Partnership Units -- Registration Rights."

Future sales of the shares of common stock described above could adversely affect the market price of our common stock. The existence of Units, options and shares of common stock reserved for issuance upon exchange of Units, and the exercise of options and registration rights referred to above, also may adversely affect the terms upon which we are able to obtain additional capital through the sale of equity securities.

#### Various Market Conditions Affect the Price of Our Common Stock

As with other publicly-traded equity securities, the market price of our common stock will depend upon various market conditions, which may change from time to time. Among the market conditions that may affect the market price of our common stock are the following:

- the extent of investor interest in us;
- the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate-based companies);
- our financial performance; and
- general stock and bond market conditions, including changes in interest rates on fixed income securities which may lead prospective purchasers of our common stock to demand a higher annual yield from future distributions. Such an increase in the required yield from distributions may adversely affect the market price of our common stock.

Other factors such as governmental regulatory action and changes in tax laws could also have a significant impact on the future market price of our common stock.

#### Earnings and Cash Distributions, Asset Value and Market Interest Rates Affect the Price of Our Common Stock

The market value of the equity securities of a REIT generally is based primarily upon the market's perception of the REIT's growth potential and its current and potential future earnings and cash distributions, and is based secondarily upon the real estate market value of the underlying assets. For that reason, shares of our common stock may trade at prices that are higher or lower than the net asset value per share. To the extent we retain operating cash flow for investment purposes, working capital reserves or other purposes, these retained funds, while increasing the value of our underlying assets, may not correspondingly increase the market price of our common stock. Our failure to meet the market's expectation with regard to future earnings and cash distributions likely would adversely affect the market price of our common stock. Another factor that may influence the price of our common stock will be the distribution yield on our common stock (as a percentage of the price of our common stock) relative to market interest rates. An increase in market interest rates might lead prospective purchasers of our common stock to expect a higher distribution yield, which would adversely affect the market price of our common stock. If the market price of our common stock declines significantly, we might breach certain covenants with respect to debt obligations, which might adversely affect our liquidity and our ability to make future acquisitions and pay distributions to our stockholders.

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#### We Could Invest in Real Estate Mortgages

We may invest in mortgages, and may do so as a strategy for ultimately acquiring the underlying property. In general, investments in mortgages include the risks that borrowers may not be able to make debt service payments or pay principal when due, that the value of the mortgaged property may be less than the principal amount of the mortgage note secured by the property and that interest rates payable on the mortgages may be lower than our cost of funds to acquire these mortgages. In any of these events, our funds from operations and our ability to make distributions on, and the market price of, our common stock could be adversely affected. "Funds from operations" means income (loss) from operations before disposal of real estate properties, minority interests and

extraordinary items plus depreciation and amortization, excluding depreciation of furniture, fixtures and equipment less funds from operations attributable to minority interests in consolidated joint ventures which are not convertible into shares of common stock.

#### GOVERNMENT REGULATIONS

Many laws and governmental regulations are applicable to our properties and changes in these laws and regulations, or their interpretation by agencies and the courts, occur frequently.

##### Costs of Compliance with Americans with Disabilities Act

Under the Americans with Disabilities Act of 1990 (the "Americans with Disabilities Act"), places of public accommodation must meet certain federal requirements related to access and use by disabled persons. Compliance with the Americans with Disabilities Act might require us to remove structural barriers to handicapped access in certain public areas where such removal is "readily achievable." If we fail to comply with the Americans with Disabilities Act, we might be required to pay fines to the government or damages to private litigants. The impact of application of the Americans with Disabilities Act to our properties, including the extent and timing of required renovations, is uncertain. If we are required to make unanticipated expenditures to comply with the Americans with Disabilities Act, our cash flow and the amounts available for distributions to our stockholders may be adversely affected.

##### We Could Encounter Costly Environmental Problems

Federal, state and local laws and regulations relating to the protection of the environment impose liability on a current or previous owner or operator of real estate for contamination resulting from the presence or discharge of hazardous or toxic substances or petroleum products at the property. A current or previous owner may be required to investigate and clean up contamination at or migrating from a site. These laws typically impose liability and clean-up responsibility without regard to whether the owner or operator knew of or caused the presence of the contaminants. Even if more than one person may have been responsible for the contamination, each person covered by the environmental laws may be held responsible for all of the clean-up costs incurred. In addition, third parties may sue the owner or operator of a site for damages based on personal injury, property damage and/or other costs, including investigation and clean-up costs, resulting from environmental contamination present at or emanating from that site.

Environmental Laws also govern the presence, maintenance and removal of asbestos. These laws require that owners or operators of buildings containing asbestos properly manage and maintain the asbestos, that they adequately inform or train those who may

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come into contact with asbestos and that they undertake special precautions, including removal or other abatement in the event that asbestos is disturbed during renovation or demolition of a building. These laws may impose fines and penalties on building owners or operators for failure to comply with these requirements and may allow third parties to seek recovery from owners or operators for personal injury associated with exposure to asbestos fibers. Some of our properties may contain asbestos-containing building materials.

Some of our properties are leased or have been leased, in part, to owners and operators of dry cleaners that operate on-site dry cleaning plants, to owners and operators of gas stations or to owners or operators of other businesses that use, store or otherwise handle petroleum products or other hazardous or toxic substances. Some of these properties contain, or may have contained, underground storage tanks for the storage of petroleum products and other hazardous or toxic substances. These operations create a potential for the release of petroleum products or other hazardous or toxic substances. Some of our properties are adjacent to or near other properties that have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. In addition, certain of our properties are on, or are adjacent to or near other properties upon which others, including former owners or tenants of the properties, have engaged or may in the future engage in activities that may release petroleum products or other hazardous or toxic substances.

All of our properties were subject to a Phase I or similar environmental assessments by independent environmental consultants at the time of acquisition or shortly after acquisition. Phase I assessments are intended to discover and evaluate information regarding the environmental condition of the surveyed property and surrounding properties. Phase I assessments generally include an historical review, a public records review, an investigation of the surveyed site and surrounding properties, and preparation and issuance of a written report, but do not include soil sampling or subsurface investigations and typically do not include an asbestos survey. We may perform additional Phase II testing if recommended by the independent environmental consultant. Phase II testing may include the collection and laboratory analysis of soil and



groundwater samples, completion of surveys for asbestos-containing building materials, and any other testing that the consultant considers prudent in order to test for the presence of hazardous materials. Some of the environmental assessments of our properties do not contain a comprehensive review of the past uses of the properties and/or the surrounding properties.

None of the environmental assessments of our properties has revealed any environmental liability that we believe would have a material adverse effect on our financial condition or results of operations taken as a whole, and we are not aware of any such material environmental liability. Nonetheless, it is possible that the assessments do not reveal all environmental liabilities and that there are material environmental liabilities of which we are unaware. Moreover, future laws, ordinances or regulations may impose material environmental liability and the current environmental condition of our properties may be affected by tenants, by the condition of land, by operations in the vicinity of the properties (such as releases from underground storage tanks), or by third parties unrelated to us. If the costs of compliance with environmental laws and regulations now existing or adopted in the future exceed our budgets for these items, our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock could be adversely affected.

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#### Our Financial Condition could be Adversely Affected if We Fail to Comply with Other Regulations

Our properties are also subject to various federal, state and local regulatory requirements such as state and local fire and life safety requirements. If we fail to comply with these requirements, we might incur fines by governmental authorities or be required to pay awards of damages to private litigants. We believe that our properties are currently in substantial compliance with all such regulatory requirements. However, these requirements may change or new requirements may be imposed which could require significant unanticipated expenditures by us. Any such unanticipated expenditures could have an adverse effect on our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock.

#### FEDERAL INCOME TAX RISKS

##### Our Failure to Qualify as a REIT Would Have Serious Adverse Consequences to Our Stockholders

We intend to operate so as to qualify as a REIT under the Code. We believe that we have been organized and have operated in a manner which would allow us to qualify as a REIT under the Code beginning with our taxable year ended December 31, 1997. However, it is possible that we have been organized or have operated in a manner which would not allow us to qualify as a REIT, or that our future operations could cause us to fail to qualify. Qualification as a REIT requires us to satisfy numerous requirements (some on an annual and quarterly basis) established under highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations, and involves the determination of various factual matters and circumstances not entirely within our control. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying sources, and we must pay dividends to stockholders aggregating annually at least 95% of our REIT taxable income (determined without regard to the dividends paid deduction and by excluding capital gains). These provisions and the applicable treasury regulations are more complicated in our case because we hold our assets in partnership form. Legislation, new regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of such qualification. However, we are not aware of any pending tax legislation that would adversely affect our ability to operate as a REIT.

If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Unless we are entitled to relief under certain statutory provisions, we would be disqualified from treatment as a REIT for the four taxable years following the year during which we lost qualification. If we lose our REIT status, our net earnings available for investment or distribution to stockholders would be significantly reduced for each of the years involved. In addition, we would no longer be required to make distributions to stockholders. See "Certain Federal Income Tax Considerations -- Failure to Qualify."

##### We Pay Some Taxes

Even if we qualify as a REIT, we will be subject to certain federal, state and local taxes on our income and property. In addition, the net taxable income, if any, from the activities conducted through the Preferred Stock Subsidiaries (which we discuss below

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under "-- Preferred Stock Subsidiaries") will be subject to federal and state income tax. See "Certain Federal Income Tax Considerations -- Other Tax Consequences."

#### WE ARE DEPENDENT ON OUR KEY PERSONNEL

We depend on the efforts of our executive officers, particularly Messrs. Abbey, Moghadam and Burke, the Chairman of our Investment Committee, our Chief Executive Officer and the Chairman of our Board of Directors, respectively. While we believe that we could find suitable replacements for these key personnel, the loss of their services or the limitation of their availability could adversely affect our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. We do not have employment agreements with any of our executive officers.

#### WE MAY BE UNABLE TO MANAGE OUR GROWTH

Our business has grown rapidly and continues to grow through property acquisitions. If we fail to effectively manage our growth, our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock could be adversely affected.

#### THE PREFERRED STOCK SUBSIDIARIES

We do not Control the Activities of the Preferred Stock Subsidiaries

The Operating Partnership owns 100% of the non-voting preferred stock of AMB Investment Management and Headlands Realty Corporation (representing approximately 95% of the economic interest in each entity). We refer to these entities as the "Preferred Stock Subsidiaries." Certain of our executive officers and an officer of AMB Investment Management own all of the outstanding voting common stock of AMB Investment Management (representing approximately 5% of the economic interest in AMB Investment Management). Certain of our executive officers and a director of Headlands Realty Corporation own all of the outstanding voting common stock of Headlands Realty Corporation (representing approximately 5% of the economic interest in Headlands Realty Corporation). The ownership structure of the Preferred Stock Subsidiaries permits us to share in the income of the Preferred Stock Subsidiaries while maintaining our status as a REIT. We receive substantially all of the economic benefit of the businesses carried on by the Preferred Stock Subsidiaries through our right to receive dividends through the Operating Partnership. However, we are not able to elect the Preferred Stock Subsidiaries' directors or officers and, as a result, we do not have the ability to influence the operation of the Preferred Stock Subsidiaries or to require that the Preferred Stock Subsidiaries' boards of directors declare and pay cash dividends on the non-voting stock of the Preferred Stock Subsidiaries held by the Operating Partnership. The boards of directors and management of the Preferred Stock Subsidiaries might implement business policies or decisions that would not have been implemented by persons controlled by us and that may be adverse to the interests of our stockholders or that may adversely impact our financial condition, results of operations, cash flow and ability to pay distributions on, and the market price of, our common stock. In addition, the Preferred Stock Subsidiaries are subject to tax on their income, reducing their cash available for distribution to the Operating Partnership.

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AMB Investment Management may not be able to Generate Sufficient Fees

Fees earned by AMB Investment Management depend on various factors affecting the ability to attract and retain investment management clients and the overall returns achieved on managed assets. These factors are beyond our control. AMB Investment Management's failure to attract investment management clients or achieve sufficient overall returns on managed assets could reduce its ability to make distributions on the stock owned by the Operating Partnership and could also limit co-investment opportunities to the Operating Partnership. This would limit the Operating Partnership's ability to generate rental revenues from such co-investments and use the co-investment program as a source to finance property acquisitions and leverage acquisition opportunities.

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#### THE COMPANY

##### GENERAL

We are one of the largest publicly-traded real estate companies in the United States. As of November 30, 1998, we owned 587 industrial buildings located in 26 markets throughout the United States, including 40 industrial buildings acquired since September 30, 1998, and 38 retail centers located in 16 markets throughout the United States, including one center acquired since September 30, 1998. As of September 30, 1998, our industrial buildings, principally warehouse distribution properties, encompassed approximately 53.1 million rentable square feet and, as of the same date, were 95.9% leased to over 1,500 tenants. As of September 30, 1998, our retail centers, principally

grocer-anchored community shopping centers, encompassed approximately 6.9 million rentable square feet and, as of the same date, were 94.8% leased to over 900 tenants. We own substantially all of our assets, and conduct substantially all of our business, through the Operating Partnership and its subsidiaries.

We are engaged in the business of acquiring and operating industrial buildings and community shopping centers in target markets nationwide. We are led by Hamid R. Moghadam, our Chief Executive Officer and one of our three founders. Douglas D. Abbey and T. Robert Burke, our other two founders, also play active roles in our operations as the Chairman of our Investment Committee and the Chairman of our Board of Directors, respectively. Our 10 executive officers have an average of 23 years of experience in the real estate industry and have worked together for an average of nine years building the AMB real estate business.

The Company was organized in November 1997 and commenced operations upon the completion of the initial public offering on November 26, 1997. We operate as a self-administered and self-managed real estate company and believe that we have qualified and that we will continue to qualify as a REIT for federal income tax purposes beginning with the year ended December 31, 1997.

#### STRATEGIC ALLIANCE PROGRAMS(TM)

We believe that our strategy of forming strategic alliances with local and regional real estate experts and institutional investors provides us with growth opportunities, access to private capital and flexibility in the markets in which we operate. We have been a leader in forming these alliances through the following Strategic Alliance Programs(TM).

- Institutional Alliance Program(TM): Our strategy for our Institutional Alliance Program(TM) is to form joint ventures with institutional investors through the co-investment program of AMB Investment Management. This program provides access to private capital, including during those times when the public markets are less attractive.
- UPREIT Alliance Program(TM): Through our UPREIT Alliance Program(TM), we issue Operating Partnership Units in exchange for properties, thereby providing additional growth for our portfolio.
- Development Alliance Program(TM): Our strategy for our Development Alliance Program(TM) is to enhance our development capability by forming alliances with development firms with a strong local presence and expertise.

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- Customer Alliance Program(TM): Through our Customer Alliance Program(TM), we seek to build long-term working relationships with major tenants with the assistance of leading local and national leasing firms.
- Management Alliance Program(TM): Our strategy for our Management Alliance Program(TM) is to develop close relationships with, and outsource property management to, local property managers that we believe are among the best in their respective markets. These local property managers provide us with local market information related to tenant activity and acquisition and development opportunities as well as economies of scale.

#### THE PREFERRED STOCK SUBSIDIARIES

AMB Investment Management provides real estate investment management services on a fee basis to clients, including certain clients of our predecessor, AMB Institutional Realty Advisors, Inc. These clients did not participate in our formation transactions. In general, we presently intend to co-invest with clients of AMB Investment Management, to the extent the clients newly commit investment capital, through partnerships, limited liability companies and joint ventures. We generally use a co-investment formula with each client whereby we will own at least a 20% interest in all ventures. As of September 30, 1998, we had consummated four co-investment transactions through one partnership. Headlands Realty Corporation invests in properties and may in the future engage in or acquire interests in entities that engage in the management, leasing and development of properties and similar activities.

#### RECENT DEVELOPMENTS

Sale of Senior Debt Securities by the Operating Partnership. On June 30, 1998, the Operating Partnership sold \$400 million aggregate principal amount of senior debt securities in an underwritten public offering. The Operating Partnership used the net proceeds to repay borrowings under the Credit Facility incurred in connection with property acquisitions.

Sale of Series A Preferred Stock by the Company. On July 27, 1998, we sold 4,000,000 shares (the "Series A Preferred Shares") of Series A Preferred Stock at a price of \$25.00 per share in an underwritten public offering. We contributed the net proceeds to the Operating Partnership which used the funds to repay borrowings under the Credit Facility incurred in connection with

property acquisitions and for general corporate purposes.

Sale of Series B Preferred Units by the Operating Partnership. On November 12, 1998, the Operating Partnership completed a private placement of 1,300,000 Series B Preferred Units to a single investor at a price of \$50.00 per Unit. See "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Series B Preferred Units." The Operating Partnership used the net proceeds of approximately \$63.3 million to repay borrowings under the Credit Facility, for general corporate purposes.

Sale of Series C Preferred Units by AMB Property II, L.P. On November 24, 1998, AMB Property II, L.P. ("AMB Property II") completed a private placement of 2,200,000 8 3/4% Series C Cumulative Redeemable Preferred Units (the "AMB Property II Series C Preferred Units") to two investors at a price of \$50.00 per unit. See "Description of Capital Stock -- Preferred Stock -- Series C Preferred Stock." The Company owns 100% of the common stock of AMB Property Holding Corporation, which has an approximate

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1% general partnership interest in AMB Property II. The Operating Partnership has an approximate 99% limited partnership interest in AMB Property II.

Acquisition and Development Activity. From September 30, 1998 to November 30, 1998, we invested approximately \$173.2 million in 40 industrial buildings aggregating 3.5 million rentable square feet and approximately \$17.4 million in one retail center comprised of 0.1 million rentable square feet.

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#### DESCRIPTION OF CAPITAL STOCK

We have summarized certain terms and provisions of our capital stock in this section. This summary is not complete. For more detail you should refer to the Maryland General Corporation Law (the "MGCL"), our Charter and our Bylaws, which we have filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

#### COMMON STOCK

Our Charter provides that we are authorized to issue 500,000,000 shares of common stock, \$.01 par value per share. As of November 30, 1998, we had 85,874,513 shares of common stock issued and outstanding. Each outstanding share of common stock entitles the holder to one vote on all matters presented to stockholders generally for a vote, including the election of directors. Except as otherwise required by law and except as provided in any resolution adopted by the Board of Directors establishing any other class or series of stock, the holders of common stock possess the exclusive voting power, subject to the provisions of the Charter regarding the ownership of shares of common stock in excess of the ownership limit or any other limit specified in the Charter, or otherwise permitted by the Board of Directors. Holders of shares of common stock do not have any conversion, exchange, sinking fund, redemption or appraisal rights or any preemptive rights to subscribe for any of our securities or cumulative voting rights in the election of directors. All shares of common stock that are issued and outstanding are duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other shares or series or classes of stock, including the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock (see "-- Preferred Stock"), and to the provisions of the Charter regarding ownership of shares of common stock in excess of the ownership limit, or such other limit specified in the Charter or as otherwise permitted by the Board of Directors, we may pay distributions to the holders of shares of common stock if and when authorized and declared by the Board of Directors out of funds legally available for distribution. We intend to continue to make quarterly distributions on outstanding shares of common stock.

Under the MGCL, stockholders are generally not liable for our debts or obligations. If we liquidate, subject to the right of any holders of preferred stock, including the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock (see "-- Preferred Stock") to receive preferential distributions, each outstanding share of common stock will be entitled to participate pro rata in the assets remaining after payment of, or adequate provision for, all of our known debts and liabilities, including debts and liabilities arising out of our status as general partner of the Operating Partnership.

Subject to the provisions of our Charter regarding the ownership of shares of common stock in excess of the ownership limit, or such other limit specified in the Charter, or as otherwise permitted by the Board of Directors as described below, all shares of common stock have equal distribution, liquidation and voting rights, and have no preference or exchange rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of at least two-thirds of the

votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Under the MGCL, the term

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"substantially all of the Company's assets" is not defined and is, therefore, subject to Maryland common law and to judicial interpretation and review in the context of the unique facts and circumstances of any particular transaction. Our Charter does not provide for a lesser percentage in any of the above situations.

Our Charter authorizes the Board of Directors to reclassify any unissued shares of common stock into other classes or series of classes of stock and to establish the number of shares in each class or series and to set the preferences, conversion and other rights, voting powers, restrictions, limitations and restrictions on ownership, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series.

#### PREFERRED STOCK

Our Charter provides that we are authorized to issue 100,000,000 shares of preferred stock, \$.01 par value per share, of which 4,600,000 shares are of a separate class designated as Series A Preferred Stock, 1,300,000 shares are of a separate class designated as Series B Preferred Stock and 2,200,000 shares are of a separate class designated as Series C Preferred Stock. The Series B Preferred Stock is issuable in exchange, on a one for one basis, subject to adjustment, for the Series B Preferred Units. The Series C Preferred Stock is issuable in exchange, on a one for one basis, subject to adjustment, for the AMB Property II Series C Preferred Units. As of November 30, 1998, we had 4,000,000 shares of Series A Preferred Stock issued and outstanding. As of the same date, we had 1,300,000 shares of Series B Preferred Stock and 2,200,000 shares of Series C Preferred Stock reserved for issuance but not issued or outstanding. We may issue additional shares of preferred stock from time to time, in one or more classes, as authorized by the Board of Directors. Prior to the issuance of shares of each class of preferred stock, the Board of Directors is required by the MGCL and the Charter to fix for each class the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption, as permitted by Maryland law. Because the Board of Directors has the power to establish the preferences, powers and rights of each class of preferred stock, it may afford the holders of any class of preferred stock preferences, powers and rights, voting or otherwise, senior to the rights of holders of shares of common stock. The issuance of preferred stock could have the effect of delaying or preventing a change of control that might involve a premium price for holders of shares of common stock or otherwise be in their best interest.

Series A Preferred Stock. The Series A Preferred Stock ranks, with respect to dividends and in the event we voluntarily or involuntarily liquidate, dissolve or wind up:

- senior to all classes or series of common stock and to all of our equity securities that provide that they rank junior to the Series A Preferred Stock;
- junior to all equity securities issued by us which rank senior to the Series A Preferred Stock; and
- on a parity with all equity securities issued by us (including the Series B Preferred Stock and the Series C Preferred Stock) other than those referred to in the bullet points above. The term "equity securities" does not include convertible debt securities.

Holders of the Series A Preferred Stock are entitled to receive, when and as authorized by the Board of Directors out of funds legally available for dividends, cumulative preferential cash dividends at the rate of 8 1/2% of the liquidation preference per

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annum (equivalent to \$2.125 per annum per share of Series A Preferred Stock). Dividends on the Series A Preferred Stock accumulate on a daily basis and are payable quarterly in arrears on the 15th day of each January, April, July and October. Except as provided below, unless full cumulative dividends on the Series A Preferred Stock have been or at the same time are declared and paid or declared and a sum sufficient for payment set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in common stock or other equity securities ranking junior to the Series A Preferred Stock) may be declared or paid or set aside for payment or other dividend be declared or made upon the common stock or any other equity securities ranking junior to or on a parity with the Series A Preferred Stock (including the Series B Preferred Stock and the Series C Preferred Stock), nor may any common stock or any other equity securities ranking junior to or on a parity with the Series A Preferred Stock (including the Series B Preferred Stock and the Series C Preferred Stock) be redeemed, purchased or otherwise acquired

for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such securities) by us (except by conversion into or exchange for other equity securities ranking junior to the Series A Preferred Stock and pursuant to the provisions of our Charter providing for limitations on ownership and transfer in order to ensure that we remain qualified as a REIT). When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series A Preferred Stock and any other equity securities ranking on a parity with the Series A Preferred Stock (including the Series B Preferred Stock and the Series C Preferred Stock), all dividends declared upon the Series A Preferred Stock and any other equity securities ranking on a parity with the Series A Preferred Stock (including the Series B Preferred Stock and the Series C Preferred Stock) will be declared pro rata so that the amount of dividends declared per share of Series A Preferred Stock and each such other equity securities shall bear to each other the same ratio that accumulated dividends per share of Series A Preferred Stock and such other equity securities (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other equity securities do not have a cumulative dividend) bear to each other. Dividends on the Series A Preferred Stock will accumulate whether or not we have funds legally available for the payment of dividends and whether or not we declare dividends. If we designate any portion of a dividend as a "capital gain dividend," a holder's share of the capital gain dividend will be an amount that bears the same ratio to the total amount of dividends (as determined for federal income tax purposes) paid to the holder for the year as the aggregate amount designated as a capital gain dividend bears to the aggregate amount of all dividends (as determined for federal income tax purposes) paid on all classes of shares for the year.

In the event that we voluntarily or involuntarily liquidate, dissolve or wind up, the holders of the Series A Preferred Stock are entitled to receive out of our assets legally available for distribution to our stockholders remaining after payment or provision for payment of all of our debts and liabilities, a liquidation preference, in cash, of \$25.00 per share, plus an amount equal to any accumulated and unpaid dividends to the date of such payment, before any distribution of assets is made to holders of common stock or any other equity securities that rank junior to the Series A Preferred Stock. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of the Series A Preferred Stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other entity, a merger of another entity with or into us, a statutory share exchange or the sale, lease, transfer or conveyance of all or substantially all of our property or business do not constitute a liquidation, dissolution or winding up for purposes of triggering the liquidation preference.

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If we voluntarily or involuntarily liquidate, dissolve or wind up and our assets are insufficient to make full payment to holders of the Series A Preferred Stock and the corresponding amounts payable on all shares of other classes or series of equity securities ranking on a parity with the Series A Preferred Stock, then the holders of the Series A Preferred Stock and all other such classes or series of equity securities will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be entitled.

The Series A Preferred Stock has no stated maturity and is not subject to mandatory redemption or any sinking fund. We cannot redeem the Series A Preferred Stock prior to July 27, 2003. On and after July 27, 2003, we can redeem the Series A Preferred Stock for cash at our option, in whole or from time to time in part, at a redemption price of \$25.00 per share, plus accumulated and unpaid dividends, if any, to the redemption date. We must pay the redemption price (other than the portion of the redemption price consisting of accumulated and unpaid dividends) solely out of the sale proceeds of other equity securities, which may include other classes or series of preferred stock. In certain circumstances related to our maintenance of our ability to qualify as a REIT for federal income tax purposes, we may redeem shares of Series A Preferred Stock. See "-- Restrictions on Ownership and Transfer of Capital Stock."

Holders of Series A Preferred Stock have no voting rights, except as described below. If we do not pay dividends on the Series A Preferred Stock for six or more quarterly periods (whether or not consecutive), holders of the Series A Preferred Stock (voting separately as a class with all other classes or series of equity securities upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to serve on our Board of Directors until we have eliminated all dividend arrearages with respect to the Series A Preferred Stock. So long as any shares of Series A Preferred Stock remain outstanding, we may not, without the affirmative vote or consent of at least two-thirds of the votes entitled to be cast by the holders of outstanding shares of Series A Preferred Stock (the Series A Preferred Stock voting separately as a class):

- authorize or create, or increase the authorized or issued amount of, any class or series of stock ranking senior to the Series A Preferred Stock;
- reclassify any of our authorized stock into any class or series of stock

ranking senior to the Series A Preferred Stock;

- create, authorize or issue any obligation or security convertible into, exchangeable or exercisable for, or evidencing the right to purchase, any class or series of stock ranking senior to the Series A Preferred Stock; or
- amend, alter or repeal the provisions of our Charter, whether by merger or consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series A Preferred Stock.

With respect to the occurrence of any of the events set forth in the fourth bullet point above, so long as shares of Series A Preferred Stock (or shares issued by a surviving entity in substitution for shares of the Series A Preferred Stock) remain outstanding with the terms materially unchanged, taking into account that upon the occurrence of such an event, we may not be the surviving entity, the occurrence of any such event will not be considered to materially and adversely affect rights, preferences, privileges or voting powers of holders of Series A Preferred Stock. Any increase in the amount of the authorized preferred stock, the creation or issuance of any other class or series of preferred stock or

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any increase in the amount of authorized Series A Preferred Stock or any other class or series of preferred stock, in each case ranking on a parity with or junior to the Series A Preferred Stock will not be considered to materially and adversely affect such rights, preferences, privileges or voting powers.

In accordance with the terms of the Partnership Agreement, we contributed the net proceeds of the sale of the Series A Preferred Shares to the Operating Partnership and the Operating Partnership issued to us Series A Preferred Units that mirror the rights, preferences and other terms of the Series A Preferred Stock. The Operating Partnership is required to make all required distributions on the Series A Preferred Units prior to any distribution of cash or assets to the holders of any other Units or any other equity interests in the Operating Partnership, except for any other series of preferred Units ranking on a parity with the Series A Preferred Units as to dividends or voluntary or involuntary liquidation, dissolution or winding up of the Operating Partnership. The Operating Partnership has no preferred Units, other than the Series A Preferred Units and the Series B Preferred Units, outstanding or any other equity interests ranking prior to any other Units or any other equity interests in the Operating Partnership.

Series B Preferred Stock. We currently have no shares of Series B Preferred Stock issued or outstanding. The Series B Preferred Stock is issuable upon exchange of the Series B Preferred Units, as described under "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Series B Preferred Units -- Exchange Rights." The Series B Preferred Stock ranks, with respect to dividends and in the event we voluntarily or involuntarily liquidate, dissolve or wind up:

- senior to all classes or series of common stock and to all of our equity securities that provide that they rank junior to the Series B Preferred Stock;
- junior to all equity securities issued by us which rank senior to the Series B Preferred Stock; and
- on a parity with all equity securities issued by us (including the Series A Preferred Stock and the Series C Preferred Stock) other than those referred to in the bullet points above. The term "equity securities" does not include convertible debt securities.

If ever issued, the Series B Preferred Stock will entitle the holders to receive, when and as authorized by the Board of Directors out of funds legally available for dividends, cumulative preferential cash dividends at the rate of 8 5/8% of the liquidation preference per annum (equivalent to \$4.3125 per annum per share of Series B Preferred Stock). Dividends on the Series B Preferred Stock accumulate on a daily basis and are payable quarterly in arrears on the 15th day of each January, April, July and October. Except as provided below, unless full cumulative dividends on the Series B Preferred Stock have been or at the same time are declared and paid or declared and a sum sufficient for payment set apart for payment for all past dividend periods and the then current dividend period, no distributions (other than in common stock or other equity securities ranking junior to the Series B Preferred Stock) may be declared or paid or set aside for payment or other dividend be declared or made upon the common stock or any other equity securities ranking junior to or on a parity with the Series B Preferred Stock (including the Series A Preferred Stock and the Series C Preferred Stock), nor may any common stock or any other equity securities ranking junior to or on a parity with the Series B Preferred Stock (including the Series A Preferred Stock and the Series C Preferred Stock) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid

to or made available for a sinking fund for the redemption of any such securities) by us (except by conversion into or exchange for other equity securities ranking junior to the Series B Preferred Stock and pursuant to the provisions of our Charter providing for limitations on ownership and transfer in order to ensure that we remain qualified as a REIT). When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Stock and any other equity securities ranking on a parity with the Series B Preferred Stock (including the Series A Preferred Stock and the Series C Preferred Stock), all dividends declared upon the Series B Preferred Stock and any other equity securities ranking on a parity with the Series B Preferred Stock (including the Series A Preferred Stock and the Series C Preferred Stock) will be declared pro rata so that the amount of dividends declared per share of Series B Preferred Stock and each such other equity securities shall bear to each other the same ratio that accumulated dividends per share of Series B Preferred Stock and such other equity securities (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other equity securities do not have a cumulative dividend) bear to each other. Dividends on the Series B Preferred Stock will accumulate whether or not we have funds legally available for the payment of dividends and whether or not we declare dividends. If we designate any portion of a dividend as a "capital gain dividend," a holder's share of the capital gain dividend will be an amount that bears the same ratio to the total amount of dividends (as determined for federal income tax purposes) paid to the holder for the year as the aggregate amount designated as a capital gain dividend bears to the aggregate amount of all dividends (as determined for federal income tax purposes) paid on all classes of shares for the year.

In the event that we voluntarily or involuntarily liquidate, dissolve or wind up following the issuance of the Series B Preferred Stock, the holders of the Series B Preferred Stock will be entitled to receive out of our assets legally available for distribution to our stockholders remaining after payment or provision for payment of all of our debts and liabilities, a liquidation preference, in cash, of \$50.00 per share, plus an amount equal to any accumulated and unpaid dividends to the date of such payment, before any distribution of assets is made to holders of common stock or any other equity securities that rank junior to the Series B Preferred Stock. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of the Series B Preferred Stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other entity, a merger of another entity with or into us, a statutory share exchange or the sale, lease, transfer or conveyance of all or substantially all of our property or business do not constitute a liquidation, dissolution or winding up for purposes of triggering the liquidation preference.

If we voluntarily or involuntarily liquidate, dissolve or wind up following the issuance of Series B Preferred Stock and our assets are insufficient to make full payment to the holders of the Series B Preferred Stock and the corresponding amounts payable on all shares of other classes or series of equity securities ranking on a parity with the Series B Preferred Stock as to liquidation rights (including the Series A Preferred Stock and the Series C Preferred Stock) then the holders of the Series B Preferred Stock and all other such classes or series of equity securities will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be entitled.

The Series B Preferred Stock has no stated maturity and is not subject to mandatory redemption or any sinking fund. If issued, we cannot redeem the Series B Preferred Stock prior to November 12, 2003. On and after November 12, 2003, we can redeem the

Series B Preferred Stock for cash at our option, in whole or from time to time in part, at a redemption price of \$50.00 per share, plus accumulated and unpaid dividends, if any, to the redemption date. We must pay the redemption price (other than the portion of the redemption price consisting of accumulated and unpaid dividends) solely out of the sale proceeds of other equity securities, which may include other classes or series of preferred stock. In certain circumstances related to our maintenance of our ability to qualify as a REIT for federal income tax purposes, we may redeem shares of Series B Preferred Stock. See "-- Restrictions on Ownership and Transfer of Capital Stock."

Holders of Series B Preferred Stock will have no voting rights, except as described below. If we do not pay dividends on the Series B Preferred Stock for six or more quarterly periods (whether or not consecutive), holders of the Series B Preferred Stock (voting separately as a class with all other classes or series of equity securities upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to serve on our Board of Directors until we have eliminated all dividend arrearages with respect to the Series B Preferred Stock. So long as any shares of Series B Preferred Stock remain outstanding, we may not, without the affirmative vote or consent of at least two-thirds of the votes entitled to be



cast by the holders of the outstanding shares of Series B Preferred Stock (the Series B Preferred Stock voting separately as a class):

- authorize or create, or increase the authorized or issued amount of, any class or series of stock ranking senior to the Series B Preferred Stock;
- reclassify any of our authorized stock into any class or series of stock ranking senior to the Series B Preferred Stock;
- designate or create, or increase the authorized or issued amount of, or reclassify, any authorized shares into, any preferred stock ranking on a parity with the Series B Preferred Stock or create, authorize or issue any obligations or securities convertible into any such shares, but only to the extent such stock is issued to one of our affiliates; or
- either consolidate, merge into or with, or convey, transfer or lease our assets substantially as an entirety, to any corporation or other entity, or amend, alter or repeal the provisions of our Charter, whether by merger or consolidation or otherwise, in each case so as to materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series B Preferred Stock.

With respect to the occurrence of any of the events set forth in the fourth bullet point above, so long as we are either the surviving entity and shares of Series B Preferred Stock remain outstanding with the terms materially unchanged or the resulting, surviving or transferee entity is a corporation organized under the laws of any state and substitutes for the Series B Preferred Stock other preferred stock having substantially the same terms and rights as the Series B Preferred Stock, the occurrence of any such event will not be considered to materially and adversely affect rights, preferences, privileges or voting powers of holders of Series B Preferred Stock. Any increase in the amount of authorized preferred stock, the creation or issuance of any other class or series of preferred stock or any increase in an amount of authorized shares of each class or series, in each case ranking on a parity with or junior to the Series B Preferred Stock will not be considered to materially and adversely affect such rights, preferences, privileges or voting powers.

We have granted certain registration rights with respect to any shares of Series B Preferred Stock that we may issue upon exchange of the Series B Preferred Units. See

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"Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Series B Preferred Units -- Registration Rights."

Series C Preferred Stock. We currently have no shares of Series C Preferred Stock issued or outstanding. The Series C Preferred Stock is issuable upon exchange of the AMB Property II Series C Preferred Units. The AMB Property II Series C Preferred Units are exchangeable in whole at any time on or after November 24, 2008, at the option of 51% of the holders of all outstanding AMB Property II Series C Preferred Units, on a one for one basis, subject to adjustment, for shares of our Series C Preferred Stock. In addition, the AMB Property II Series C Preferred Units are exchangeable in whole at any time at the option of 51% of the holders of all outstanding AMB Property II Series C Preferred Units if:

- any AMB Property II Series C Preferred Unit shall not have received full distributions with respect to six prior quarterly distribution periods (whether or not consecutive); or
- AMB Property Holding Corporation, the general partner of AMB Property II, or one of its subsidiaries takes the position, and a holder or holders of AMB Property II Series C Preferred Units receive an opinion of independent counsel that AMB Property II is, or upon the happening of a certain event likely will be, a "publicly traded partnership" within the meaning of the Code.

The AMB Property II Series C Preferred Units are exchangeable in whole for shares of Series C Preferred Stock at any time after November 24, 2001 and prior to November 24, 2008 at the option of 51% of the holders of all outstanding AMB Property II Series C Preferred Units if those holders deliver to AMB Property Holding Corporation a private letter ruling or an opinion of independent counsel to the effect that an exchange of the AMB Property II Series C Preferred Units at that time would not cause the AMB Property II Series C Preferred Units to be considered "stock and securities" within the meaning of the Code for purposes of determining whether the holder of AMB Property II Series C Preferred Units is an "investment company" under the Code.

The AMB Property II Series C Preferred Units are also exchangeable in whole at any time for shares of Series C Preferred Stock, if initial purchasers of the AMB Property II Series C Preferred Units holding 51% of all outstanding AMB Property II Series C Preferred Units determine, (regardless of whether held by the initial purchasers) if:

- AMB Property II reasonably determines that the assets and income of AMB Property II for a taxable year after 1998 would not satisfy the income and assets tests of the Code for such taxable year if AMB Property II were a REIT; or
- any holder of AMB Property II Series C Preferred Units delivers to AMB Property II and AMB Property Holding Corporation an opinion of independent counsel to the effect that (based on the assets and income of AMB Property II for a taxable year after 1998) AMB Property II would not satisfy the income and assets tests of the Code for such taxable year if AMB Property II were a REIT and that such failure would create a meaningful risk that a holder of AMB Property II Series C Preferred Units would fail to maintain qualification as a REIT.

In lieu of an exchange for Series C Preferred Stock, AMB Property II may redeem AMB Property II Series C Preferred Units for cash in an amount equal to the original capital account balance of the holder of AMB Property II Series C Preferred Units. A

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holder of AMB Property II Series C Preferred Units will not be entitled to exchange the units for Series C Preferred Stock if the exchange would result in a violation of the ownership limit. See "Description of Capital Stock -- Restrictions on Ownership and Transfer of Capital Stock."

The Series C Preferred Stock ranks, with respect to dividends and in the event we voluntarily or involuntarily liquidate, dissolve or wind up:

- senior to all classes or series of common stock and to all of our equity securities that provide that they rank junior to the Series C Preferred Stock;
- junior to all equity securities issued by us which rank senior to the Series C Preferred Stock; and
- on a parity with all equity securities issued by us (including the Series A Preferred Stock and the Series B Preferred Stock) other than those referred to in the bullet points above. The term "equity securities" does not include convertible debt securities until converted into equity securities.

If ever issued, the Series C Preferred Stock will entitle the holders to receive, when and as authorized by the Board of Directors out of funds legally available for dividends, cumulative preferential cash dividends at the rate of 8.75% of the liquidation preference per annum (equivalent to \$4.375 per annum per share of Series C Preferred Stock). Dividends on the Series C Preferred Stock accumulate on a daily basis and are payable quarterly in arrears on the 15th day of each January, April, July and October. Except as provided below, unless full cumulative dividends on the Series C Preferred Stock have been or at the same time are declared and paid or declared and a sum sufficient for payment set apart for payment for all past dividend periods and the then current dividend period, no distributions (other than in common stock or other equity securities ranking junior to the Series C Preferred Stock) may be declared or paid or set aside for payment or other dividend be declared or made upon the common stock or any other equity securities ranking junior to or on a parity with the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock), nor may any common stock or any other equity securities ranking junior to or on a parity with the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such securities) by us (except by conversion into or exchange for other equity securities ranking junior to the Series C Preferred Stock and pursuant to the provisions of our Charter providing for limitations on ownership and transfer in order to ensure that we remain qualified as a REIT). When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Stock and any other equity securities ranking on a parity with the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock), all dividends declared upon the Series C Preferred Stock and any other equity securities ranking on a parity with the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock) will be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and each such other equity securities shall bear to each other the same ratio that accumulated dividends per share of Series C Preferred Stock and such other equity securities (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other equity securities do not have a cumulative dividend) bear to each other. Dividends on the Series C Preferred Stock will accumulate whether or not we have funds legally available for the payment of dividends and whether or not we

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declare dividends. If we designate any portion of a dividend as a "capital gain

dividend," a holder's share of the capital gain dividend will be an amount that bears the same ratio to the total amount of dividends (as determined for federal income tax purposes) paid to the holder for the year as the aggregate amount designated as a capital gain dividend bears to the aggregate amount of all dividends (as determined for federal income tax purposes) paid on all classes of shares for the year.

In the event that we voluntarily or involuntarily liquidate, dissolve or wind up following the issuance of Series C Preferred Stock, the holders of the Series C Preferred Stock will be entitled to receive out of our assets legally available for distribution to our stockholders remaining after payment or provision for payment of all of our debts and liabilities, a liquidation preference, in cash, of \$50.00 per share, plus an amount equal to any accumulated or accrued and unpaid dividends to the date of such payment, before any distribution of assets is made to holders of common stock or any other equity securities that rank junior to the Series C Preferred Stock. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of the Series C Preferred Stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other entity, a merger of another entity with or into us, a statutory share exchange or the sale, lease, transfer or conveyance of all or substantially all of our property or business do not constitute a liquidation, dissolution or winding up for purposes of triggering the liquidation preference.

If we voluntarily or involuntarily liquidate, dissolve or wind up following the issuance of Series C Preferred Stock and our assets are insufficient to make full payment to holders of the Series C Preferred Stock and the corresponding amounts payable on all shares of other classes or series of equity securities ranking on a parity with the Series C Preferred Stock as to liquidation rights (including the Series A Preferred Stock and the Series B Preferred Stock) then the holders of the Series C Preferred Stock and all other such classes or series of equity securities will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be entitled.

The Series C Preferred Stock has no stated maturity and is not subject to mandatory redemption or any sinking fund. If issued, we cannot redeem the Series C Preferred Stock prior to November 24, 2003. On and after November 24, 2003, we can redeem the Series C Preferred Stock for cash at our option, in whole or from time to time in part, at a redemption price of \$50.00 per share, plus accumulated and unpaid dividends, if any, to the redemption date. We must pay the redemption price (other than the portion of the redemption price consisting of accumulated and unpaid dividends) solely out of the sale proceeds of other equity securities, which may include other classes or series of preferred stock. In certain circumstances related to our maintenance of our ability to qualify as a REIT for federal income tax purposes, we may redeem shares of Series C Preferred Stock. See "-- Restrictions on Ownership and Transfer of Capital Stock."

Holders of Series C Preferred Stock will have no voting rights, except as described below. If we do not pay dividends on the Series C Preferred Stock for six or more quarterly periods (whether or not consecutive), holders of the Series C Preferred Stock (voting separately as a class with all other classes or series of equity securities upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to serve on our Board of Directors until we have eliminated all dividend arrearages with respect to the Series C Preferred Stock. So long as any shares of Series C Preferred Stock remain outstanding, we may not, without the affirmative vote or consent of at least two-thirds of the votes entitled to be cast by the

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holders of the outstanding shares of Series C Preferred Stock (the Series C Preferred Stock voting separately as a class):

- authorize or create, or increase the authorized or issued amount of, any class or series of stock ranking senior to the Series C Preferred Stock;
- reclassify any of our authorized stock into any class or series of stock ranking senior to the Series C Preferred Stock;
- designate or create, or increase the authorized or issued amount of, or reclassify, any authorized shares into, any preferred stock ranking on a parity with the Series C Preferred Stock or create, authorize or issue any obligations or securities convertible into any such shares, but only to the extent such stock is issued to one of our affiliates; or
- either consolidate, merge into or with, or convey, transfer or lease our assets substantially, as an entirety, to any corporation or other entity, or amend, alter or repeal the provisions of our Charter, whether by merger or consolidation or otherwise, in each case so as to materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series C Preferred Stock.

With respect to the occurrence of any of the events set forth in the fourth bullet point above, so long as we are either the surviving entity and shares of Series C Preferred Stock remain outstanding with the terms materially unchanged or the resulting, surviving or transferee entity is a corporation, business trust or like entity organized under the laws of any state and substitutes for the Series C Preferred Stock other preferred stock or preferred shares having substantially the same terms and rights as the Series C Preferred Stock, the occurrence of any such event will not be considered to materially and adversely affect rights, preferences, privileges or voting powers of holders of Series C Preferred Stock. Any increase in the amount of authorized preferred stock, the creation or issuance of any other class or series of preferred stock or any increase in an amount of authorized shares of each class or series, in each case ranking on a parity with or junior to the Series C Preferred Stock will not be considered to materially and adversely affect such rights, preferences, privileges or voting powers.

We have agreed to file a registration statement registering the resale of the shares of Series C Preferred Stock issuable to the holders of AMB Property II Series C Preferred Units as soon as practicable but not later than 60 days after the date the AMB Property II Series C Preferred Units are exchanged for shares of Series C Preferred Stock. We have also agreed to use our best efforts to cause the registration statement to be declared effective within 120 days after the date of the exchange.

#### RESTRICTIONS ON OWNERSHIP AND TRANSFER OF CAPITAL STOCK

In order for us to qualify as a REIT under the Code, no more than 50% in value of all classes of our outstanding shares of capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which we have made an election to be treated as a REIT). In addition, if we, or an owner of 10% or more of our capital stock, actually or constructively own 10% or more of one of our tenants (or a tenant of any partnership or limited liability company in which we are a partner or member), the rent received by us (either directly or through the partnership or limited liability company) from the tenant will not be qualifying income for purposes of the gross income tests for REITs contained in the Code. A REIT's stock also must be beneficially

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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 (other than the first year for which an election to be treated as a REIT has been made).

Because our Board of Directors believes it is desirable for us to qualify as a REIT, our Charter, subject to certain exceptions as discussed below, provides that no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% (by value or number of shares, whichever is more restrictive) of either our issued and outstanding common stock or our issued and outstanding Series A Preferred Stock. We will also prohibit the ownership, actually or constructively, of any shares of our Series B Preferred Stock and any shares of our Series C Preferred Stock by any single person so that no such person, taking into account all of our stock so owned by such person, may own in excess of 9.8% of our issued and outstanding capital stock. The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our common stock, Series A Preferred Stock or capital stock (or the acquisition of an interest in an entity that owns, actually or constructively, common stock, Series A Preferred Stock or capital stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding common stock, Series A Preferred Stock or capital stock, as the case may be, and thereby subject the common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock to the applicable ownership limit. The Board of Directors may, but in no event will be required to, waive the applicable ownership limit with respect to a particular stockholder if it determines that such ownership will not jeopardize our status as a REIT and the Board of Directors otherwise decides such action would be in our best interest. As a condition of such waiver, the Board of Directors may require an opinion of counsel satisfactory to it and/or undertakings or representations from the applicant with respect to preserving our REIT status. The Board of Directors has waived the ownership limit applicable to our common stock with respect to Ameritech Pension Trust, allowing it to own up to 14.9% of our common stock and, under some circumstances, allowing it to own up to 19.6%. However, we conditioned this waiver upon the receipt of undertakings and representations from Ameritech Pension Trust which we believed were reasonably necessary in order for us to conclude that the waiver would not cause us to fail to qualify as a REIT.

Our Charter also provides that:

- no person may actually or constructively own common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock

that would result in us being "closely held" under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT;

- no person may transfer common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock if a transfer would result in shares of our capital stock being owned by fewer than 100 persons; and
- any person who acquires or attempts or intends to acquire actual or constructive ownership of common stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock that will or may violate any of the foregoing restrictions on transferability and ownership is required to notify us immediately and provide us with such other information as we may request in order to determine the effect of the transfer on our status as a REIT. The foregoing restrictions on transferability

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and ownership will not apply if our Board of Directors determines that it is no longer in our best interest to attempt to qualify, or to continue to qualify, as a REIT. Except as otherwise described above, any change in the applicable ownership limit would require an amendment to our Charter, which requires the affirmative vote of holders owning at least two-thirds of the shares of our outstanding capital stock entitled to vote on the amendment.

Under our Charter, if any attempted transfer of shares of stock or any other event would otherwise result in any person violating an ownership limit, any other limit imposed by our Board of Directors or the other restrictions in the Charter, then any such attempted transfer will be void and of no force or effect with respect to the purported transferee (the "Prohibited Transferee") as to that number of shares that exceeds the applicable ownership limit or such other limit (referred to as "Excess Shares"). Under those circumstances, the Prohibited Transferee will acquire no right or interest (or, in the case of any event other than an attempted transfer, the person or entity holding record title to any shares in excess of the applicable ownership limit (the "Prohibited Owner") will cease to own any right or interest) in the Excess Shares. Any Excess Shares described above will be transferred automatically, by operation of law, to a trust, the beneficiary of which will be a qualified charitable organization selected by us (the "Beneficiary"). This automatic transfer will be considered to be effective as of the close of business on the business day prior to the date of the violating transfer or event. Within 20 days of receiving notice from us of the transfer of shares to the trust, the trustee of the trust will be required to sell the Excess Shares to a person or entity who could own the shares without violating the applicable ownership limit, or any other limit imposed by our Board of Directors, and distribute to the Prohibited Transferee an amount equal to the lesser of the price paid by the Prohibited Transferee for the Excess Shares or the sales proceeds received by the trust for the Excess Shares. In the case of any Excess Shares resulting from any event other than a transfer, or from a transfer for no consideration (such as a gift), the trustee will be required to sell Excess Shares to a qualified person or entity and distribute to the Prohibited Owner an amount equal to the lesser of the applicable market price of the Excess Shares as of the date of the event or the sales proceeds received by the trust for the Excess Shares. In either case, any proceeds in excess of the amount distributable to the Prohibited Transferee or Prohibited Owner will be distributed to the Beneficiary. Prior to a sale of any Excess Shares by the trust, the trustee will be entitled to receive, in trust for the Beneficiary, all dividends and other distributions paid by us with respect to the Excess Shares, and also will be entitled to exercise all voting rights with respect to the Excess Shares. Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee will have the authority (at the trustee's sole discretion) to rescind as void any vote cast by a Prohibited Transferee or Prohibited Owner prior to the time that we discover that the shares have been automatically transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the Beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote. If we pay the Prohibited Transferee or Prohibited Owner any dividend or other distribution before we discover that the shares were transferred to the trust, the Purported Transferee or Prohibited Owner will be required to repay the trustee upon demand for distribution to the Beneficiary. If the transfer to the trust is not automatically effective (for any reason), to prevent violation of the applicable ownership limit or any other limit provided in our Charter or imposed by the Board of Directors, then our Charter provides that the transfer of the Excess Shares will be void ab initio.

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In addition, shares of stock held in the trust will be considered to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of such devise or gift) and (2) the applicable market price on the date that we, or our designee, accept the offer. We have the right to accept the offer until the trustee has sold the shares held in the trust. Upon that sale to

us, the interest of the Beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the Prohibited Transferee or Prohibited Owner.

If any attempted transfer of shares would cause us to be beneficially owned by fewer than 100 persons, our Charter provides that the transfer will be null and void in its entirety and the intended transferee will acquire no rights to the stock.

All certificates representing shares will bear a legend referring to the restrictions described above. The ownership limitations described above could delay, defer or prevent a transaction or a change in control that might involve a premium price for the shares or otherwise be in the best interest of stockholders.

Under our Charter, owners of outstanding shares must, upon our demand, provide us with a completed questionnaire containing information regarding ownership of the shares, as set forth in the treasury regulations. In addition, each stockholder must upon demand disclose to us in writing such information that we may request in order to determine the effect, if any, of the stockholder's actual and constructive ownership of shares of common stock, Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock on our status as a REIT and to ensure compliance with each ownership limit, or any other limit specified in the Charter or required by the Board of Directors.

#### TRANSFER AGENT, REGISTRAR, CONVERSION AGENT AND DIVIDEND DISBURSING AGENT

The transfer agent, registrar and dividend disbursing agent for our common stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock is BankBoston, N.A., an affiliate of First National Bank of Boston.

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#### DESCRIPTION OF CERTAIN PROVISIONS OF THE PARTNERSHIP AGREEMENT OF THE OPERATING PARTNERSHIP

Substantially all of our assets are held, and all of our operations are conducted, by or through the Operating Partnership. We are the sole general partner of the Operating Partnership and owned, as of November 30, 1998, an approximate 95.1% interest in the Operating Partnership. As the sole general partner, we have the exclusive right and power to manage the Operating Partnership. Our interest in the Operating Partnership is designated as a general partner interest. Except with respect to distributions of cash and allocations of income and loss, and except as otherwise noted in this prospectus, the description in this section of common limited partnership Units is also applicable to Performance Units, and holders of Performance Units will be treated as limited partners. We have summarized certain terms and provisions of the Partnership Agreement. This summary is not complete and is qualified by the provisions of the Partnership Agreement. For more detail, you should refer to the Partnership Agreement itself, which we have filed as an exhibit to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

#### GENERAL

Holders of limited partnership Units hold limited partnership interests in the Operating Partnership, and all holders of partnership interests (including us in our capacity as general partner) are entitled to share in cash distributions from, and in the profits and losses of, the Operating Partnership. The number of general partnership Units (the "GP Units") held by us is approximately equal to the total number of outstanding shares of our common stock and preferred stock. Accordingly, the distributions that we pay per share of common stock are expected to be equal to the distributions per unit that the Operating Partnership pays on the common Units, and the distributions that we pay per share of Series A Preferred Stock, any Series B Preferred Stock and any Series C Preferred Stock are expected to be equal to the distributions per unit that the Operating Partnership pays on the Series A Preferred Units, the Series B Preferred Units and any Series C Preferred Units, respectively. The Units have not been registered pursuant to federal or state securities laws, and they will not be listed on the New York Stock Exchange or any other exchange or quoted on any national market system. However, the shares of common stock, Series B Preferred Stock and Series C Preferred Stock that we may issue upon exchange of the common Units, Series B Preferred Units and AMB Property II Series C Preferred Units may be sold in registered transactions or transactions exempt from registration under the Securities Act. The limited partners of the Operating Partnership have the rights to which limited partners are entitled under the Partnership Agreement and the Delaware Uniform Limited Partnership Act (the "Partnership Act"). The Partnership Agreement imposes certain restrictions on the transfer of Units, as described below.

#### PURPOSE, BUSINESS AND MANAGEMENT

The Operating Partnership is organized as a Delaware limited partnership pursuant to the terms of the Partnership Agreement. We are the sole general

partner of the Operating Partnership and conduct substantially all of our business through the Operating Partnership, except for investment advisory services (which we conduct through AMB Investment Management) and certain other activities that we conduct through Headlands Realty Corporation.

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The primary purpose of the Operating Partnership is, in general, to acquire, purchase, own, operate, manage, develop, redevelop, invest in, finance, refinance, sell, lease and otherwise deal with industrial and retail properties and assets related to those properties, and interests in those properties and assets. The Operating Partnership is authorized to conduct any business that a limited partnership formed under the Partnership Act may lawfully conduct, except that the Partnership Agreement requires of the Operating Partnership to conduct its business in such a manner that will permit the Company to be classified as a REIT under Section 856 of the Code, unless the Company ceases to qualify as a REIT for reasons other than the conduct of the business of the Operating Partnership. Subject to the foregoing limitation, the Operating Partnership may enter into partnerships, joint ventures or similar arrangements and may own interests directly or indirectly in any other entity.

As the general partner of the Operating Partnership we have the exclusive power and authority to conduct the business of the Operating Partnership, subject to the consent of the limited partners in certain limited circumstances (as discussed below) and except as expressly limited in the Partnership Agreement.

We have the right to make all decisions and take all actions with respect to the Operating Partnership's acquisition and operation of our properties and all other assets and businesses of or related to the Operating Partnership. No limited partner may take part in the conduct or control of the business or affairs of the Operating Partnership by virtue of being a holder of Units. In particular, each limited partner expressly acknowledged in the Partnership Agreement that as general partner, we are acting on behalf of the Operating Partnership's limited partners and our stockholders, collectively, and are under no obligation to consider the tax consequences to limited partners when making decisions for the benefit of the Operating Partnership. We intend to make decisions in our capacity as general partner of the Operating Partnership so as to maximize our profitability and the profitability of the Operating Partnership as a whole, independent of the tax effects on the limited partners. The Company and the Operating Partnership have no liability to a limited partner as a result of any liabilities or damages incurred or suffered by, or benefits not derived by, a limited partner as a result of an action or inaction of the Company as general partner of the Operating Partnership as long as the Company acted in good faith. Limited partners have no right or authority to act for or to bind the Operating Partnership.

Limited partners of the Operating Partnership have no authority to transact business for, or participate in the management activities or decisions of, the Operating Partnership, except as provided in the Partnership Agreement or as required by applicable law.

#### ENGAGING IN OTHER BUSINESSES; CONFLICTS OF INTEREST

We may not conduct any business other than in connection with the ownership, acquisition and disposition of Operating Partnership interests as a general partner and the management of the business of the Operating Partnership, its operation as a public reporting company with a class (or classes) of securities registered under the Exchange Act its operation as a REIT and activities that are incidental to these activities (including ownership of any interest in AMB Property Holding Corporation, AMB Property Holding II Corporation, the Preferred Stock Subsidiaries or a title holding, management or finance subsidiary organized as a partnership, limited liability company or corporation) without the consent of the holders of a majority of the limited partnership interests. Unless they otherwise agree in writing, each limited partner, and its affiliates, is free to engage in any business or activity, even if the business or activity competes with or is enhanced by

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the business of the Operating Partnership. The Partnership Agreement does not prevent another person or entity that acquires control of the Company in the future from conducting other businesses or owning other assets, even if it would be in the best interests of the limited partners for the Operating Partnership to own those businesses or assets. In the exercise of our power and authority under the Partnership Agreement, we may contract and otherwise deal with or otherwise obligate the Operating Partnership to entities in which we or any one or more of our officers, directors or stockholders may have an ownership or other financial interest, whether direct or indirect.

#### OUR REIMBURSEMENT; TRANSACTIONS WITH US AND OUR AFFILIATES

We do not receive any compensation for our services as general partner of the Operating Partnership. However, as a partner in the Operating Partnership, we have rights to allocations and distributions as a partner of the Operating

Partnership. In addition, the Operating Partnership reimburses us for all expenses we incur relating to our activities as general partner, our continued existence and qualification as a REIT and all other liabilities that we incur in connection with the pursuit of our business and affairs. We may retain persons or entities that we select (including ourselves, any entity in which we have an interest, or any entity with which we are affiliated) to provide services to or on behalf of the Operating Partnership. The Operating Partnership will reimburse us for all expenses incurred relating to the ongoing operation of the Operating Partnership and any issuance of additional partnership interests in the Operating Partnership. These expenses include those incurred in connection with the administration and activities of the Operating Partnership, such as the maintenance of the Operating Partnership's books and records, management of the Operating Partnership's property and assets, and preparation of information regarding the Operating Partnership provided to the partners in the preparation of their individual tax returns. Except as expressly permitted by the Partnership Agreement, however, our affiliates will not engage in any transactions with the Operating Partnership except on terms that are fair and reasonable to the Operating Partnership and no less favorable to the Operating Partnership than it would obtain from an unaffiliated third party.

#### OUR EXCULPATION AND INDEMNIFICATION

The Partnership Agreement generally provides that we, as general partner of the Operating Partnership, will incur no liability to the Operating Partnership or any limited partner for losses sustained, liabilities incurred, or benefits not derived as a result of errors in judgment or for any mistakes of fact or law or for anything that we may do or not do in connection with the business and affairs of the Operating Partnership if we carry out our duties in good faith. Our liability in any event is limited to our interest in the Operating Partnership. We have no liability for the loss of any limited partner's capital. In addition, we are not responsible for any misconduct, negligent act or omission of any of our consultants, contractors or agents, or any of the Operating Partnership's consultants, contractors or agents, and we have no obligation other than to use good faith in the selection of all contractors, consultants and agents. We may consult with counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisors that we select. An opinion by a consultant on a matter that we believe is within the consultant's professional or expert competence is considered to be complete protection as to any action that we take or fail to take based on the opinion and in good faith.

The Partnership Agreement also requires the Operating Partnership to indemnify us, our directors and officers, and other persons that we may from time to time designate

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against any loss or damage, including reasonable legal fees and court costs incurred by the person by reason of anything the person may do or not do for or on behalf of the Operating Partnership or in connection with its business or affairs unless it is established that:

- the act or omission of the indemnified person was material to the matter giving rise to the proceeding and either the indemnified person committed the act or omission in bad faith or as the result of active and deliberate dishonesty;
- the indemnified person actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the indemnified person had reasonable cause to believe that the act or omission was unlawful. Any indemnification claims must be satisfied solely out of the assets of the Operating Partnership.

#### SALES OF ASSETS; LIQUIDATION

Under the Partnership Agreement, as general partner we generally have the exclusive authority to determine whether, when and on what terms, the Operating Partnership will sell its assets (including our properties, which we own through the Operating Partnership). However, we have agreed, in connection with the contribution of properties from taxable investors in our formation transactions and certain property acquisitions for Units (with an estimated aggregate value of approximately \$253.7 million), not to dispose of certain assets in a taxable sale or exchange for a mutually agreed upon period and, thereafter, to use commercially reasonable or best efforts to minimize the adverse tax consequences of any sale. We may enter into similar or other agreements in connection with other acquisitions of properties for Units.

A merger of the Operating Partnership with another entity generally requires an affirmative vote of the partners (other than the preferred limited partners) holding a majority of the outstanding percentage interest (including the interest held directly or indirectly by us) of all partners other than preferred limited partners, subject to certain consent rights of holders of Units as described below under "Amendment of the Partnership Agreement." A



dissolution or liquidation of the Operating Partnership, including a sale or disposition of all or substantially all of the Operating Partnership's assets and properties, generally requires an affirmative vote of the limited partners (other than the preferred limited partners) holding a majority of the outstanding percentage interest of all limited partners other than preferred limited partners.

#### CAPITAL CONTRIBUTION

The Partnership Agreement provides that if the Operating Partnership requires additional funds at any time or from time to time in excess of funds available to the Operating Partnership from borrowings or capital contributions, we may borrow funds from a financial institution or other lender or through public or private debt offerings and lend the funds to the Operating Partnership on the same terms and conditions as are applicable to our borrowing of the funds. As an alternative to borrowing funds required by the Operating Partnership, we may contribute the amount of the required funds as an additional capital contribution to the Operating Partnership. If we contribute additional capital to the Operating Partnership, our partnership interest in the Operating Partnership will be increased on a proportionate basis. Conversely, the partnership interests of the limited partners will be decreased on a proportionate basis if we make additional capital contributions.

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#### DISTRIBUTIONS; ALLOCATIONS OF INCOME AND LOSS

The Partnership Agreement generally provides that the Operating Partnership will make quarterly distributions of Available Cash (as defined below), as determined in the manner provided in the Partnership Agreement, to the partners of the Operating Partnership in proportion to their percentage interests in the Operating Partnership (which for any partner is determined by the number of Units it owns relative to the total number of Units outstanding). If any preferred Units are outstanding, the Operating Partnership will pay distributions to holders of preferred Units in accordance with the rights of each class of preferred Units (and, within each such class, pro rata in proportion to the respective percentage interest of each holder), with any remaining Available Cash distributed in accordance with the previous sentence. "Available Cash" is generally defined as net cash flow from operations, plus any reduction in reserves, and minus interest and principal payments on debt, capital expenditures, any additions to reserves and other adjustments. Other than as described below, neither we nor the limited partners are currently entitled to any preferential or disproportionate distributions of Available Cash with respect to the Units.

#### SERIES A PREFERRED UNITS

In connection with the sale of the Series A Preferred Shares, we received Series A Preferred Units in the Operating Partnership that mirror the rights, preferences and other terms of the Series A Preferred Stock. The Series A Preferred Units rank, with respect to distribution rights and rights upon liquidation, winding up or dissolution of the Operating Partnership:

- senior to the common Units and to all Units that provide that they rank junior to the Series A Preferred Units;
- junior to all Units which rank senior to the Series A Preferred Units; and
- on a parity with the Series B Preferred Units, any Series C Preferred Units that the Operating Partnership may issue to us (see "-- Series C Preferred Units") and all other Units expressly designated by the Operating Partnership to rank on a parity with the Series A Preferred Units.

We receive preferred distributions of cash and preferred allocations of income on the Series A Preferred Units in an amount equal to the dividends payable by us on the Series A Preferred Stock. If we acquire any Series B Preferred Units from the holders pursuant to the exercise of their exchange rights, or if the Operating Partnership issues any Series C Preferred Units to us, we will receive preferred distributions of cash and preferred allocations of income on the Series B Preferred Units or Series C Preferred Units in an amount equal to the dividends payable by us on the Series B Preferred Stock or Series C Preferred Stock. See "-- Series C Preferred Units."

As a consequence, we will receive distributions from the Operating Partnership sufficient to pay dividends on the Series A Preferred Stock and any Series B Preferred Stock and Series C Preferred Stock before any other partner in the Operating Partnership (other than holders of parity preferred units, including the Series B Preferred Units) receives a distribution. In addition, if necessary, income will be specially allocated to us and losses will be allocated to the other partners of the Operating Partnership in amounts necessary to ensure that, to the extent possible, the balance in our capital account will at all times be equal to or in excess of the amount payable by us on the Series A Preferred Stock and any Series B Preferred Stock and Series C Preferred Stock upon liquidation or

redemption. See "Certain Federal Income Tax Considerations -- Tax Aspects of the Operating Partnership and the Joint Ventures -- Allocations of Operating Partnership Income, Gain, Loss and Deduction."

#### SERIES B PREFERRED UNITS

General. The Series B Preferred Units rank, with respect to distribution rights and rights upon liquidation, winding up or dissolution of the Operating Partnership:

- senior to the common Units and to all Units that provide that they rank junior to the Series B Preferred Units;
- junior to all Units which rank senior to the Series B Preferred Units; and
- on a parity with the Series A Preferred Units, any Series C Preferred Units and all other Units expressly designated by the Operating Partnership to rank on a parity with the Series B Preferred Units.

Subject to the rights of holders of parity preferred Units (including the Series A Preferred Units and any Series C Preferred Units), holders of the Series B Preferred Units are entitled to receive, when, as and if declared by the Operating Partnership, acting through us as general partner, cumulative preferential cash distributions in an amount equal to 8 5/8% per annum on an amount equal to \$50.00 per Series B Preferred Unit then outstanding (equivalent to \$4.3125 per annum). These distributions are payable on the 15th day of January, April, July and October of each year.

Exchange Rights. The Series B Preferred Units are exchangeable in whole at any time on or after November 12, 2008, at the option of 51% of the holders of all outstanding Series B Preferred Units, on a one for one basis, subject to adjustment, for shares of our Series B Preferred Stock. In addition, the Series B Preferred Units are exchangeable in whole at any time at the option of 51% of the holders of all outstanding Series B Preferred Units if:

- any Series B Preferred Unit shall not have received full distributions with respect to six prior quarterly distribution periods (whether or not consecutive); or
- we or one of our subsidiaries take the position, and a holder or holders of Series B Preferred Units receive an opinion of independent counsel that the Operating Partnership is, or upon the happening of a certain event likely will be, a "publicly traded partnership" within the meaning of the Code.

The Series B Preferred Units are exchangeable in whole for shares of Series B Preferred Stock at any time after November 12, 2001 and prior to November 12, 2008 at the option of 51% of the holders of all outstanding Series B Preferred Units if those holders deliver to us as general partner a private letter ruling or an opinion of independent counsel to the effect that an exchange of the Series B Preferred Units at that time would not cause the Series B Preferred Units to be considered "stock and securities" within the meaning of the Code for purposes of determining whether the holder of Series B Preferred Units is an "investment company" under the Code.

With certain limitations, the Series B Preferred Units are also exchangeable in whole at any time for shares of Series B Preferred Stock (regardless of whether held by the initial purchaser) if:

- the initial purchaser of the Series B Preferred Units reasonably concludes that there exists an imminent and substantial risk that the initial purchaser's interest in the

Operating Partnership represents or will represent more than 19.5% of the total profits or capital interests in the Operating Partnership for a taxable year;

- the initial purchaser of the Series B Preferred Units delivers to us an opinion to the effect that there is a substantial risk that the initial purchaser's interest in the Operating Partnership represents or will represent more than 19.5% of the total profits or capital interests in the Operating Partnership for a taxable year; and
- we, as the general partner, agree with the conclusions in the bullet points above; provided, that we may not unreasonably withhold our agreement.

In lieu of an exchange for Series B Preferred Stock, we may elect to cause the Operating Partnership to redeem Series B Preferred Units for cash in an

amount equal to the original capital account balance of the Series B Preferred Units plus all accrued and unpaid distributions to the date of redemption. A holder of Series B Preferred Units will not be entitled to exchange the Units for Series B Preferred Stock if the exchange would result in a violation of the ownership limit. See "Description of Capital Stock -- Restrictions on Ownership and Transfer of Capital Stock."

Redemption. On or after November 12, 2003, the Operating Partnership has the right to redeem the Series B Preferred Units, in whole or in part from time to time, at a redemption price payable in cash equal to the capital account balance of the holder, provided that the amount shall not be less than \$50.00 per Series B Preferred Unit. The Operating Partnership must pay the redemption price solely out of the sale proceeds of our capital stock or interests in the Operating Partnership and from no other source. The Operating Partnership may not redeem fewer than all of the Series B Preferred Units unless the Operating Partnership has paid all accumulated and unpaid distributions on all Series B Preferred Units for all quarterly distribution periods terminating on or prior to the date of redemption.

Limited Approval Rights. For so long as any Series B Preferred Units are outstanding, without the affirmative vote of the holders of at least two-thirds of the Series B Preferred Units outstanding at the time, the Operating Partnership may not:

- authorize, create or increase the authorized or issued amount of, or reclassify, any class or series of partnership interests, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any partnership interests, ranking prior to the Series B Preferred Units;
- authorize, create or increase the authorized or issued amount of, or reclassify, any class or series of partnership interests, or create, authorize or issue any obligations or security convertible into or evidencing a right to purchase any partnership interests, ranking equal to the Series B Preferred Units, but only to the extent that such securities are issued to an affiliate of the Operating Partnership, other than us to the extent that the issuance is to allow us to issue corresponding shares of Series B Preferred Stock to persons who are not affiliates of the Operating Partnership; or
- either consolidate, merge into or with, or convey, transfer or lease its assets substantially as an entirety to, any corporation or other entity or amend, alter or repeal the provisions of the Partnership Agreement, in a manner that would materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series B Preferred Units. So long as the Operating Partnership is the surviving entity and the Series B Preferred Units remain outstanding on the

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same terms, or the resulting, surviving or transferee entity is a partnership, limited liability company or other pass-through entity and substitutes the Series B Preferred Units for other interests in such entity, with substantially the same terms and rights, then the occurrence of any of the events listed above in this bullet point will not be considered to materially and adversely affect such rights, privileges or voting powers.

Other than as discussed above or elsewhere in this prospectus, the holders of Series B Preferred Units have no voting rights other than with respect to certain matters that would adversely affect them or as otherwise provided by applicable law.

Liquidation Preference. The distribution and income allocation provisions of the Partnership Agreement have the effect of providing each Series B Preferred Unit with a liquidation preference to each holder of such Units equal to the holder's capital contributions, plus any accrued but unpaid distributions, in preference to any other class or series of partnership interest of the Operating Partnership, other than any Series A Preferred Units and any Series C Preferred Units.

Registration Rights. We have agreed to file a registration statement registering the resale of the shares of Series B Preferred Stock issuable to the holders of Series B Preferred Units as soon as practicable but not later than 60 days after the date the Series B Preferred Units are exchanged for shares of Series B Preferred Stock. We have also agreed to use our best efforts to cause the registration statement to be declared effective within 120 days after the date of the exchange.

#### SERIES C PREFERRED UNITS

As described under "Description of Capital Stock -- Preferred Stock -- Series C Preferred Stock," holders of AMB Property II Series C Preferred Units may exchange their units for shares of our Series C Preferred Stock. If we issue Series C Preferred Stock, we will:

- contribute 99% of the AMB Property II Series C Preferred Units to the Operating Partnership in exchange for Series C Preferred Units in the Operating Partnership that mirror the rights, preferences and other terms of the Series C Preferred Stock; and
- contribute 1% of the AMB Property II Series C Preferred Units to AMB Property Holding Corporation.

Any Series C Preferred Units will rank on a parity with the Series A Preferred Units and Series B Preferred Units. As a consequence, we would receive distributions from the Operating Partnership that we would use to pay dividends on any Series C Preferred Stock and the Series A Preferred Stock before any other partner in the Operating Partnership (other than holders of parity preferred units, including the Series B Preferred Units).

#### COMMON LIMITED PARTNERSHIP UNITS

##### Redemption/Exchange Rights

Holder of common Units have the right, commencing generally on or before the first anniversary of the holder becoming a limited partner of the Operating Partnership (or such other date agreed to by the Operating Partnership and the applicable Unit holders), to require the Operating Partnership to redeem part or all of their common Units for cash (based upon the fair market value of an equivalent number of shares of common stock at the time of redemption) or we may, in our sole and absolute discretion (subject to the

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limits on ownership and transfer of common stock set forth in our Charter) elect to exchange those common Units for shares of common stock (on a one-for-one basis, subject to adjustment in the event of stock splits, stock dividends, issuance of certain rights, certain extraordinary distributions and similar events). See "Redemption/Exchange of Common Units for Common Stock." We presently anticipate that we will elect to issue shares of common stock in exchange for common Units in connection with each redemption request, rather than having the Operating Partnership pay cash. With each redemption or exchange, our percentage ownership interest in the Operating Partnership will increase. Common limited partners may exercise this redemption/exchange right from time to time, in whole or in part, subject to the limitations that limited partners may not exercise the right if exercise would result in any person actually or constructively owning shares of common stock in excess of the ownership limit or any other amount specified by the Board of Directors, assuming common stock was issued in the exchange. Holders of Performance Units also have limited redemption/exchange rights, as discussed under the caption "-- Performance Units" below.

##### Registration Rights

We have granted to common limited partners certain registration rights with respect to the shares of stock issuable upon exchange of common Units or otherwise. We have agreed to file and generally keep continuously effective generally beginning on or as soon as practicable after one year after issuance of common Units a registration statement covering the issuance of shares of common stock upon exchange of the Units and the resale of the shares.

This prospectus is a part of the registration statement registering the shares issuable to limited partners of the Operating Partnership who hold common Units issued on November 26, 1997 in connection with our formation. Pursuant to the terms and conditions of such registration rights, prior to the date upon which the shares of common stock issuable upon exchange of the common Units would be eligible for resale under Rule 144(k) under the Securities Act, as such rule may be amended from time to time (or any similar rule or regulation hereafter adopted by the SEC), each of the selling stockholders generally is limited to resales of shares of common stock issued pursuant to this prospectus to the number of shares which otherwise would be eligible for resale by that selling stockholder pursuant to Rule 144, assuming the shares were issued on the same date as the respective common Units were issued. In addition, we have agreed to file a registration statement covering shares of common stock issuable upon exchange of Performance Units. We may also agree to provide registration rights to any other person who may become an owner of Units, provided the person provides us with satisfactory undertakings. See "Risk Factors -- Ownership of Common Stock -- The Large Number of Shares Available for Future Sale Could Adversely Affect the Market Price of Our Common Stock." We will bear expenses incident to our registration obligations upon exercise of registration rights, including the payment of federal securities law and state Blue Sky registration fees, except that we will not bear any underwriting discounts or commissions or transfer taxes relating to registration of the shares.

#### PERFORMANCE UNITS

Notwithstanding the foregoing discussion of distributions and allocations of income or loss of the Operating Partnership, depending on the trading price of our common stock after November 26, 1998 (the first anniversary of our

initial public offering), certain of our officers, in their capacity as limited partners of the Operating Partnership, may receive

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performance units ("Performance Units") as of each of February 26, May 26, August 26 and November 26, 1999. The Performance Units are similar to common Units in many respects, including the right to share in operating distributions, and allocations of operating income and loss, of the Operating Partnership on a pro rata basis with common Units, and certain redemption and exchange rights, including limited rights to cause the Operating Partnership to redeem the Performance Units for cash or, at the Company's option, to exchange the Performance Units for shares of common stock. Any redemption rights with respect to Performance Units, however, will be dependent upon an increase in the value of the assets of the Operating Partnership (in some cases measured by reference to the trading price of the shares of common stock) after the issuance of the Performance Units. If there is no increase, the holders of Performance Units will not be entitled to receive any proceeds upon the liquidation of the Operating Partnership or the redemption of their Performance Units.

Immediately prior to our initial public offering, certain investors owned assets that were subject to advisory agreements with AMB Institutional Realty Advisors, Inc. containing an incentive fee provision or a "catch up adjustment." We refer to these investors as "Performance Investors." Allmerica Financial Life Insurance and Annuity Company, which is a selling stockholder under this registration statement, is a Performance Investor. If officers receive Performance Units, an equal number of GP Units allocable to the Company and Units allocable to Performance Investors who are limited partners in the Operating Partnership will be transferred to the Operating Partnership. 55,963 of Allmerica's Units are held in an escrow account for possible transfer to the Operating Partnership. If any of our GP Units are transferred to the Operating Partnership as a result of the issuance of Performance Units, an equal number of shares of common stock (the "Performance Shares") will be transferred to us by the applicable Performance Investors. Accordingly, no Company stockholder or limited partner in the Operating Partnership (other than Performance Investors, to the extent of their obligations to transfer Performance Shares to the Company or the Operating Partnership, as applicable) will be diluted as a result of the issuance of Performance Units.

#### REMOVAL OF THE GENERAL PARTNER; TRANSFERABILITY OF OUR INTERESTS; TREATMENT OF LIMITED PARTNERSHIP UNITS IN SIGNIFICANT TRANSACTIONS

The limited partners may not remove us as general partner, with or without cause, other than with our consent. The Partnership Agreement provides that we may not withdraw from the Operating Partnership (whether by sale, statutory merger, consolidation, liquidation or otherwise) without the consent of a majority in interest of the limited partners other than the preferred limited partners. However, except as set forth below, we may transfer or assign our general partner interest in connection with a merger, consolidation or sale of substantially all of our assets without limited partner consent.

Neither the Company nor the Operating Partnership may engage in any merger, consolidation or other combination with or into another person, or effect any reclassification, recapitalization or change of its outstanding equity interests, and the Company may not sell all or substantially all of its assets (each a "Termination Transaction") unless in connection with the Termination Transaction all holders of limited partnership Units other than preferred Units either will receive, or will have the right to elect to receive, for each Unit an amount of cash, securities or other property equal to the product of the number of shares of common stock into which each Unit is then exchangeable and the greatest amount of cash, securities or other property paid to the holder of one share in consideration of one share pursuant to the Termination Transaction.

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If, in connection with the Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding shares of common stock, each holder of limited partnership Units other than preferred Units will receive, or will have the right to elect to receive, the greatest amount of cash, securities or other property that the holder would have received had it exercised its right to redemption and received shares of common stock in exchange for its Units immediately prior to the expiration of the purchase, tender or exchange offer and had accepted the purchase, tender or exchange offer. Any Performance Units issued will also have the benefit of these provisions, irrespective of the capital account then applicable to the Performance Units.

A Termination Transaction may also occur if the following conditions are met:

- substantially all of the assets directly or indirectly owned by the surviving entity are held directly or indirectly by the Operating Partnership or another limited partnership or limited liability company which is the survivor of a merger, consolidation or combination of assets with the Operating Partnership;

- the holders of common Units, including the holders of any Performance Units issued, own a percentage interest of the surviving partnership based on the relative fair market value of the net assets of the Operating Partnership and the other net assets of the surviving partnership immediately prior to the consummation of the transaction;
- the rights, preferences and privileges of the holders in the surviving partnership, including the holders of Performance Units issued or to be issued, are at least as favorable as those in effect immediately prior to the consummation of such transaction and as those applicable to any other limited partners or non-managing members of the surviving partnership (except, as to Performance Units, for such differences with Units regarding liquidation, redemption or exchange as are described in this prospectus); and
- such rights of the common limited partners, including the holders of Performance Units issued or to be issued, include at least one of the following:
  - the right to redeem their interests in the surviving partnership for the consideration available to them pursuant to the preceding paragraph; or
  - the right to redeem their Units for cash on terms equivalent to those in effect immediately prior to the consummation of the transaction, or, if the ultimate controlling person of the surviving partnership has publicly traded common equity securities, the common equity securities, with an exchange ratio based on the relative fair market value of the securities and the common stock.

Our Board of Directors will reasonably determine fair market values and rights, preferences and privileges of the common limited partners as of the time of the Termination Transaction and, to the extent applicable, the values will be no less favorable to the holders of common Units than the relative values reflected in the terms of the Termination Transaction.

In addition, in the event of a Termination Transaction, the arrangements with respect to Performance Units and Performance Shares (as defined under "-- Performance Units") will be equitably adjusted to reflect the terms of the transaction, including, to the extent that the shares are exchanged for consideration other than publicly traded common equity, the transfer or release of remaining Performance Shares, and resulting issuance of any Performance Units, as of the consummation of the Termination Transaction.

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#### DUTIES AND CONFLICTS

Except as otherwise provided by our conflicts of interest policies with respect to directors and officers and as provided in the non-competition agreements described under "Risk Factors -- Conflicts of Interest -- Some of Our Executive Officers are Involved in Other Real Estate Activities and Investments," any limited partner of the Operating Partnership may engage in other business activities outside the Operating Partnership, including business activities that directly compete with the Operating Partnership.

#### MEETINGS; VOTING

As general partner, we may call meetings of the limited partners of the Operating Partnership, on our own motion, or upon written request of limited partners owning at least 25% of the then outstanding Units. Limited partners may vote either in person or by proxy at meetings. Limited partners may take any action that they are required or permitted to take either at a meeting of the limited partners or without a meeting if consents in writing setting forth the action taken are signed by limited partners owning not less than the minimum number of Units that would be necessary to authorize or take the action at a meeting of the limited partners at which all limited partners entitled to vote on the action were present. On matters for which limited partners are entitled to vote, each limited partner has a vote equal to the number of Units the limited partner holds. A transferee of Units who has not been admitted as a substituted limited partner with respect to the Units will have no voting rights with respect to the Units, even if the transferee holds other Units as to which it has been admitted as a limited partner. The Partnership Agreement does not provide for, and we do not anticipate calling, annual meetings of the limited partners.

#### AMENDMENT OF THE PARTNERSHIP AGREEMENT

Amendments to the Partnership Agreement may be proposed by the Company or by limited partners owning at least 25% of the then outstanding Units entitled to vote. Generally, the Partnership Agreement may be amended with our approval, as general partner, and partners (including us but not including the preferred limited partners) holding a majority of the percentage interest of all partners other than preferred limited partners. Certain provisions regarding, among other

things, our rights and duties as general partner (e.g., restrictions on our power to conduct businesses other than as denoted herein) or the dissolution of the Operating Partnership, may not be amended without the approval of limited partners (other than preferred limited partners) holding a majority of the percentage interests of the limited partners other than preferred limited partners. As general partner, we have the power, without the consent of the limited partners, to amend the Partnership Agreement as may be required to, among other things:

- add to our obligations as general partner or surrender any right or power granted to us as general partner;
- reflect the admission, substitution, termination or withdrawal of partners in accordance with the terms of the Partnership Agreement;
- establish the rights, powers, duties and preferences of any additional partnership interests issued in accordance with the terms of the Partnership Agreement;
- reflect a change of an inconsequential nature that does not materially adversely affect any limited partner, or cure any ambiguity, correct or supplement any provisions of the Partnership Agreement not inconsistent with law or with other

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provisions of the Partnership Agreement, or make other changes concerning matters under the Partnership Agreement that are not otherwise inconsistent with the Partnership Agreement or applicable law; or

- satisfy any requirements of federal, state or local law.

We must approve, and each limited partner that would be adversely affected must approve, certain amendments to the Partnership Agreement, including amendments effected directly or indirectly through a merger or sale of assets of the Operating Partnership or otherwise, that would, among other things,

- convert a limited partner's interest into a general partner's interest;
- modify the limited liability of a limited partner;
- alter the interest of a partner in profits or losses, or the rights to receive any distributions (except as permitted under the Partnership Agreement with respect to the admission of new partners or the issuance of additional Units, either of which actions will have the effect of changing the percentage interests of the partners and thereby altering their interests in profits, losses and distributions); or
- alter the limited partner's redemption right.

These protections apply to both holders of common Units and holders of Performance Units. In addition, no amendment may be effected, directly or indirectly, through a merger or sale of assets of the Operating Partnership or otherwise, which would adversely affect the rights of former stockholders of AMB Institutional Realty Advisors to receive Performance Units.

#### BOOKS AND REPORTS

The Operating Partnership's books and records are maintained at the principal office of the Operating Partnership, which is located at 505 Montgomery Street, San Francisco, California 94111. All elections and options available to the Operating Partnership for federal or state income tax purposes may be taken or rejected by the Operating Partnership in our sole discretion as general partner. The limited partners have the right, subject to certain limitations, to receive copies of the most recent SEC filings by us and the Operating Partnership, the Operating Partnership's federal, state and local income tax returns, a list of limited partners, the Partnership Agreement, the partnership certificate and all amendments and certain information about the capital contributions of the partners. We may keep confidential from the limited partners any information that we believe to be in the nature of trade secrets or other information the disclosure of which we in good faith believe is not in the best interests of the Operating Partnership or which the Operating Partnership is required by law or by agreements with unaffiliated third parties to keep confidential.

We will use reasonable efforts to furnish to each limited partner, within 90 days after the close of each taxable year, the tax information reasonably required by the limited partners for federal and state income tax reporting purposes.

#### TERM

The Operating Partnership will continue in full force and effect for approximately 99 years or until sooner dissolved pursuant to the terms of the Partnership Agreement.

## REDEMPTION/EXCHANGE OF COMMON UNITS FOR COMMON STOCK

## TERMS OF THE EXCHANGE

Beginning on November 26, 1998, the limited partners of the Operating Partnership who hold common Units issued on November 26, 1997 (the selling stockholders under this prospectus) may require the Operating Partnership to redeem up to 2,542,163 of their common Units for cash by delivering to the Company, as general partner of the Operating Partnership, a notice of redemption. Upon receipt of the notice of redemption, the Company may, in its sole and absolute discretion (subject to the limitations on ownership and transfer of common stock set forth in the Charter), elect to exchange those common Units for shares of common stock on a one-for-one basis, subject to adjustment as described under "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Common Limited Partnership Units -- Redemption/Exchange Rights."

A tendering partner will have the right to receive, on the day of receipt by the Company of a notice of redemption, the number of shares of common stock which corresponds to the number of common Units that the Company has elected to exchange in lieu of a cash redemption. Any shares of common stock issued by the Company to a limited partner will be duly authorized, validly issued, fully paid and nonassessable shares, free of any pledge, lien, encumbrance or restriction other than those provided in the Charter, the Bylaws, the Securities Act, relevant state securities or blue sky laws and any applicable registration rights agreement with respect to the shares entered into by the tendering partner. Notwithstanding any delay in delivery, the tendering partner will be considered to be owner of shares and rights for all purposes, including rights to vote or consent and receive dividends as of the date the Company received the notice of redemption.

Each tendering partner will continue to own all Units subject to any redemption or exchange, and be treated as a limited partner with respect to the Units for all purposes, until the limited partner transfers the Units to us and we pay for them or exchange them, and until that time, the partner will have no rights as a stockholder.

## CERTAIN CONDITIONS TO THE EXCHANGE

The consummation of a redemption or exchange as described above upon the Company's receipt of a notice of redemption from a tendering partner is subject to the following conditions:

- in order to protect the Company's status as a REIT, no tendering partner will be entitled to effect a redemption for cash or an exchange for common stock, if the ownership or right to acquire common stock would cause the tendering partner or any other person to violate the ownership limit;
- without the consent of the Company, no tendering partner may effect a redemption for less than 10,000 Units, or if the tendering partner holds less than 10,000 Units, all of the Units held by the tendering partner;
- without the consent of the Company, no tendering partner may effect a redemption during the period after the record date established by the Company for a distribution from the Operating Partnership to the partners in the Operating Partnership and before the record date established by the Company for a

distribution to its common stockholders of some or all of its portion of such distribution; and

- the consummation of any redemption or exchange will be subject to the expiration or termination of any waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

## COMPARISON OF OWNERSHIP OF COMMON UNITS AND COMMON STOCK

Generally, the nature of an investment in common stock of the Company is similar in several respects to an investment in common Units of the Operating Partnership. Holders of common stock and holders of common Units generally receive the same distributions and stockholders and holders of common Units generally share in the risks and rewards of ownership in the enterprise being conducted by the Company through the Operating Partnership. However, there are also differences between ownership of common Units and ownership of common stock, some of which may be material to investors.

The information below highlights a number of the significant differences between the Operating Partnership and the Company relating to, among other things, form of organization, management control, voting rights, liquidity and



federal income tax considerations. These comparisons are intended to assist limited partners in understanding how their investment will be changed if they exchange their common Units for shares of common stock in the Company. THIS DISCUSSION IS SUMMARY IN NATURE AND DOES NOT CONSTITUTE A COMPLETE DISCUSSION OF THESE MATTERS, AND HOLDERS OF UNITS SHOULD CAREFULLY REVIEW THE REST OF THIS PROSPECTUS AND THE REGISTRATION STATEMENT OF WHICH THIS PROSPECTUS IS A PART FOR ADDITIONAL IMPORTANT INFORMATION ABOUT THE COMPANY.

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#### FORM OF ORGANIZATION AND ASSETS OWNED

##### OPERATING PARTNERSHIP

The Operating Partnership is organized as a Delaware limited partnership. The Operating Partnership owns substantially all of the Company's assets and conducts substantially all of the Company's business. The Operating Partnership's purpose is to conduct any business that may be lawfully conducted by a limited partnership organized pursuant to the Delaware Revised Uniform Limited Partnership Act, provided that the Operating Partnership must conduct its business in a manner that permits the Company to be qualified as a REIT unless the Company ceases to qualify as REIT for reasons other than the conduct of the business of the Operating Partnership.

##### COMPANY

The Company is a Maryland corporation. The Company has elected to be taxed as a REIT under the Code, commencing with its taxable year ending December 31, 1997, and intends to maintain its qualification as a REIT. The Company's only substantial asset is its interest in the Operating Partnership, which gives the Company an indirect investment in the properties owned by the Operating Partnership. Under its Charter, the Company may engage in any lawful activity permitted by the MGCL.

#### ADDITIONAL EQUITY

##### OPERATING PARTNERSHIP

The Operating Partnership is authorized to issue Units and other partnership interests (including partnership interests of different series or classes that may be senior to common Units) as determined by the Company as its general partner, in its sole discretion. The Operating Partnership may issue Units and other partnership interests to the Company, as long as the Operating Partnership issues such interests in connection with a comparable issuance of shares of the Company and the Company contributes to the Operating Partnership proceeds raised in connection with the issuance of such shares.

##### COMPANY

The Board of Directors may issue, in its discretion, additional shares of common stock or additional shares of preferred stock; provided, that the total number of shares issued does not exceed the authorized number of shares of capital stock set forth in the Company's Charter. As long as the Operating Partnership is in existence, the Company will contribute to the Operating Partnership the proceeds of all equity capital raised by the Company in exchange for Units in the Operating Partnership.

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#### MANAGEMENT CONTROL

##### OPERATING PARTNERSHIP

All management powers over the business and affairs of the Operating Partnership are exclusively vested in the Company as the general partner, and no limited partner of the Operating Partnership has any right to participate in or exercise control or management power over the business and affairs of the Operating Partnership except as provided below under "-- Voting Rights." The general partner may not be removed by the limited partners with or without cause.

##### COMPANY

The Board of Directors has exclusive control over the Company's business affairs subject only to the restrictions in the Charter and Bylaws. At each annual meeting of stockholders, the Company's stockholders elect the Company's directors for one year terms. The Board of Directors may alter or eliminate its policies without a vote of the stockholders. Accordingly, except for their vote in the election of directors, stockholders have no control over the ordinary business policies of the Company. The Company cannot change its policy of maintaining its status as a REIT, however, without the approval of holders of two-thirds of the shares of the Company's capital stock outstanding and entitled to vote on the change.

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## FIDUCIARY DUTIES

### OPERATING PARTNERSHIP

Under Delaware law, the general partner of the Operating Partnership is accountable to the Operating Partnership as a fiduciary and, consequently, is required to exercise good faith and integrity in all of its dealings with respect to partnership affairs. However, under the Partnership Agreement, the general partner is not liable for monetary damages for losses sustained, liabilities incurred or benefits not derived by partners as a result of errors of judgment or mistakes of fact or law or any act or omission, provided that the general partner has acted in good faith. Each limited partner expressly acknowledged in the Partnership Agreement that as general partner, the Company is acting on behalf of the Operating Partnership's limited partners and the Company's stockholders, collectively, and is under no obligation to consider the tax consequences to limited partners when making decisions for the benefit of the Operating Partnership. The Company intends to make decisions in its capacity as general partner of the Operating Partnership so as to maximize its profitability and the profitability of the Operating Partnership as a whole, independent of the tax effects on the limited partners.

### COMPANY

Under Maryland law, the directors must perform their duties in good faith, in a manner that they reasonably believe to be in the best interests of the Company and with the care of an ordinarily prudent person in a like position. Directors of the Company who act in such a manner generally will not be liable to the Company for monetary damages arising from their activities.

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## VOTING RIGHTS

### OPERATING PARTNERSHIP

Under the Partnership Agreement, the common limited partners have voting rights only as to the dissolution of the Operating Partnership, the sale of all or substantially all of the Operating Partnership's assets or merger of the Operating Partnership, and amendments of the Partnership Agreement, as described more fully below. Otherwise, all decisions relating to the operation and management of the Operating Partnership are made by the general partner. As of November 30, 1998, the Company owned an approximate 95.1% general partner interest in the Operating Partnership. As Units are redeemed or exchanged by limited partners, the Company's percentage ownership of the Units will increase. If additional Units are issued to third parties, the Company's percentage ownership of the Units will decrease.

### COMPANY

The Company is managed and controlled by a Board of Directors. Directors are elected by the stockholders at annual meetings of the Company. Maryland law requires that certain major corporate transactions, including most amendments to the Charter, may not be consummated without the approval of stockholders as set forth below. All holders of common stock have one vote per share, and the Charter permits the Board of Directors to classify and issue preferred stock in one or more series having voting power which may differ from that of the common stock. See "Description of Capital Stock."

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The following is a comparison of the voting rights of the common limited partners of the Operating Partnership and the common stockholders of the Company as they relate to certain major transactions:

#### A. AMENDMENT OF THE PARTNERSHIP AGREEMENT OR THE CHARTER.

### OPERATING PARTNERSHIP

The Partnership Agreement may be amended through a proposal by the general partner or any limited partners holding 25% or more of the then outstanding Units entitled to vote. Generally, the Partnership Agreement may be amended with the approval of the Company as general partner and partners (including the Company but not including the preferred limited partners) holding a majority of the percentage interest of all partners other than preferred limited partners. Certain provisions regarding, among other things, the rights and duties of the Company as general partner and the dissolution of the Operating Partnership, may not be amended without the approval of the limited partners (other than preferred limited partners) holding a majority of the percentage interests of the limited partners other than preferred limited partners. Certain amendments that affect the fundamental rights of a limited partner must be approved by the Company and each limited partner that would be adversely affected. The Company may, without the limited partners' consent, amend the Partnership Agreement to establish rights, powers, duties and preferences of additional partnership interests issued in accordance with the Partnership Agreement and to reflect

certain ministerial matters.

#### COMPANY

Amendments to the Company's Charter must be advised by the Board of Directors and approved by the vote of at least two-thirds of the votes entitled to be cast on the matter at a meeting of stockholders.

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#### B. VOTE REQUIRED TO DISSOLVE THE OPERATING PARTNERSHIP OR THE COMPANY.

##### OPERATING PARTNERSHIP

The general partner may not elect to dissolve the Operating Partnership without the prior consent of limited partners (other than the preferred limited partners) holding a majority of the outstanding percentage interest of all limited partners other than preferred limited partners.

#### COMPANY

Under Maryland Law, the Company may be dissolved by the affirmative vote of a majority of the Board of Directors declaring the dissolution to be advisable and approval of holders of at least two-thirds of the total number of shares of capital stock outstanding and entitled to vote on the matter. The Partnership Agreement provides that the Company may not withdraw from the Operating Partnership (whether by sale, statutory merger, consolidation, liquidation or otherwise) without the consent of limited partners (other than the preferred limited partners) holding a majority of the outstanding percentage interest of all limited partners other than preferred limited partners. However, as described below under "-- Vote Required to Sell Assets or Merge," the Company may transfer or assign its general partner interest in connection with a merger, consolidation or sale of substantially all of its assets without limited partner consent, upon certain terms and conditions.

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#### C. VOTE REQUIRED TO SELL ASSETS OR MERGE.

##### OPERATING PARTNERSHIP

Under the Partnership Agreement, the sale, exchange, transfer or other disposition of all or substantially all of the Operating Partnership's assets requires the consent of the partners (other than the preferred limited partners) holding a majority of the percentage interest of all partners other than preferred limited partners. The merger, consolidation or other combination of the Operating Partnership also requires the consent of the partners (other than the preferred limited partners) holding a majority of the percentage interest of all partners other than preferred limited partners.

#### COMPANY

Under Maryland law, the sale of all or substantially all of the assets of the Company or merger or consolidation of the Company requires the approval of the Board of Directors and the stockholders by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter. The stockholders are not required to approve the sale of less than all or substantially all of the Company's assets.

Pursuant to the Partnership Agreement, the Company may not withdraw from the Operating Partnership and may not transfer all or any portion of its interest in the Operating Partnership (whether by sale, statutory merger, consolidation, liquidation or otherwise) without the consent of limited partners (other than the preferred limited partners) holding a majority of the outstanding percentage interest of all limited partners other than preferred limited partners. However, the Company may transfer or assign its general partner interest in connection with a merger, consolidation or sale of substantially all of its assets without limited partner consent if the conditions described under "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Removal of the General Partner; Transferability of Our Interests; Treatment of Limited Partnership Units in Significant Transactions" are met. These conditions generally relate to receipt by the common limited partners of property that the partner would have received had it exchanged its common Units for shares of common stock immediately prior to the transaction.

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#### COMPENSATION, FEES AND DISTRIBUTIONS

##### OPERATING PARTNERSHIP

The general partner does not receive any compensation for its services as general partner of the Operating Partnership. As a partner in the Operating Partnership, however, the general partner has the same right to allocations and distributions as other partners of the Operating Partnership. In addition, the

Operating Partnership will reimburse the Company for all expenses it incurs relating to its activities as general partner, its continued existence and qualification as a REIT and all other liabilities that it incurs in connection with the pursuit of its business and affairs. The Operating Partnership will reimburse the Company for all expenses incurred relating to the ongoing operation of the Company and any issuance of additional partnership interests in the Operating Partnership. These expenses include those incurred in connection with the administration and activities of the Operating Partnership, such as the maintenance of the Operating Partnership's books and records, management of the Operating Partnership's property and assets, and preparation of information regarding the Operating Partnership provided to the partners in the preparation of their individual tax returns. Except as expressly permitted by the Partnership Agreement, however, the Company's affiliates will not engage in any transactions with the Operating Partnership except on terms that are fair and reasonable to the Operating Partnership and no less favorable to the Operating Partnership than it would obtain from an unaffiliated third party.

#### COMPANY

The outside directors and officers of the Company receive compensation for their services.

#### LIABILITY OF INVESTORS

##### OPERATING PARTNERSHIP

Under the Partnership Agreement and applicable Delaware law, the liability of the limited partners for the Operating Partnership's debts and obligations is generally limited to the amount of their investment in the Operating Partnership.

#### COMPANY

Under Maryland law, stockholders are generally not personally liable for the debts or obligations of the Company.

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#### LIQUIDITY

##### OPERATING PARTNERSHIP

Subject to certain conditions, limited partners may generally transfer their Units to accredited investors, provided that the Company has a right of first refusal for any proposed transfer. Limited partners may transfer their Units without the Company's consent in the following situations:

- - transfers to the general partner,
- - transfers to an affiliate controlled by the limited partner or to immediate family members;
- - transfers to a trust for the benefit of a charitable beneficiary or to a charitable foundation; or
- - transfers pursuant to a pledge to an unaffiliated lending institution as collateral or security for a loan or other extension of credit.

#### COMPANY

A limited partner is entitled to freely transfer the shares of common stock received by that partner in exchange for Units, subject to prospectus delivery and other requirements for registered securities. The common stock is listed on the New York Stock Exchange. The breadth and strength of this secondary market will depend, among other things, upon the number of shares outstanding, the Company's financial results and prospects, the general interest in the Company's and other real estate investments, and the Company's dividend yield compared to that of other debt and equity securities.

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#### TAXES

##### OPERATING PARTNERSHIP

The Operating Partnership itself is not subject to federal income taxes. Instead, each holder of Units includes its allocable share of the Operating Partnership's taxable income or loss in determining its individual federal income tax liability. Cash distributions from the Operating Partnership are generally not taxable to a holder of Units except to the extent they exceed the holder's basis in its interest in the Operating Partnership (which will include such holder's allocable share of the Operating Partnership's nonrecourse debt).

#### COMPANY

Distributions made by the Company to its taxable domestic stockholders out of current or accumulated earnings and profits will be taken into account by them as ordinary income. Distributions that are designated as capital gain dividends generally will be taxed as gains from the sale or disposition of a capital asset. Distributions in excess of current or accumulated earnings and profits will be treated as a nontaxable return of basis to the extent of a stockholder's adjusted basis in its common stock, with the excess taxed as capital gain. See "Certain Federal Income Tax Considerations -- Taxation of Taxable U.S. Stockholders."

Income and loss from the Operating Partnership generally is subject to the "passive activity" limitations. Under the "passive activity" rules, partners can generally offset income and loss from the Operating Partnership that is considered "passive income" against income and loss from other investments that constitute "passive activities." However, this offset will not be available if the Operating Partnership becomes a publicly traded partnership (as defined in the Code).

Holder of Units are required, in some cases, to file state income tax returns and/or pay state income taxes in the states in which the Operating Partnership owns property, even if they are not residents of those states.

Dividends paid by the Company will be treated as "portfolio" income and stockholders cannot offset these dividends with losses from "passive activities."

Stockholders who are individuals generally will not be required to file state income tax returns and/or pay state income taxes outside of their state of residence with respect to the Company's operations and distributions. The Company may be required to pay state income taxes in certain states.

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#### CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

We have summarized certain terms and provisions of the MGCL and our Charter and Bylaws. This summary is not complete and is qualified by the provisions of our Charter and Bylaws, and the MGCL. For more detail, you should refer to our Charter and Bylaws, which we have filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

#### BOARD OF DIRECTORS

The Charter provides that the number of our directors shall be established by the Bylaws, but cannot be less than the minimum number required by the MGCL, which in the case of the Company is three. Our Bylaws currently provide that the Board of Directors consists of not fewer than five nor more than 13 members who are elected to a one-year term at each annual meeting of our stockholders. A majority of the entire Board of Directors may fill any vacancy (except for a vacancy caused by removal). Our Bylaws provide that a majority of the Board of Directors must be "Independent Directors." An "Independent Director" is a director who is not:

- an employee, officer or affiliate of us or one of our subsidiaries or divisions;
- a relative of a principal executive officer; or
- an individual member of an organization acting as advisor, consultant or legal counsel, receiving compensation on a continuing basis from us in addition to director's fees.

#### REMOVAL OF DIRECTORS

While our Charter and the MGCL empower our stockholders to fill vacancies in the Board of Directors that are caused by the removal of a director, our Charter precludes stockholders from removing incumbent directors except upon a substantial affirmative vote. Specifically, our Charter provides that stockholders may remove a director only for cause and only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, subject to the rights of the holders of shares of our preferred stock to elect and remove directors elected by such holders under certain circumstances. The MGCL does not define the term "cause." As a result, removal for "cause" is subject to Maryland common law and to judicial interpretation and review in the context of the unique facts and circumstances of any particular situation. This provision, when coupled with the provision in our Bylaws authorizing the Board of Directors to fill vacant directorships, precludes stockholders from removing incumbent directors except upon a substantial affirmative vote and filling the vacancies created by removal with their own nominees.

#### OPT OUT OF BUSINESS COMBINATIONS AND CONTROL SHARE ACQUISITION STATUTES

We have elected in our Bylaws not to be governed by the "control share acquisition" provisions of the MGCL (Sections 3-701 through 3-709), and the Board of Directors has determined, by irrevocable resolution, that we will not be governed by the "business combination" provision of the MGCL (Section 3-602), each of which could have the effect of delaying or preventing a change of control. Our Bylaws provide that we cannot at a future date determine to be governed by either provision without the approval of a majority of the outstanding shares entitled to vote. In addition, the irrevocable resolution

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adopted by the Board of Directors may only be changed by the approval of a majority of the outstanding shares entitled to vote.

#### AMENDMENT TO OUR CHARTER AND BYLAWS

Our Charter may not be amended without the affirmative vote of at least two-thirds of the shares of capital stock outstanding and entitled to vote on the amendment, voting together as a single class. Our Bylaws may be amended by the vote of a majority of the Board of Directors or by a vote of a majority of the shares of our capital stock entitled to vote on the amendment, except with respect to the following Bylaw provisions (each of which requires the approval of a majority of the shares of capital stock entitled to vote on the amendment):

- provisions opting out of the control share acquisition statute;
- the requirement in our Bylaws that our independent directors approve transactions involving our executive officers or directors or any limited partners of the Operating Partnership and their affiliates;
- provisions governing amendment of our Bylaws.

#### MEETINGS OF STOCKHOLDERS

Our Bylaws provide for annual meetings of stockholders to elect the Board of Directors and transact other business as may properly be brought before the meeting. The President, the Board of Directors and the Chairman of the Board may call a special meeting of stockholders. The holders of 50% or more of our outstanding stock entitled to vote may also make a written request to call a special meeting of stockholders.

The MGCL provides that stockholders may act by unanimous written consent without a meeting with respect to any action that they are required or permitted to take at a meeting, if each stockholder entitled to vote on the matter signs the consent setting forth the action and each stockholder entitled to notice of the meeting but not entitled to vote at the meeting signs a written waiver of any right to dissent.

#### ADVANCE NOTICE OF DIRECTOR NOMINATIONS AND NEW BUSINESS

Our Bylaws provide that with respect to an annual meeting of stockholders, nominations of persons for election to the Board of Directors and the proposal of business to be considered by stockholders may be made only:

- pursuant to the notice of the meeting;
- by or at the direction of the Board of Directors; or
- by a stockholder who is entitled to vote at the meeting and has complied with the advance notice procedures set forth in our Bylaws.

Our Bylaws also provide that with respect to special meetings of stockholders, only the business specified in the notice of meeting may be brought before the meeting.

The provisions in our Charter regarding amendments to the Charter and the advance notice provisions of our Bylaws could have the effect of discouraging a takeover or other transaction in which holders of some, or a majority, of the shares of common stock might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests.

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#### DISSOLUTION OF THE COMPANY

Under the MGCL, we may be dissolved by the affirmative vote of a majority of the entire Board of Directors declaring dissolution to be advisable and directing that the proposed dissolution be submitted for consideration at any annual or special meeting of stockholders. We may also be dissolved, upon proper notice, by the affirmative vote of the holders of two-thirds of the total number of shares of capital stock outstanding and entitled to vote on the dissolution, voting as a single class.

#### LIMITATION OF DIRECTORS' AND OFFICERS' LIABILITY

Our officers and directors are indemnified under the MGCL, our Charter and the Partnership Agreement against certain liabilities. Our Charter and Bylaws require us to indemnify our directors and officers to the fullest extent permitted from time to time by the MGCL.

The MGCL permits a corporation to indemnify its directors and officers and certain other parties against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

A corporation may indemnify a director or officer against judgments, penalties, fines, settlements and reasonable expenses that the director or officer actually incurs in connection with the proceeding unless the proceeding is one by or in the right of the corporation and the director or officer has been adjudged to be liable to the corporation. In addition, a corporation may not indemnify a director or officer with respect to any proceeding charging improper personal benefit to the director or officer in which the director or officer was adjudged to be liable on the basis that personal benefit was received. The termination of any proceeding by conviction, or upon a plea of nolo contendere or its equivalent, or an entry of any order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet the requisite standard of conduct required for indemnification to be permitted.

The MGCL permits the charter of a Maryland corporation to include a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, subject to specified restrictions. Our Charter contains this provision. The MGCL does not, however, permit the liability of directors and officers to the corporation or its stockholders to be limited to the extent that:

- it is proved that the person actually received an improper personal benefit in money, property or services;
- a judgment or other final adjudication is entered in a proceeding based on a finding that the person's action, or failure to act, was committed in bad faith or was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding; or

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- in the case of any criminal proceeding, the director had reasonable cause to believe that the act or failure to act was unlawful.

This provision does not limit our ability or our stockholders to obtain other relief, such as an injunction or rescission. The Partnership Agreement also provides for our indemnification, as general partner, and our officers and directors to the same extent indemnification is provided to our officers and directors in our Charter, and limits our liability and the liability of our officers and directors to the Operating Partnership and the partners of the Operating Partnership to the same extent liability of our officers and directors to us and our stockholders is limited under our Charter. See "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Our Exculpation and Indemnification."

Insofar as the foregoing provisions permit indemnification for liability arising under the Securities Act of directors, officers or persons controlling us, we have been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

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#### CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

The following summary of certain federal income tax considerations regarding the Company and the common stock we are registering is based on current law, is for general information only and is not tax advice. The information set forth below, to the extent that it constitutes matters of law, summaries of legal matters or legal conclusions, is the opinion of Latham & Watkins. The tax treatment to holders of common stock or common Units will vary depending on a holder's particular situation and this discussion does not purport to deal with all aspects of taxation that may be relevant to a holder of

common stock or common Units in light of his or her personal investments or tax circumstances, or to certain types of stockholders, subject to special treatment under the federal income tax laws except to the extent discussed under the headings "-- Taxation of Tax-Exempt Stockholders" and "-- Taxation of Non-U.S. Stockholders." Stockholders subject to special treatment include, without limitation, insurance companies, financial institutions or broker-dealers, tax-exempt organizations, stockholders holding securities as part of a conversion transaction, or a hedge or hedging transaction or as a position in a straddle for tax purposes, foreign corporations or partnerships and persons who are not citizens or residents of the United States. In addition, the summary below does not consider the effect of any foreign, state, local or other tax laws that may be applicable to holders of our common stock.

The information in this section is based on the Code, current, temporary and proposed Treasury Regulations promulgated under the Code, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the "IRS") (including its practices and policies as expressed in certain private letter rulings which are not binding on the IRS except with respect to the particular taxpayers who requested and received such rulings), and court decisions, all as of the date of this prospectus. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect, perhaps retroactively, the tax considerations described herein. We have not requested, and do not plan to request, any rulings from the IRS concerning our tax treatment and the statements in this prospectus are not binding on the IRS or a court. Thus, we can provide no assurance that these statements will not be challenged by the IRS or sustained by a court if challenged by the IRS.

YOU ARE ADVISED TO CONSULT YOUR TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES TO YOU OF THE DISPOSITION OF COMMON UNITS AND THE ACQUISITION, OWNERSHIP AND SALE OF OUR COMMON STOCK, INCLUDING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF SUCH DISPOSITION, ACQUISITION, OWNERSHIP AND SALE AND OF POTENTIAL CHANGES IN APPLICABLE TAX LAWS.

#### TAX CONSIDERATIONS OF THE EXERCISE OF REDEMPTION RIGHTS

The exchange of the common Units held by a limited partner of the Operating Partnership for shares of our common stock, or a redemption of such units for cash, will be treated for tax purposes as a sale of the common Units by the limited partner. A limited partner will recognize gain or loss for income tax purposes in an amount equal to the difference between the "amount realized" by the limited partner in the exchange or redemption and the limited partner's adjusted tax basis in the common Units exchanged or redeemed. Generally, the amount realized by a limited partner on an exchange or

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redemption will be the fair market value of the exchanged shares received in the exchange, with the amount of cash received in the redemption, plus the amount of the Operating Partnership's liabilities allocable to the common Units being exchanged or redeemed. However, in the event that the Company elects to cause the Operating Partnership to pay a limited partner cash for a portion of his or her common Units, under certain circumstances, the limited partner may recognize gain only to the extent the cash received for such common Units, plus the amount of any reduction of Operating Partnership liabilities allocable to the limited partner, exceed the limited partner's basis in all of his or her common Units prior to such payment. The recognition of any loss resulting from an exchange of common Units for shares of common stock or a redemption of common Units for cash is subject to a number of limitations set forth in the Code. The character of any such gain or loss as capital or ordinary will depend on the nature of the assets of the Operating Partnership at the time of the redemption or exchange.

#### TAXATION OF THE COMPANY

General. We elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1997. We believe we have been organized and have operated in a manner which allows us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 1997. We intend to continue to operate in this manner. However, our qualification and taxation as a REIT depends upon our ability to meet (through actual annual operating results, asset diversification, distribution levels and diversity of stock ownership) the various qualification tests imposed under the Code. Accordingly, there is no assurance that we have operated or will continue to operate in a manner so as to qualify or remain qualified as a REIT. See "-- Failure to Qualify."

The sections of the Code that relate to the qualification and operation as a REIT are highly technical and complex. The following sets forth the material aspects of the sections of the Code that govern the federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Code provisions, relevant rules and regulations promulgated under the Code, and administrative and judicial interpretations of the Code.

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on our net income that is currently distributed



to our stockholders. This treatment substantially eliminates the "double taxation" (once at the corporate level when earned and once again at the stockholder level when distributed) that generally results from investment in a corporation. However, the Company will be subject to federal income tax as follows:

First, we will be taxed at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.

Second, we may be subject to the "alternative minimum tax" on our items of tax preference under certain circumstances.

Third, if we have (a) net income from the sale or other disposition of "foreclosure property" (defined generally as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property) which is held primarily for sale to customers in the ordinary course of business or (b) other nonqualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on this income.

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Fourth, we will be subject to a 100% tax on any net income from prohibited transactions (which are, in general, certain sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property).

Fifth, we will be subject to a 100% tax on an amount equal to (a) the gross income attributable to the greater of the amount by which we fail the 75% or 95% gross income test multiplied by (b) a fraction intended to reflect our profitability, if we fail to satisfy the 75% gross income test or the 95% gross income test (as discussed below), but have maintained our qualification as a REIT because we satisfied certain other requirements.

Sixth, we would be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed if we fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for the year, (ii) 95% of our REIT capital gain net income for the year, and (iii) any undistributed taxable income from prior periods.

Seventh, if we acquire any asset (a "Built-In Gain Asset") from a corporation which is or has been a C corporation (i.e., generally a corporation subject to full corporate-level tax) in a transaction in which the basis of the Built-In Gain Asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the ten-year period (the "Recognition Period") beginning on the date on which we acquired the asset, then we will be subject to tax at the highest regular corporate tax rate on this gain to the extent of the Built-In Gain (i.e., the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the beginning of the Recognition Period). The results described in this paragraph with respect to the recognition of Built-In Gain assume that we will make an election pursuant to IRS Notice 88-19.

Requirements for Qualification as a REIT. The Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;
- (4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of each taxable year; and
- (7) that meets certain other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), pension

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funds and certain other tax-exempt entities are treated as individuals, subject to a "look-through" exception with respect to pension funds.

We believe that we have satisfied each of the above conditions. In addition, our charter provides for restrictions regarding ownership and transfer of shares. These restrictions are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. These ownership and transfer restrictions are described in "Description of Capital Stock -- Restrictions on Ownership and Transfer of Capital Stock." These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, our status as a REIT will terminate. However, if we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See "-- Failure to Qualify."

In addition, a corporation may not elect to become a REIT unless its taxable year is the calendar year. We have and will continue to have a calendar taxable year.

Termination of S Status. Prior to its merger into the Company in connection with our formation transactions, AMB Institutional Realty Advisors, Inc. believed that it validly elected to be taxed as an S corporation and that such election had not been revoked or otherwise terminated (except as provided below). In order to allow us to become a REIT, AMB Institutional Realty Advisors, Inc. revoked its S election shortly before its merger into the Company. If AMB Institutional Realty Advisors, Inc. was not an S corporation in 1997 (the calendar year in which our formation transactions occurred), we likely would not qualify as a REIT for our taxable year ended December 31, 1997 and perhaps subsequent years. See "-- Failure to Qualify." In connection with our initial public offering, Latham & Watkins rendered an opinion regarding AMB Institutional Realty Advisors, Inc.'s federal income tax status as an S corporation, which opinion was based upon certain representations made by AMB Institutional Realty Advisors, Inc. as to factual matters and upon the opinion of counsel for certain shareholders of AMB Institutional Realty Advisors, Inc., with respect to matters relating to the tax status of such shareholders.

Ownership of Interests in Partnerships and Qualified REIT Subsidiaries. In the case of a REIT which is a partner in a partnership, IRS regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership. Also, the REIT will be deemed to be entitled to the income of the partnership attributable to its proportionate share. The character of the assets and gross income of the partnership retains the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our proportionate share of the assets and items of income of the Operating Partnership (including the Operating Partnership's share of these items for any partnership in which it owns an interest) are treated as our assets and items of income for purposes of applying the requirements described in this prospectus (including the income and asset tests described below). We have included a brief summary of the rules governing the federal income taxation of partnerships and their partners below in "--Tax Aspects of the Operating Partnerships and the Joint Ventures." We have direct control of the Operating Partnership and will continue to operate it consistent with the requirements for qualification as a REIT. However, we are a limited partner or non-managing member in certain of our joint ventures. If a joint venture takes or expects to take actions which could jeopardize our

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status as a REIT or subject us to tax, we may be forced to dispose of our interest in such joint venture. In addition, it is possible that a joint venture could take an action which could cause us to fail a REIT income or asset test, and that we would not become aware of such action in a time frame which would allow us to dispose of our interest in the joint venture or take other corrective action on a timely basis. In such a case, we could fail to qualify as a REIT. The Company owns 100% of the stock of two subsidiaries that are qualified REIT subsidiaries (each, a "QRS") and may acquire stock of one or more new subsidiaries. A corporation will qualify as a QRS if 100% of its stock is held by the Company. A QRS will not be treated as a separate corporation, and all assets, liabilities and items of income, deduction and credit of a QRS will be treated as assets, liabilities and such items (as the case may be) of the Company for all purposes of the Code, including the REIT qualification tests. For this reason, references under "Certain Federal Income Tax Considerations" to our income and assets shall include the income and assets of any QRS. A QRS will not be subject to federal income tax, and our ownership of the voting stock of a QRS will not violate the restrictions against ownership of securities of any one issuer which constitute more than 10% of such issuer's voting securities or more than 5% of the value of our total assets, as described below under "-- Asset Tests."

Income Tests. We must satisfy two gross income requirements annually to

maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income (excluding gross income from prohibited transactions) from investments relating to real property or mortgages on real property (including "rents from real property" and, in certain circumstances, interest) or from certain types of temporary investments. Second, each taxable year we must derive at least 95% of our gross income (excluding gross income from prohibited transactions) from these real property investments, dividends, interest and gain from the sale or disposition of stock or securities (or from any combination of the foregoing). The term "interest" generally does not include any amount received or accrued (directly or indirectly) if the determination of the amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents we receive will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if the following conditions are met:

- the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales;
- the Code provides that rents received from a tenant will not qualify as "rents from real property" in satisfying the gross income tests if the REIT, or an actual or constructive owner of 10% or more of the REIT, actually or constructively owns 10% or more of the interests in such tenant (a "Related Party Tenant");
- if rent attributable to personal property, leased in connection with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to personal property will not qualify as "rents from real property"; and
- for rents received to qualify as "rents from real property," the REIT generally must not operate or manage the property or furnish or render services to the tenants of

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the property (subject to a 1% de minimis exception), other than through an independent contractor from whom the REIT derives no revenue. The REIT may, however, directly perform certain services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property.

We do not and will not, and as general partner of the Operating Partnership, will not permit the Operating Partnership to:

- charge rent for any property that is based in whole or in part on the income or profits of any person (except by reason of being based on a percentage of receipts or sales, as described above);
- rent any property to a Related Party Tenant;
- derive rental income attributable to personal property (other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease); or
- perform services considered to be rendered to the occupant of the property, other than through an independent contractor from whom we derive no revenue.

Notwithstanding the foregoing, we may have taken and may continue to take certain of the actions set forth above to the extent these actions will not, based on the advice of our tax counsel, jeopardize our status as a REIT.

AMB Investment Management is the sole general partner of, and conducts its operations through, AMB Investment Management Limited Partnership (the "Investment Management Partnership.") The Investment Management Partnership conducts the asset management business and receives fees (including incentive fees) in exchange for the provision of certain services to asset management clients. In addition, Headlands Realty Corporation may provide certain services in exchange for a fee or derive other income which would not qualify under the REIT gross income tests. Such fees and other income do not accrue to us, but we derive our allocable share of dividend income from the Preferred Stock Subsidiaries through our interest in the Operating Partnership. Such dividend income qualifies under the 95%, but not the 75%, REIT gross income test. The Operating Partnership may provide certain management or administrative services to the Investment Management Partnership and Headlands Realty Corporation. The fees derived by the Operating Partnership as a result of the provision of such

services will be nonqualifying income to us under both the 95% and 75% REIT income tests. The amount of such dividend and fee income will depend on a number of factors which cannot be determined with certainty, including the level of services provided by the Investment Management Partnership, Headlands Realty Corporation and the Operating Partnership. We will monitor the amount of the dividend income from the Preferred Stock Subsidiaries and the fee income described above, and will take actions intended to keep this income (and any other nonqualifying income) within the limitations of the REIT income tests. However, there can be no assurance that such actions will in all cases prevent us from violating a REIT income test.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. Generally, we may avail ourselves of the relief provisions if:

- our failure to meet these tests was due to reasonable cause and not due to willful neglect;

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- we attach a schedule of the sources of our income to our federal income tax return; and

- any incorrect information on the schedule was not due to fraud with intent to evade tax.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally incur exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed above in "-- Taxation of the Company -- General," even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our excess net income. We may not always be able to maintain compliance with the gross income tests for REIT qualification despite our periodic monitoring of our income.

Prohibited Transaction Income. Any gain realized by us on the sale of any property held as inventory or other property held primarily for sale to customers in the ordinary course of business (including our share of any such gain realized by the Operating Partnership) will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. This prohibited transaction income may also adversely affect our ability to satisfy the income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. The Operating Partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with the Operating Partnership's investment objectives. However, the IRS may contend that that one or more of these sales is subject to the 100% penalty tax.

Asset Tests. At the close of each quarter of our taxable year, we also must satisfy three tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, real estate assets include stock or debt instruments that are purchased with the proceeds of a stock offering or a long-term (at least five years) public debt offering, but only for the one-year period beginning on the date we receive such proceeds. Second, not more than 25% of our total assets may be represented by securities, other than those securities includable in the 75% asset test. Third, of the investments included in the 25% asset class, the value of any one issuer's securities may not exceed 5% of the value of our total assets and we may not own more than 10% of any one issuer's outstanding voting securities.

The Operating Partnership owns 100% of the non-voting preferred stock of each of the Preferred Stock Subsidiaries, and by virtue of its ownership of interests in the Operating Partnership, the Company is considered to own its pro rata share of such stock. See "Structure of the Company." The stock of each of the Preferred Stock Subsidiaries held by us is not a qualifying real estate asset. The Operating Partnership does not and will not own any of the voting securities of either of the Preferred Stock Subsidiaries, and therefore we will not be considered to own more than 10% of the voting securities of either of the Preferred Stock Subsidiaries. In addition, we believe that the value of our pro rata share of the securities of each of the Preferred Stock Subsidiaries held by the Operating

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Partnership does not, in either case, exceed 5% of the total value of our assets, and will not exceed such amount in the future. No independent appraisals

have been obtained to support this conclusion. There can be no assurance that the IRS will not contend that the value of the securities of one or both of the Preferred Stock Subsidiaries held by us exceeds the 5% value limitation. The 5% value test must be satisfied not only on the date that we (directly or through the Operating Partnership) acquire securities in the applicable Preferred Stock Subsidiary, but also each time we increase our ownership of securities of such Preferred Stock Subsidiary, including as a result of increasing our interest in the Operating Partnership. For example, our indirect ownership of securities of each Preferred Stock Subsidiary will increase as a result of our capital contributions to the Operating Partnership or as limited partners exercise their redemption/exchange rights. Although we believe that we presently satisfy the 5% value test and plan to take steps to ensure that we satisfy such test for any quarter with respect to which retesting is to occur, there can be no assurance that such steps will always be successful, or will not require a reduction in the Operating Partnership's overall interest in either or both of the Preferred Stock Subsidiaries.

After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy the asset tests because we acquire securities or other property during a quarter (including an increase in our interests in the Operating Partnership), we can cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe we have maintained and intend to continue to maintain adequate records of the value of our assets to ensure compliance with the asset tests and to take such other actions within the 30 days after the close of any quarter as may be required to cure any noncompliance. If we fail to cure noncompliance with the asset tests within this time period, we would cease to qualify as a REIT.

**Annual Distribution Requirements.** To maintain our qualification as a REIT, we are required to distribute dividends (other than capital gain dividends) to our stockholders in an amount at least equal to the sum of 95% of our "REIT taxable income" (computed without regard to the dividends paid deduction and our net capital gain) and 95% of our net income (after tax), if any, from foreclosure property, minus the excess of the sum of certain items of noncash income (i.e., income attributable to leveled stepped rents, original issue discount on purchase money debt, or a like-kind exchange that is later determined to be taxable) over 5% of "REIT taxable income" as described above.

These distributions must be paid in the taxable year to which they relate, or in the following taxable year if they are declared before we timely file our tax return for such year and if paid on or before the first regular dividend payment after such declaration. Except as provided below, these distributions are taxable to our stockholders (other than tax-exempt entities, as discussed below) in the year in which paid. This is so even though these distributions relate to the prior year for purposes of our 95% distribution requirement. The amount distributed must not be preferential -- e.g., every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated otherwise than in accordance with its dividend rights as a class. To the extent that we do not distribute all of our net capital gain or distribute at least 95%, but less than 100%, of our "REIT taxable income," as adjusted, we will be subject to tax thereon at regular ordinary and capital gain corporate tax rates. We believe we have made and intend to continue to make timely distributions sufficient to satisfy these annual distribution requirements. In this regard, the Partnership Agreement

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authorizes us, as general partner of the Operating Partnership, to take such steps as may be necessary to cause the Operating Partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements.

We expect that our REIT taxable income will be less than our cash flow due to the allowance of depreciation and other non-cash charges in computing REIT taxable income. Accordingly, we anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in arriving at our taxable income. If these timing differences occur, in order to meet the distribution requirements, we may need to arrange for short-term, or possibly long-term, borrowings or need to pay dividends in the form of taxable stock dividends.

Under certain circumstances, we may be able to rectify a failure to meet the distribution requirement for a year by paying "deficiency dividends" to stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. However, we will be required to pay interest based upon the amount of any deduction taken for deficiency dividends.

Furthermore, we would be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed if we should fail to distribute during each calendar year (or in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of January immediately following such year) at least the sum of 85% of our REIT ordinary income for such year, 95% of our REIT capital gain income for the year and any undistributed taxable income from prior periods. Any REIT taxable income and net capital gain on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax.

Earnings and Profits Distribution Requirement. In order to qualify as a REIT, we cannot have at the end of any taxable year any undistributed "earnings and profits" that are attributable to a "C corporation" taxable year (i.e., a year in which a corporation is neither a REIT nor an S corporation). In connection with our formation transactions, we succeeded to various tax attributes of AMB Institutional Realty Advisors, Inc., AMB Current Income Fund, Inc. ("CIF") and AMB Value Added Fund, Inc. ("VAF") (if the mergers of CIF and VAF into AMB Institutional Realty Advisors, Inc. (the "Private REIT Mergers") were treated as tax-free reorganizations under the Code), including any undistributed C corporation earnings and profits of such corporations. If AMB Institutional Realty Advisors, Inc. qualified as an S corporation for each year in which its activities would have created earnings and profits, and each of CIF and VAF qualified as a REIT during its existence and its merger into us was treated as a tax-free reorganization under the Code, then those corporations would not have any undistributed C corporation earnings and profits. If, however, either CIF or VAF failed to qualify as a REIT throughout the duration of its existence, or AMB Institutional Realty Advisors, Inc. failed to qualify as an S corporation for any year in which its activities would have created earnings and profits, then we would have acquired undistributed C corporation earnings and profits that, if not distributed by us prior to the end of its first taxable year, would prevent us from qualifying as a REIT.

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We believe that each of CIF and VAF qualified as a REIT throughout the duration of its existence and that, in any event, neither CIF nor VAF had any undistributed C corporation earnings and profits at the time of the applicable Private REIT Merger. We believe that AMB Institutional Realty Advisors, Inc. qualified as an S corporation since its 1989 taxable year and that its activities prior to such year did not create any earnings and profits. In addition, in connection with our initial public offering, counsel to CIF and VAF rendered opinions with respect to the qualification of those corporations as REITs for federal income tax purposes, and Latham & Watkins rendered an opinion with respect to AMB Institutional Realty Advisors, Inc.'s status as an S corporation for federal income tax purposes. Those opinions were based on certain representations and assumptions. However, the IRS may contend otherwise on a subsequent audit of AMB Institutional Realty Advisors, Inc., CIF or VAF.

#### FAILURE TO QUALIFY

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify will not be deductible by us and we will not be required to distribute any amounts to our stockholders. As a result, our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as ordinary income to the extent of our current and accumulated earnings and profits, and subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, we will also be disqualified from taxation as a REIT for the four taxable years following the year during which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

#### TAX ASPECTS OF THE OPERATING PARTNERSHIP AND THE JOINT VENTURES

General. Substantially all of our investments will be held indirectly through the Operating Partnership. In addition, the Operating Partnership holds certain of its investments indirectly through joint ventures. In general, partnerships are "pass-through" entities which are not subject to federal income tax. Rather, partners are allocated their proportionate shares of the items of income, gain, loss, deduction and credit of a partnership, and are potentially subject to tax thereon, without regard to whether the partners receive a distribution from the partnership. We will include in our income our proportionate share of the foregoing partnership items for purposes of the various REIT income tests and in the computation of our REIT taxable income. Moreover, for purposes of the REIT asset tests, we will include our proportionate share of assets held by the Operating Partnership and joint ventures. See "-- Taxation of the Company."

Entity Classification. Our interests in the Operating Partnership and the

joint ventures involve special tax considerations, including the possibility of a challenge by the IRS of the status of the Operating Partnership or a partnership as a partnership (as opposed to an association taxable as a corporation) for federal income tax purposes. If the Operating Partnership or a partnership were treated as an association, it would be taxable as a corporation and therefore be subject to an entity-level tax on its income. In such a situation, the character of our assets and items of gross income would change and preclude us from satisfying the asset tests and possibly the income tests (see "-- Taxation of the Company -- Asset Tests" and "-- Income Tests"). This, in turn, would prevent us from

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qualifying as a REIT. See "-- Failure to Qualify" for a discussion of the effect of our failure to meet these tests for a taxable year. In addition, a change in the Operating Partnership's or a partnership's status for tax purposes might be treated as a taxable event. If so, we might incur a tax liability without any related cash distributions.

Treasury Regulations that apply for tax periods beginning on or after January 1, 1997 provide that a domestic business entity not otherwise classified as a corporation and which has at least two members (an "Eligible Entity") may elect to be taxed as a partnership for federal income tax purposes. Unless it elects otherwise, an Eligible Entity in existence prior to January 1, 1997 will have the same classification for federal income tax purposes that it claimed under the entity classification Treasury Regulations in effect prior to this date. In addition, an Eligible Entity which did not exist, or did not claim a classification, prior to January 1, 1997, will be classified as a partnership for federal income tax purposes unless it elects otherwise. The Operating Partnership and each of our joint ventures intend to claim classification as a partnership under the Final Regulations, and, as a result, we believe such partnerships will be classified as partnerships for federal income tax purposes.

Allocations of Operating Partnership Income, Gain, Loss and Deduction. The Partnership Agreement provides for preferred distributions of cash and preferred allocations of income to the Company with respect to its Series A Preferred Units and to the holders of Series B Preferred Units. In addition, to the extent the Company issues Series C Preferred Stock in exchange for AMB Property II Series C Preferred Units, the Operating Partnership will issue Series C Preferred Units to the Company, and the Partnership Agreement will be amended to provide for similar preferred distributions of cash and preferred allocations of income to the Company with respect to its Series C Preferred Units. As a consequence, the Company will receive distributions from the Operating Partnership and attributable to its other assets that we would use to pay dividends on shares of Series A Preferred Stock and any shares of Series B Preferred Stock or Series C Preferred Stock issued by the Company before any other partner in the Operating Partnership (other than a holder of Series B Preferred Units, if such units are not then held by the Company) receives a distribution. In addition, if necessary, income will be specially allocated to the Company, and losses will be allocated to the other partners of the Operating Partnership, in amounts necessary to ensure that the balance in the capital account of the Company will at all times be equal to or in excess of the amount payable by the Company on the Series A Preferred Stock and any Series B Preferred Stock or Series C Preferred Stock then issued by the Company upon liquidation or redemption. As long as the Company does not hold the Series B Preferred Units, similar preferred distributions and allocations will be made for the benefit of the holders of such units. All remaining items of operating income and loss will be allocated to the holders of common Units in proportion to the number of Units or Performance Units held by each such unitholder. All remaining items of gain or loss relating to the disposition of the Operating Partnership's assets upon liquidation will be allocated first to the partners in the amounts necessary, in general, to equalize the Company's and the limited partners' per unit capital accounts, with any special allocation of gain to the holders of Performance Units being offset by a reduction in the gain allocation to the Company and unitholders which were Performance Investors. Certain limited partners have agreed to guarantee debt of the Operating Partnership, either directly or indirectly through an agreement to make capital contributions to the Operating Partnership under limited circumstances. As a result of these guarantees or contribution agreements, and notwithstanding the foregoing discussion of allocations of income and loss of the Operating Partnership to holders of common Units, such limited partners could under limited circumstances be allocated a disproportionate

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amount of net loss upon a liquidation of the Operating Partnership, which net loss would have otherwise been allocable to the Company.

If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. The Operating Partnership's allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations

promulgated under this section of the Code.

Tax Allocations with Respect to the Properties. Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership, must be allocated in a manner so that the contributing partner is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss is generally equal to the difference between the fair market value of contributed property at the time of contribution and the adjusted tax basis of the property at the time of contribution (a "Book-Tax Difference"). These allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners. The Operating Partnership was formed by way of contributions of appreciated property. Moreover, subsequent to the formation of the Operating Partnership, additional appreciated property has been contributed to the Operating Partnership in exchange for interests in the Operating Partnership. The Partnership Agreement requires that these allocations be made in a manner consistent with Section 704(c) of the Code.

In general, the partners of the Operating Partnership (including the Company) which contributed assets having an adjusted tax basis less than their fair market value at the time of contribution will be allocated depreciation deductions for tax purposes which are lower than such deductions would have been if determined on a pro rata basis. In addition, in the event of the disposition of any of the contributed assets which have such a Book-Tax Difference, all income attributable to such Book-Tax Difference generally will be allocated to such contributing partners. These allocations will tend to eliminate the Book-Tax Difference over the life of the Operating Partnership. However, the special allocation rules of Section 704(c) do not always entirely eliminate the Book-Tax Difference on an annual basis or with respect to a specific taxable transaction such as a sale. Thus, the carryover basis of the contributed assets in the hands of the Operating Partnership may cause the Company or other partners to be allocated lower depreciation and other deductions, and possibly an amount of taxable income in the event of a sale of such contributed assets in excess of the economic or book income allocated to the Company or other partners as a result of such sale. Such an allocation might cause the Company or other partners to recognize taxable income in excess of cash proceeds, which might adversely affect the Company's ability to comply with the REIT distribution requirements. See "-- Taxation of the Company -- Requirements for Qualification" and "-- Annual Distribution Requirements."

Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for Book-Tax Differences, including retention of the "traditional method" or the election of certain methods which would permit any distortions caused by a Book-Tax Difference to be entirely rectified on an annual basis or with respect to a specific taxable transaction such as a sale. We and the

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Operating Partnership have determined to use the "traditional method" for accounting for Book-Tax Differences for the properties initially contributed to the Operating Partnership and for certain assets contributed subsequently. We and the Operating Partnership have not yet decided what method will be used to account for Book-Tax Differences for properties acquired by the Operating Partnership in the future.

Any property acquired by the Operating Partnership in a taxable transaction will initially have a tax basis equal to its fair market value, and Section 704(c) of the Code will not apply.

#### TAXATION OF TAXABLE U.S. STOCKHOLDERS

As used below, the term "U.S. Stockholder" means a holder of shares of common stock who (for United States federal income tax purposes):

- is a citizen or resident of the United States;
- is a corporation, partnership, or other entity created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia, unless, in the case of a partnership, Treasury Regulations provide otherwise;
- is an estate the income of which is subject to United States federal income taxation regardless of its source; or
- is a trust whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust.

Notwithstanding the preceding sentence, to the extent provided in Treasury Regulations, certain trusts in existence on August 20, 1996, and treated as United States persons prior to this date that elect to continue to be treated as United States persons, shall also be considered U.S. Stockholders.



Distributions Generally. As long as we qualify as a REIT, distributions out of our current or accumulated earnings and profits, other than capital gain dividends discussed below, will constitute dividends taxable to our taxable U.S. Stockholders as ordinary income. These distributions will not be eligible for the dividends-received deduction in the case of U.S. Stockholders that are corporations. For purposes of determining whether distributions to holders of common stock are out of current or accumulated earnings and profits, our earnings and profits will be allocated first to the outstanding preferred stock (if any) and then to the common stock.

To the extent that we make distributions in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to each U.S. Stockholder. This treatment will reduce the adjusted basis which each U.S. Stockholder has in his shares of stock for tax purposes by the amount of the distribution (but not below zero). Distributions in excess of a U.S. Stockholder's adjusted basis in his shares will be taxable as capital gains (provided that the shares have been held as a capital asset) and will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and payable to a stockholder of record on a specified date in any of these months shall be treated as both paid by us and received by the stockholder on December 31 of that year, provided we actually pay the dividend on or before January 31 of the following calendar year. Stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

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Capital Gain Distributions. Distributions that we properly designate as capital gain dividends will be taxable to taxable U.S. Stockholders as gains (to the extent that they do not exceed our actual net capital gain for the taxable year) from the sale or disposition of a capital asset. Depending on the period of time we have held the assets which produced these gains, and on certain designations, if any, which we may make, these gains may be taxable to non-corporate U.S. stockholders at a 20% or 25% rate. U.S. Stockholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income. For a discussion of the manner in which that portion of any dividends designated as capital gain dividends will be allocated among the holders of our preferred stock and common stock, see "-- Description of Capital Stock."

Passive Activity Losses and Investment Interest Limitations. Distributions we make and gain arising from the sale or exchange by a U.S. Stockholder of our shares will not be treated as passive activity income. As a result, U.S. Stockholders generally will not be able to apply any "passive losses" against this income or gain. Distributions we make (to the extent they do not constitute a return of capital) generally will be treated as investment income for purposes of computing the investment interest limitation. Gain arising from the sale or other disposition of our shares, however, will not be treated as investment income under certain circumstances.

Retention of Net Long-Term Capital Gains. We may elect to retain, rather than distribute as a capital gain dividend, our net long-term capital gains. If we make this election, we would pay tax on our retained net long-term capital gains. In addition, to the extent we designate, a U.S. Stockholder generally would:

- include its proportionate share of our undistributed long-term capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls (subject to certain limitations as to the amount that is includable);
- be deemed to have paid the capital gains tax imposed on us on the designated amounts included in the U.S. Stockholder's long-term capital gains;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its common stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. Stockholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be prescribed by the IRS.

#### DISPOSITIONS OF COMMON STOCK

If you are a U.S. Stockholder and you sell or dispose of your shares of common stock, you will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property you receive on the sale or other disposition and your adjusted basis in the shares for tax purposes. This gain or loss will be capital if you have held the common stock as a capital asset and will be long-term

capital gain or loss if you have held the common stock for more than one year. However, if you are a U.S. Stockholder and you recognize loss upon the sale or other disposition of common stock that you have held for six months or less (after applying certain holding period rules), the loss you recognize will be treated as a long-term capital loss, to the extent you received distributions from us which were required to be treated as long-term capital gains.

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#### BACKUP WITHHOLDING

We report to our U.S. Stockholders and the IRS the amount of dividends paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a stockholder may be subject to backup withholding at the rate of 31% with respect to dividends paid unless the holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A U.S. Stockholder that does not provide us with his correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status. See "-- Taxation of Non-U.S. Stockholders."

#### TAXATION OF TAX-EXEMPT STOCKHOLDERS

The IRS has ruled that amounts distributed as dividends by a qualified REIT do not constitute unrelated business taxable income ("UBTI") when received by a tax-exempt entity. Based on that ruling, provided that a tax-exempt stockholder (except certain tax-exempt stockholders described below) has not held its shares as "debt financed property" within the meaning of the Code (generally, shares of common stock, the acquisition of which was financed through a borrowing by the tax exempt stockholder) and the shares are not otherwise used in a trade or business, dividend income from us will not be UBTI to a tax-exempt stockholder. Similarly, income from the sale of shares will not constitute UBTI unless a tax-exempt stockholder has held its shares as "debt financed property" within the meaning of the Code or has used the shares in its trade or business.

For tax-exempt stockholders which are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from federal income taxation under Code Section 501(c)(7), (c)(9), (c)(17) and (c)(20), respectively, income from an investment in our shares will constitute UBTI unless the organization is able to properly deduct amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their own tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a "pension held REIT" shall be treated as UBTI as to certain types of trusts which hold more than 10% (by value) of the interests in the REIT.

A REIT will not be a "pension held REIT" if it is able to satisfy the "not closely held" requirement without relying upon the "look-through" exception with respect to certain trusts. As a result of certain limitations on the transfer and ownership of stock contained in our charter, we do not expect to be classified as a "pension held REIT," and, as a result, the tax treatment described above should be inapplicable to our stockholders.

#### TAXATION OF NON-U.S. STOCKHOLDERS

The preceding discussion does not address the rules governing United States federal income taxation of the ownership and disposition of common stock by persons that are not U.S. Stockholders ("Non-U.S. Stockholders"). In general, Non-U.S. Stockholders may be subject to special tax withholding requirements on distributions from the Company and

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with respect to their sale or other disposition of common stock of the Company, except to the extent reduced or eliminated by an income tax treaty between the United States and the Non-U.S. Stockholder's country. A Non-U.S. Stockholder who is a stockholder of record and is eligible for reduction or elimination of withholding must file an appropriate form with the Company in order to claim such treatment. Non-U.S. Stockholders should consult their own tax advisors concerning the federal income tax consequences to them of an acquisition of shares of Common Stock, including the federal income tax treatment of dispositions of interests in, and the receipt of distributions from, the Company.

#### OTHER TAX CONSEQUENCES

We may be subject to state or local taxation in various state or local jurisdictions, including those in which we transact business and our stockholders may be subject to state or local taxation in various state or local

jurisdictions, including those in which they reside. Our state and local tax treatment may not conform to the federal income tax consequences discussed above. In addition, your state and local tax treatment may not conform to the federal income tax consequences discussed above. Consequently, you should consult your own tax advisors regarding the effect of state and local tax laws on an investment in our shares.

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#### ERISA CONSIDERATIONS

The following is a summary of material considerations arising under the Employee Retirement Income Securities Act of 1974, as amended ("ERISA") and the prohibited transaction provisions of Section 4975 of the Code that may be relevant to a prospective purchaser (including a prospective purchaser that is not an employee benefit plan which is subject to ERISA, but is a tax-qualified retirement plan or an individual retirement account, individual retirement annuity, medical savings account or education individual retirement account (collectively, an "IRA")). This discussion does not purport to deal with all aspects of ERISA or Section 4975 of the Code or, to the extent not preempted, state law that may be relevant to particular employee benefit plan stockholders (including plans subject to Title I of ERISA, other employee benefit plans and IRAs subject to the prohibited transaction provisions of Section 4975 of the Code, and governmental plans and church plans that are exempt from ERISA and Section 4975 of the Code but that may be subject to state law requirements) in light of their particular circumstances.

A FIDUCIARY MAKING THE DECISION TO INVEST IN SHARES OF COMMON STOCK ON BEHALF OF A PROSPECTIVE PURCHASER WHICH IS AN ERISA PLAN, A TAX QUALIFIED RETIREMENT PLAN, AN IRA OR OTHER EMPLOYEE BENEFIT PLAN IS ADVISED TO CONSULT ITS OWN LEGAL ADVISOR REGARDING THE SPECIFIC CONSIDERATIONS ARISING UNDER ERISA, SECTION 4975 OF THE INTERNAL REVENUE CODE, AND (TO THE EXTENT NOT PRE-EMPTED) STATE LAW WITH RESPECT TO THE PURCHASE, OWNERSHIP OR SALE OF SHARES OF COMMON STOCK BY SUCH PLAN OR IRA. Plans should also consider the entire discussion under the heading "Certain Federal Income Tax Considerations," as material contained in that section is relevant to any decision by an employee benefit plan, tax-qualified retirement plan or IRA to purchase our common stock.

#### EMPLOYEE BENEFIT PLANS, TAX-QUALIFIED RETIREMENT PLANS AND IRAS

Each fiduciary of an employee benefit plan subject to Title I of ERISA (an "ERISA Plan") should carefully consider whether an investment in shares of common stock is consistent with its fiduciary responsibilities under ERISA. In particular, the fiduciary requirements of Part 4 of Title I of ERISA require that

- an ERISA Plan make investments that are prudent and in the best interests of the ERISA Plan, its participants and beneficiaries;
- an ERISA Plan make investments that are diversified in order to reduce the risk of large losses, unless it is clearly prudent for the ERISA Plan not to do so;
- an ERISA Plan's investments are authorized under ERISA and the terms of the governing documents of the ERISA Plan; and
- the fiduciary not cause the ERISA Plan to enter into transactions prohibited under Section 406 of ERISA.

In determining whether an investment in shares of common stock is prudent for purposes of ERISA, the appropriate fiduciary of an ERISA Plan should consider all of the facts and circumstances, including whether the investment is reasonably designed, as a part of the ERISA Plan's portfolio for which the fiduciary has investment responsibility, to meet the objectives of the ERISA Plan, taking into consideration the risk of loss and opportunity for gain (or other return) from the investment, the diversification, cash flow

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and funding requirements of the ERISA Plan, and the liquidity and current return of the ERISA Plan's portfolio. A fiduciary should also take into account the nature of our business, the length of our operating history and other matters described under "Risk Factors."

The fiduciary of an IRA or of an employee benefit plan not subject to Title I of ERISA because it is a governmental or church plan (if no election has been made under Section 410(d) of the Code) or because it does not cover common law employees (a "Non-ERISA Plan") should consider that such an IRA or Non-ERISA Plan may only make investments that are either authorized or not prohibited by the appropriate governing documents, not prohibited under Section 4975 of the Code and permitted under applicable state law.

#### STATUS OF THE COMPANY UNDER ERISA

A prohibited transaction may occur if our assets are deemed to be assets of

the investing ERISA Plans and disqualified persons deal with such assets. In certain circumstances where an ERISA Plan holds an interest in an entity, the assets of the entity are deemed to be ERISA Plan assets (the "look-through rule"). Under those circumstances, any person that exercises authority or control with respect to the management or disposition of the assets is an ERISA Plan fiduciary. ERISA Plan assets are not defined in ERISA or the Code, but the United States Department of Labor has issued regulations, effective March 13, 1987, that outline the circumstances under which an ERISA Plan's interest in an entity will be subject to the look-through rule.

The Department of Labor regulations apply only to the purchase by an ERISA Plan of an "equity interest" in an entity, such as stock of a REIT. However, the Department of Labor regulations provide an exception to the look-through rule for equity interests that are "publicly-offered securities." The Department of Labor regulations also provide exceptions to the look-through rule for equity interests in certain types of entities, including any entity which qualifies as either a "real estate operating company" (a "REOC") or a "venture capital operating company" (a "VCOC").

Under the Department of Labor regulations, a "publicly-offered security" is a security that is:

- freely transferable;
- part of a class of securities that is widely-held; and
- either part of a class of securities that is registered under section 12(b) or 12(g) of the Exchange Act or sold to an ERISA Plan as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act and the class of securities of which such security is a part is registered under the Exchange Act within 120 days (or such longer period allowed by the SEC) after the end of the fiscal year of the issuer during which the offering of such securities to the public occurred.

Whether a security is considered "freely transferable" depends on the facts and circumstances of each case. Under the Department of Labor regulations, if the security is part of an offering in which the minimum investment is \$10,000 or less, then any restriction on or prohibition against any transfer or assignment of such security for the purposes of preventing a termination or reclassification of the entity for federal or state tax purposes will not ordinarily prevent the security from being considered freely transferable. Additionally, limitations or restrictions on the transfer or assignment of a security which

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are created or imposed by persons other than the issuer of the security or persons acting for or on behalf of the issuer will ordinarily not prevent the security from being considered freely transferable. A class of securities is considered "widely-held" if it is a class of securities that is owned by 100 or more investors independent of the issuer and of one another.

Under the Department of Labor regulations, a REOC is defined as an entity which on certain testing dates has at least 50% of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, invested in real estate which is managed or developed and with respect to which the entity has the right to substantially participate directly in the management or development activities and which, in the ordinary course of its business, is engaged directly in real estate management or development activities. A VCOC is defined as an entity which on certain testing dates has at least 50% of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, invested in one or more operating companies with respect to which the entity has management rights and which, in the ordinary course of its business, actually exercises its management rights with respect to one or more of the operating companies in which it invests.

We expect that the shares of our common stock offered in this prospectus will meet the criteria of the publicly-offered securities exception to the look-through rule. First, the common stock should be considered to be freely transferable, as the minimum investment will be less than \$10,000 and the only restrictions upon its transfer are those required under federal tax laws to maintain our status as a REIT, resale restrictions under applicable federal securities laws with respect to securities not purchased pursuant to this prospectus and those owned by our officers, directors and other affiliates, and voluntary restrictions agreed to by the selling stockholders regarding volume limitations. See "Description of Certain Provisions of the Partnership Agreement of the Operating Partnership -- Registration Rights." Second, we expect the common stock to be held by 100 or more investors and we expect that at least 100 or more of these investors will be independent of us and of one another. Third, the shares of common stock will be part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act and the common stock is registered under the Exchange Act. In addition, we have obtained management rights with respect to the Operating Partnership and conduct our affairs in such a manner that we will qualify as either a REOC or VCOC under

the Department of Labor regulations. Accordingly, we believe that if an ERISA Plan purchases the common stock, our assets should not be deemed to be ERISA Plan assets and, therefore, that any person who exercises authority or control with respect to our assets should not be an ERISA Plan fiduciary.

SELLING STOCKHOLDERS

"Selling stockholders" are those persons who may receive shares of our common stock registered pursuant to this registration statement upon exchange of Units. The following table provides the names of the selling stockholders, the maximum number of shares of common stock issuable to each of the selling stockholders in the exchange and the aggregate number of shares of common stock that will be owned by the selling stockholders after the exchange. The number of shares on the following table represents the number of shares of common stock into which Units held by the person are exchangeable. Since the selling stockholders may sell all, some or none of their shares, we cannot estimate the aggregate number of shares that the selling stockholders will offer pursuant to this prospectus or that each selling stockholder will own upon completion of the offering to which this prospectus relates.

The selling stockholders named below may from time to time offer the shares of common stock offered by this prospectus:

<TABLE>  
<CAPTION>

NAME	SHARES OF COMMON STOCK OWNED PRIOR TO THE EXCHANGE (a)	MAXIMUM NUMBER OF SHARES OF COMMON STOCK ISSUABLE IN THE EXCHANGE AND AVAILABLE FOR RESALE	AGGREGATE NUMBER OF SHARES OF COMMON STOCK OWNED FOLLOWING THE EXCHANGE (a) (b)	PERCENTAGE OF OUTSTANDING COMMON STOCK OWNED FOLLOWING THE EXCHANGE (a) (b)
----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
David Brown.....	--	54,779	54,779	*
Daniel Sarhad.....	--	294	294	*
Craig Duncan.....	--	10,307	10,307	*
GP Met Phase One 95, Ltd.....	--	84,484	84,484	*
GP Met 4/12, Ltd.....	--	70,772	70,772	*
Charles R. Wichman and Frederick B. Wichman as trustees for the Holbrook W. Goodale 54 Trust.....	--	53,274	53,274	*
Holbrook W. Goodale and Frederick B. Wichman as trustees for the Charles R. Wichman 54 Trust.....	--	53,274	53,274	*
Charles R. Wichman and Holbrook W. Goodale as trustees for the Frederick B. Wichman 54 Trust....	--	53,274	53,274	*
Charles R. Wichman and Frederick B. Wichman as trustees for the Holbrook W. Goodale 57 Trust.....	--	186,654	186,654	*
Holbrook W. Goodale and Frederick B. Wichman as trustees for the Charles R. Wichman 57 Trust.....	--	186,654	186,654	*
Charles R. Wichman and Holbrook W. Goodale as trustees for the Frederick B. Wichman 57 Trust....	--	186,654	186,654	*
Charles R. Wichman and Frederick B. Wichman as trustees for the Holbrook W. Goodale 58 Trust.....	--	186,654	186,654	*

<TABLE>  
<CAPTION>

NAME	SHARES OF COMMON STOCK OWNED PRIOR TO THE EXCHANGE (a)	MAXIMUM NUMBER OF SHARES OF COMMON STOCK ISSUABLE IN THE EXCHANGE AND AVAILABLE FOR RESALE	AGGREGATE NUMBER OF SHARES OF COMMON STOCK OWNED FOLLOWING THE EXCHANGE (a) (b)	PERCENTAGE OF OUTSTANDING COMMON STOCK OWNED FOLLOWING THE EXCHANGE (a) (b)
----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Holbrook W. Goodale and Frederick B. Wichman as trustees for the Charles R. Wichman 58 Trust.....	--	186,654	186,654	*
Charles R. Wichman and Holbrook W. Goodale as trustees for the Frederick B. Wichman 58 Trust....	--	186,654	186,654	*

Allmerica Financial Life Insurance and Annuity Company.....	--	559,628	559,628	*
The Gamble Family Limited Partnership.....	--	482,153	482,153	*
		-----	-----	
Total.....		2,542,163	2,542,163	2.9%
		=====	=====	

</TABLE>

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(a) Based on information available to the Company as of November 30, 1998.

(b) Assumes the selling stockholders exchange all of their Units for shares of common stock. Also assumes that no transactions with respect to common stock or Units occur other than the exchange.

\* Less than 1%.

AMB Institutional Realty Advisors, Inc., one of our predecessors, acted as an investment advisor to the Selling Stockholders prior to our formation transactions. AMB Investment Management provides investment advisory services to Allmerica Financial Life Insurance and Annuity Company. David Brown, Daniel Sarhad and Craig Duncan have ownership interests in or are otherwise associated with an entity that provides property management and leasing services with respect to certain of our properties, and to which we pay customary compensation.

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#### PLAN OF DISTRIBUTION

This prospectus relates to:

- the possible issuance by us of up to 2,542,163 shares of common stock if, and to the extent that, holders of up to 2,542,163 Units tender their Units for cash redemption and we elect, in our sole and absolute discretion, to exchange the Units for common stock in lieu of a cash redemption; and
- the offer and sale from time to time of those 2,542,163 shares of common stock by the selling stockholders.

We are registering the shares of common stock to provide the holders with freely tradeable securities, but the registration of these shares does not necessarily mean that any of these shares will be offered or sold by the holders.

Pursuant to the terms and conditions of the registration rights agreement dated as of November 26, 1997 among the Company, the Operating Partnership and the selling stockholders, prior to the date upon which the Units would be eligible for resale under Rule 144(k) under the Securities Act, as such rule may be amended from time to time (or any similar rule or regulation hereafter adopted by the SEC), each of the selling stockholders generally is limited to resales of any shares of common stock issued pursuant to this prospectus to the number of shares which otherwise would be eligible for resale by that limited partner pursuant to Rule 144, assuming the shares were issued on the same date as the respective Units were issued. See "Risk Factors -- Ownership of Common Stock -- The Large Number of Shares Available for Future Sale Could Adversely Affect the Market Price of Our Common Stock."

We will not receive any proceeds from the issuance of the shares of common stock to the selling stockholders or from the sale of the shares by the selling stockholders, but we have agreed to pay certain expenses of the registration of the shares. The selling stockholders may from time to time sell the shares directly to purchasers. Alternatively, the selling stockholders may from time to time offer the shares through dealers or agents, who may receive compensation in the form of commissions from the selling stockholders and for the purchasers of the shares for whom they may act as agent. The selling stockholders and any dealers or agents that participate in the distribution of the shares may be deemed to be "underwriters" within the meaning of the Securities Act and any profit on the sale of the common stock by them and any commissions received by any such dealers or agents might be deemed to be underwriting commissions under the Securities Act.

In connection with distribution of the shares of common stock covered by this prospectus, the selling stockholders may enter into hedging transactions with broker-dealers, and the broker-dealers may engage in short sales of the common stock in the course of hedging the positions they assume with the selling stockholders. The selling stockholders also may sell the common stock short and deliver the common stock to close out such short positions. The selling stockholders also may enter into option or other transactions with broker-dealers that involve the delivery of the shares to the broker-dealers, who may then resell or otherwise transfer the shares. The selling stockholders also may loan or pledge the shares to a broker-dealer and the broker-dealer may sell the shares so loaned or upon a default may sell or otherwise transfer the

pledged shares.

LEGAL MATTERS

Ballard, Spahr, Andrews & Ingersoll, LLP, Baltimore, Maryland will issue an opinion to us regarding certain matters of Maryland law. Latham & Watkins will issue an opinion to us regarding certain tax matters described under "Certain Federal Income Tax Considerations."

EXPERTS

The audited financial statements and schedules incorporated by reference in this prospectus and elsewhere in the registration statement to the extent and for the periods indicated in their reports have been audited by Arthur Andersen LLP, independent public accountants, and are included herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table itemizes the expenses incurred by the Registrant in connection with the issuance and registration of the securities being registered hereunder. All amounts shown are estimates except the Securities and Exchange Commission registration fee.

<TABLE>	
<S>	
SEC Registration Fee.....	\$ 15,216
NYSE Listing Fee.....	\$ 8,500
Printing and Engraving Expenses.....	\$100,000
Legal Fees and Expenses (other than Blue Sky).....	\$ 40,000
Accounting and Fees and Expenses.....	\$ 10,000
Blue Sky Fees and Expenses.....	\$ 5,000
Miscellaneous.....	\$ 21,284
	-----
Total.....	\$200,000
	=====

</TABLE>

All of the costs identified above will be paid for by the Company.

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 2-418 of the MGCL permits a corporation to indemnify its directors and officers and certain other parties against judgments, penalties, fines, settlements, and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty; (ii) the director or officer actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the director or officer in connection with the proceeding; provided, however, that if the proceeding is one by or in the right of the corporation, indemnification may not be made with respect to any proceeding in which the director or officer has been adjudged to be liable to the corporation. In addition, a director or officer may not be indemnified with respect to any proceeding charging improper personal benefit to the director or officer, whether or not involving action in the director's or officer's official capacity, in which the director or officer was adjudged to be liable on the basis that personal benefit was received. The termination of any proceeding by conviction, or upon a plea of nolo contendere or its equivalent, or an entry of any order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet the requisite standard of conduct required for indemnification to be permitted.

In addition, Section 2-418 of the MGCL requires that, unless prohibited by its charter, a corporation indemnify any director or officer who is made a party to any proceeding by reason of service in that capacity against reasonable expenses incurred by the director or officer in connection with the proceeding, in the event that the director or officer is successful, on the merits or otherwise, in the defense of the proceeding.

The Company's Charter and Bylaws provide in effect for the indemnification by the Company of the directors and officers of the Company to the fullest extent permitted by applicable law. The Company has purchased directors' and officers' liability insurance for the benefit of its directors and officers.

The Company has entered into indemnification agreements with each of its executive officers and directors. The indemnification agreements require, among other matters, that the Company indemnify its executive officers and directors to the fullest extent permitted by law and reimburse the executive officers and directors for all related expenses as incurred, subject to return if it is subsequently determined that indemnification is not permitted.

ITEM 16. EXHIBITS

<TABLE>  
<CAPTION>

EXHIBIT  
NUMBER

DESCRIPTION

EXHIBIT NUMBER	DESCRIPTION
4.1	Articles of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.2	Articles Supplementary establishing and fixing the rights and preferences of the 8 1/2% Series A Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 3.4(4) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998).
4.3	Articles Supplementary establishing and fixing the rights and preferences of the 8 5/8% Series B Cumulative Redeemable Preferred Stock.
4.4	Articles Supplementary establishing and fixing the rights and preferences of the 8.75% Series C Cumulative Redeemable Preferred Stock.
4.5	Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.6	Specimen common stock certificate (incorporated by reference to Exhibit 3.3 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.7	Form of Registration Rights Agreement among the Registrant and the persons named therein (incorporated by reference to exhibit 10.2 to the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.8	Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.1 of the Registrant's Registration Statement on Form S-11 (No. 333-49163)).
4.9	First Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
4.10	Second Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
4.11	Third Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-11 (No. 333-49163)).

</TABLE>

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<TABLE>  
<CAPTION>

EXHIBIT  
NUMBER

DESCRIPTION

EXHIBIT NUMBER	DESCRIPTION
4.12	Specimen of 7.10% Notes due 2008 (included in the First Supplemental Indenture incorporated by reference as Exhibit 4.2 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
4.13	Specimen of 7.50% Notes due 2018 (included in the Second Supplemental Indenture incorporated by reference as Exhibit 4.3 to the Company's Registration Statement on Form S-11



	(No. 333-49163)).
4.14	Specimen of 6.90% Reset Put Securities due 2015 (included in the Third Supplemental Indenture incorporated by reference as Exhibit 4.4 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
5.1	Opinion of Ballard, Spahr, Andrews & Ingersoll, LLP regarding the validity of the common stock being registered.
8.1	Opinion of Latham & Watkins regarding certain federal income tax matters.
23.1	Consent of Arthur Andersen, LLP.
23.2	Consent of Ballard, Spahr, Andrews & Ingersoll, LLP (included in Exhibit 5.1).
23.3	Consent of Latham & Watkins (included in Exhibit 8.1).
24.1	Power of Attorney (included on signature page).
99.1	Third Amended and Restated Agreement of Limited Partnership of AMB Property, L.P.

</TABLE>

ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned Registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

The undersigned Registrant hereby further undertakes that:

- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance under Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act of 1933 shall be deemed to be part

of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Exchange Act of 1934, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Exchange Act of 1934, and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned thereunto duly authorized in the City of San Francisco, State of California, on the 30th day of November, 1998.

AMB PROPERTY CORPORATION

By: /s/ HAMID R. MOGHADAM

-----  
Hamid R. Moghadam  
President and Chief Executive  
Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints jointly and severally, Hamid R. Moghadam, David S. Fries, John T. Roberts, Jr., and Michael A. Coke and each of them, his attorney-in-fact, each with the power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement (including post effective amendments), and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, and all post-effective amendments thereto, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<TABLE>  
<CAPTION>

SIGNATURE -----	TITLE -----	DATE ----
<S>	<C>	<C>
/s/ T. ROBERT BURKE ----- T. Robert Burke	Chairman of the Board and Director	November 30, 1998
/s/ HAMID R. MOGHADAM ----- Hamid R. Moghadam	President, Chief Executive Officer and Director (Principal Executive Officer)	November 30, 1998
/s/ DOUGLAS D. ABBEY ----- Douglas D. Abbey	Chairman of Investment Committee and Director	November 30, 1998
/s/ S. DAVIS CARNIGLIA -----	Chief Financial Officer (Principal Financial	November 30, 1998

&lt;/TABLE&gt;

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<TABLE>  
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SIGNATURE -----	TITLE -----	DATE ----
/s/ MICHAEL A. COKE ----- Michael A. Coke	Vice President and Director of Financial Management Reporting (Principal Accounting Officer)	November 30, 1998
/s/ DANIEL H. CASE, III ----- Daniel H. Case, III	Director	November 30, 1998
/s/ ROBERT H. EDELSTEIN, PH.D. ----- Robert H. Edelstein, Ph.D.	Director	November 30, 1998
/s/ LYNN M. SEDWAY ----- Lynn M. Sedway	Director	November 30, 1998
/s/ JEFFREY L. SKELTON, PH.D. ----- Jeffrey L. Skelton, Ph.D.	Director	November 30, 1998
/s/ THOMAS W. TUSHER ----- Thomas W. Tusher	Director	November 30, 1998
/s/ CARYL B. WELBORN ----- Caryl B. Welborn	Director	November 30, 1998

&lt;/TABLE&gt;

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## EXHIBIT INDEX

<TABLE>  
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EXHIBIT NUMBER -----	DESCRIPTION -----
<C> <S> 4.1	Articles of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.2	Articles Supplementary establishing and fixing the rights and preferences of the 8 1/2% Series A Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 3.4(4) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998).
4.3	Articles Supplementary establishing and fixing the rights and preferences of the 8 5/8% Series B Cumulative Redeemable Preferred Stock.
4.4	Articles Supplementary establishing and fixing the rights and preferences of the 8.75% Series C Cumulative Redeemable Preferred Stock.
4.5	Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.6	Specimen common stock certificate (incorporated by reference to Exhibit 3.3 of the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.7	Form of Registration Rights Agreement among the Registrant and the persons named therein (incorporated by reference to exhibit 10.2 to the Registrant's Registration Statement on Form S-11 (No. 333-35915)).
4.8	Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.1 of the Registrant's Registration Statement on Form S-11 (No. 333-49163)).
4.9	First Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-11 (No.

- 333-49163)).
- 4.10 Second Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
- 4.11 Third Supplemental Indenture dated as of June 30, 1998 by and among the Operating Partnership, the Company and State Street Bank and Trust Company of California, N.A., as trustee (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
- 4.12 Specimen of 7.10% Notes due 2008 (included in the First Supplemental Indenture incorporated by reference as Exhibit 4.2 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
- 4.13 Specimen of 7.50% Notes due 2018 (included in the Second Supplemental Indenture incorporated by reference as Exhibit 4.3 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
- 4.14 Specimen of 6.90% Reset Put Securities due 2015 (included in the Third Supplemental Indenture incorporated by reference as Exhibit 4.4 to the Company's Registration Statement on Form S-11 (No. 333-49163)).
- 5.1 Opinion of Ballard, Spahr, Andrews & Ingersoll, LLP regarding the validity of the common stock being registered.

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EXHIBIT

NUMBER

DESCRIPTION

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- | ----- | -----   |
|-------|---|
| 8.1   | Opinion of Latham & Watkins regarding certain federal income tax matters.         |
| 23.1  | Consent of Arthur Andersen, LLP.  |
| 23.2  | Consent of Ballard, Spahr, Andrews & Ingersoll, LLP (included in Exhibit 5.1).    |
| 23.3  | Consent of Latham & Watkins (included in Exhibit 8.1).                            |
| 24.1  | Power of Attorney (included on signature page).                                   |
| 99.1  | Third Amended and Restated Agreement of Limited Partnership of AMB Property, L.P. |

</TABLE>

AMB PROPERTY CORPORATION  
 ARTICLES SUPPLEMENTARY  
 ESTABLISHING AND FIXING THE RIGHTS AND  
 PREFERENCES OF 8 5/8% SERIES B CUMULATIVE  
 REDEEMABLE PREFERRED STOCK

AMB Property Corporation, a corporation organized and existing under the laws of the State of Maryland (the "Corporation"), certifies to the State Department of Assessments and Taxation of Maryland (the "Department") that:

FIRST: Pursuant to the authority expressly vested in the Board of Directors of the Corporation (sometimes referred to herein as the "Board") by Article IV of the Articles of Incorporation of the Corporation filed with the Department on November 24, 1997, which comprises, together with the Articles Supplementary filed by the Corporation on July 23, 1998 establishing a class of Preferred Stock of the Corporation, par value \$0.01 per share (the "Preferred Stock"), designated as the "8 1/2% Series A Cumulative Redeemable Preferred Stock" (the "Series A Preferred Stock") and these Articles Supplementary, the charter (the "Charter") of the Corporation, and Section 2-105 of the Maryland General Corporation Law (the "MGCL"), the Board of Directors of the Corporation, on September 3, 1998, adopted resolutions authorizing the Corporation, among other things, to issue up to a stated maximum number of shares of Preferred Stock of the Corporation, having a stated maximum aggregate liquidation preference and dividend rate and certain other stated terms applicable to the issuance thereof, and appointing, pursuant to the MGCL and the powers contained in the Bylaws of the Corporation, a committee (the "Committee") of the Board of Directors comprised of Hamid R. Moghadam and delegating to the Committee, to the fullest extent permitted by Maryland law and the Charter and Bylaws of the Corporation, all powers of the Board of Directors with respect to classifying, authorizing, approving, ratifying and/or confirming the terms of the Preferred Stock to be issued, including, without limitation, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption, and determining the consideration per share to be received in respect of the issuance and sale of each share of Preferred Stock to be issued and sold, and the number of shares of Preferred Stock to be so classified or reclassified and issued by the Corporation, subject to the limitations set forth in the resolutions of the Board of Directors adopted on September 3, 1998.

SECOND: Pursuant to the authority conferred upon the Committee as aforesaid, the Committee has, on November 11, 1998, adopted resolutions classifying and designating a separate class of Preferred Stock as the 8 5/8% Series B Cumulative Redeemable Preferred

Stock, with the preferences, conversions and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption and other terms and conditions of such 8 5/8% Series B Cumulative Redeemable Preferred Stock (within the limitations set by the Board of Directors in the resolutions adopted on September 3, 1998 and referred to in Article First of these Articles Supplementary) and establishing 1,300,000 as the number of shares to be so classified and designated, and authorizing the issuance of up to 1,300,000 shares of 8 5/8% Series B Cumulative Redeemable Preferred Stock.

THIRD: The separate class of Preferred Stock of the Corporation created by the resolutions duly adopted by the Board of Directors of the Corporation and by the Committee and referred to in Articles First and Second of these Articles Supplementary shall have the designation, number of shares, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption and other terms and conditions as follows (and which, upon any restatement of the Charter, may be made a part of Article IV thereof, with any necessary or appropriate changes to the numeration or lettering of the sections or subsections hereof):

(1) DESIGNATION AND NUMBER. A class of Preferred Stock, designated the "8 5/8% Series B Cumulative Redeemable Preferred Stock" (the "Series B Preferred Stock"), is hereby established. The number of shares of Series B Preferred Stock shall be 1,300,000 (the "Series B Preferred Shares").

(2) RANK. The Series B Preferred Shares will rank, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, (a) senior to all classes or series of Common Stock (as defined in the Charter) and to all equity securities of the Corporation the terms of which provide that such equity securities shall rank junior to such Series B Preferred Shares; (b) on a parity with all equity securities issued by the Corporation other than those referred to in clauses (a) and (c) (including the Series A Preferred Stock); and (c) junior to all equity

securities issued by the Corporation which rank senior to the Series B Preferred Shares in accordance with Section 6(d) of this Article Third. The term "equity securities" does not include convertible debt securities.

(3) DIVIDENDS.

(a) Holders of Series B Preferred Shares shall be entitled to receive, if, when and as authorized by the Board, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 8 5/8% of the \$50.00 liquidation preference per annum (equivalent to \$4.3125 per annum per share). Such dividends shall accumulate on a daily basis computed on the basis of a 360-day year consisting of twelve 30-day months and be cumulative,

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shall accrue from the original date of issuance and shall be payable quarterly in equal amounts in arrears on the 15th day of each January, April, July and October, or, if not a business day, the next succeeding business day (each a "Dividend Payment Date"). Dividends shall be payable to holders of record as they appear in the share records of the Corporation at the close of business on the applicable record date (each, a "Dividend Record Date"), which shall be the date designated by the Board for the payment of dividends that is not more than 30 nor less than 10 days prior to the applicable payment date therefor. Any dividend payable on the Series B Preferred Shares for any partial dividend period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. If any date on which distributions are to be made on the Series B Preferred Stock is not a Business Day (as defined herein), then payment of the distribution to be made on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. Notwithstanding any provision to the contrary contained herein, each outstanding share of Series B Preferred Stock shall be entitled to receive, and shall receive, a dividend with respect to any Dividend Record Date equal to the dividend paid with respect to each other share of Series B Preferred Stock which is outstanding on such date. In addition, notwithstanding anything to the contrary set forth herein, each share of Series B Preferred Stock shall also continue to accrue all accrued and unpaid distributions up to the exchange date on any Series B Preferred Unit (as defined in the Third Amended and Restated Limited Partnership Agreement of AMB Property, L.P. dated as of November 12, 1998, as amended and supplemented from time to time (the "Partnership Agreement")) validly exchanged into such share of Series B Preferred Stock in accordance with the provisions of the Partnership Agreement.

(b) No dividend on the Series B Preferred Shares shall be authorized by the Board or be paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding anything to the contrary contained herein, dividends on the Series B Preferred Shares shall accumulate whether or not restrictions exist in respect thereof, whether or not there are funds legally available for the payment thereof and whether or not such dividends are declared. Accumulated but unpaid dividends on the Series B Preferred Shares will accumulate as of the Dividend Payment Date on which they first become payable or on the date of redemption, as the case may be.

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(d) If any Series B Preferred Shares are outstanding, no full dividends will be declared or paid or set apart for payment on any other equity securities of the Corporation of any other class or series ranking, as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, junior to or on a parity with the Series B Preferred Shares (including the Series A Preferred Stock) unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series B Preferred Shares for all dividend periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Shares and any other equity securities ranking as to distributions on a parity with the Series B Preferred Shares (including the Series A Preferred

Stock), all dividends declared upon the Series B Preferred Shares and any other equity securities of the Corporation ranking on a parity with the Series B Preferred Stock as to distributions and upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock) shall be declared pro rata so that the amount of dividends declared per Series B Preferred Share and each such other equity securities shall in all cases bear to each other the same ratio that accumulated dividends per Series B Preferred Share and such other equity securities (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other equity securities do not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series B Preferred Shares which may be in arrears.

(e) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series B Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all dividend periods, no dividends (other than in Common Stock or other equity securities of the Corporation ranking junior to the Series B Preferred Shares as to distributions and upon voluntary or involuntary liquidation, dissolution and winding up of the Corporation) shall be declared or paid or set aside for payment nor shall any other dividend be declared or made upon the Common Stock or any other equity securities of the Corporation ranking as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation junior to or on a parity with the Series B Preferred Stock (including the Series A Preferred Stock), nor shall any Common Stock or any other equity securities of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such securities) by the Corporation (except by conversion into or exchange for other equity securities of the Corporation ranking junior to the Series B Preferred Stock as to distributions and upon voluntary and involuntary liquidation, dissolution and winding up of the Corporation, and except

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pursuant to Section 7 of this Article Third to ensure the Corporation's continued status as a REIT or comparable Charter provisions with respect to other classes or series of the Corporation's stock).

(f) Accumulated but unpaid dividends on the Series B Preferred Shares will not bear interest and holders of Series B Preferred Shares shall not be entitled to any dividend in excess of full cumulative dividends as described above. Any dividend payment made on the Series B Preferred Shares shall first be credited against the earliest accumulated but unpaid dividend due with respect to such shares which remains payable.

(g) If, for any taxable year, the Corporation elects to designate as a "capital gain dividend" (as defined in Section 857 of the Code), any portion (the "Capital Gains Amount") of the dividends paid or made available for the year to holders of any class or series of stock of the Corporation, the portion of the Capital Gains Amount that shall be allocable to holders of the Series B Preferred Stock shall be the amount that the total dividends (as determined for Federal income tax purposes) paid or made available to the holders of the Series B Preferred Stock for the year bears to the aggregate amount of dividends (as determined for Federal income tax purposes) paid or made available to the holders of all classes or series of stock of the Corporation for such year.

#### (4) LIQUIDATION PREFERENCE.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of Series B Preferred Shares then outstanding shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders remaining after payment or provision for payment of all debts and liabilities of the Corporation, a liquidation preference in cash of \$50.00 per share, plus an amount equal to any accumulated and unpaid dividends to the date of such payment, before any distribution of assets is made to holders of Common Stock or any other equity securities of the Corporation that rank junior to the Series B Preferred Shares as to liquidation rights.

(b) If, upon any such voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets of the Corporation are insufficient to make full payment to holders of Series B Preferred Shares and the corresponding amounts payable on all shares of other classes or series of equity securities of the Corporation ranking on a parity with the Series B Preferred Shares as to liquidation rights (including the Series A Preferred Stock), then the holders of the Series B Preferred Shares and all other such classes or

series of equity securities shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

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(c) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series B Preferred Shares at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(d) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Shares will have no right or claim to any of the remaining assets of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other entity, a merger of another entity with or into the Corporation, a statutory share exchange by the Corporation or a sale, lease, transfer or conveyance of all or substantially all of the property or business of the Corporation shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

(f) In determining whether a distribution (other than upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation) by dividend, redemption or other acquisition of shares of stock of the Corporation or otherwise is permitted under the MGCL, no effect shall be given to amounts that would be needed, if the Corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of the Series B Preferred Shares whose preferential rights upon dissolution are superior to those receiving the distribution.

(5) OPTIONAL REDEMPTION.

(a) The Series B Preferred Shares are not redeemable prior to November 12, 2003. To ensure that the Corporation remains a qualified real estate investment trust ("REIT") for federal income tax purposes, however, the Series B Preferred Shares shall be subject to the provisions of Section 7 of this Article Third pursuant to which Series B Preferred Shares owned by a stockholder in excess of the Ownership Limit (as defined in Section 7 of this Article Third) or certain other limitations shall automatically be transferred to a Trust for the benefit of a Charitable Beneficiary (as defined in Section 7 of this Article Third) and the Corporation shall have the right to purchase such shares, as provided in Section 7 of this Article Third. On and after November 12, 2003, the Corporation, at its option, upon giving notice as provided below, may redeem the Series B Preferred Shares, in whole or from time to time in part, for cash, at a redemption price of \$50.00 per share, plus all accumulated and unpaid dividends on such Series B Preferred Shares to the date fixed for redemption.

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(b) The redemption price of the Series B Preferred Shares (other than any portion thereof consisting of accumulated and unpaid dividends) is payable solely from the sale proceeds of other equity securities of the Corporation, and not from any other source. For purposes of the preceding sentence, "equity securities" means any equity securities (including Common Stock and Preferred Stock (as defined in the Charter)), depositary shares in respect of any of the foregoing, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(c) If fewer than all of the outstanding Series B Preferred Shares are to be redeemed, the shares to be redeemed shall be selected pro rata (as nearly as practicable without creating fractional shares) or by lot or by any other equitable method determined by the Corporation. If such redemption is to be by lot and, as a result of such redemption, any holder of Series B Preferred Shares would become a holder of a number of Series B Preferred Shares in excess of the Ownership Limit (or other limitations set forth in Section 7 of this Article Third) because such holder's Series B Preferred Shares were not redeemed, or were only redeemed in part, then, except as otherwise provided in the Charter, the Corporation will redeem the requisite number of Series B Preferred Shares of such holder such that no holder will hold in excess of the Ownership Limit (or such other limits) subsequent to such redemption.

(d) Notwithstanding anything to the contrary contained herein, unless



full cumulative dividends on all Series B Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no Series B Preferred Shares shall be redeemed unless all outstanding Series B Preferred Shares are simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase by the Corporation of Series B Preferred Shares pursuant to Section 7 of this Article Third or otherwise in order to ensure that the Corporation remains qualified as a REIT for Federal or state income tax purposes or the purchase or acquisition of Series B Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series B Preferred Shares. In addition, unless full cumulative dividends on all outstanding Series B Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all dividend periods, the Corporation shall not purchase or otherwise acquire directly or indirectly any Series B Preferred Shares or any equity securities of the Corporation ranking junior to or on a parity with the Series B Preferred Shares as to dividends or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock) (except by conversion into or exchange for equity securities of the Corporation ranking junior to the Series B Preferred Shares as to dividends and upon voluntary or involuntary liquidation, dissolution or winding up of the

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Corporation and except pursuant to Section 7 of this Article Third or comparable Charter provisions with respect to other classes or series of the Corporation's stock).

(e) The holders of shares of Series B Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payable with respect to the shares of Series B Preferred Stock held on the corresponding Dividend Payment Date notwithstanding the redemption thereof between such Dividend Record Date and the corresponding Dividend Payment Date or the Corporation's default in the payment of the dividend due. Except as provided herein, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series B Preferred Shares to be redeemed.

(f) The following provisions set forth the procedures for Redemption:

(i) Notice of redemption will be given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date. A similar notice will be mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series B Preferred Shares to be redeemed at their respective addresses as they appear on the share records of the Corporation. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series B Preferred Shares except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which the Series B Preferred Shares may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of Series B Preferred Shares to be redeemed; (D) the place or places where the certificates evidencing shares of Series B Preferred Shares are to be surrendered for payment of the redemption price; and (E) that dividends on the Series B Preferred Shares to be redeemed will cease to accumulate on such redemption date. If fewer than all of the Series B Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series B Preferred Shares to be redeemed from such holder.

(iii) On or after the redemption date, each holder of Series B Preferred Shares to be redeemed shall present and surrender the certificates representing such holder's Series B Preferred Shares to the Corporation at the place designated in the notice of redemption and shall be entitled to the redemption price and any accumulated and unpaid dividends payable upon such redemption upon such surrender and thereupon the redemption price of such shares (including all accumulated and unpaid dividends up to the redemption date) shall be paid to or on the order of

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the person whose name appears on such certificate representing Series B Preferred Shares as the owner thereof and each surrendered certificate shall be

canceled. If fewer than all the shares represented by any such certificate representing Series B Preferred Shares are to be redeemed, a new certificate shall be issued representing the unredeemed shares.

(iv) If notice of redemption of any Series B Preferred Shares has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders thereof, then from and after the redemption date all dividends on such Series B Preferred Shares shall cease to accumulate and any such Series B Preferred Shares will no longer be deemed outstanding and all rights of the holders thereof will terminate, except the right to receive the redemption price (including all accumulated and unpaid dividends up to the redemption date) and such shares shall not thereafter be transferred (except with the consent of the Corporation) on the Corporation's stock transfer records. At its election, the Corporation, prior to a redemption date, may irrevocably deposit the redemption price (including accumulated and unpaid dividends to the redemption date) of the Series B Preferred Shares so called for redemption in trust for the holders thereof with a bank or trust company, in which case the redemption notice to holders of the Series B Preferred Shares to be redeemed shall (A) state the date of such deposit, (B) specify the office of such bank or trust company as the place of payment of the redemption price and (C) require such holders to surrender the certificates representing such shares at such place on or about the date fixed in such redemption notice (which may not be later than the redemption date) against payment of the redemption price (including all accumulated and unpaid dividends to the redemption date). Any monies so deposited which remain unclaimed by the holders of the Series B Preferred Shares at the end of two years after the redemption date shall be returned by such bank or trust company to the Corporation.

(g) Any Series B Preferred Shares that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without further designation as to series or class until such shares are once more designated as part of a particular series or class by the Board.

(6) VOTING RIGHTS.

(a) Holders of the Series B Preferred Shares will not have any voting rights, except as set forth below.

(b) Whenever dividends on any Series B Preferred Shares shall remain unpaid for six or more quarterly periods (whether or not consecutive) (a "Preferred Dividend Default"), the holders of such Series B Preferred Shares (voting as a single class with all other equity securities of the Corporation ranking on a parity with the Series B Preferred Shares as to dividends and

upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation upon which like voting rights have been conferred and are exercisable, including the Series A Preferred Stock ("Parity Preferred Stock")) will be entitled to vote for the election of two additional directors of the Corporation (the "Preferred Stock Directors"), who will be elected for a one-year term and until their successors are duly elected and shall qualify (or until such director's right to hold such office terminates as provided herein, whichever occurs earlier, subject to such director's earlier death, disqualification, resignation or removal), at a special meeting called by the holders of at least 20% of the outstanding Series B Preferred Shares or the holders of shares of any other class or series of Parity Preferred Stock with respect to which dividends are so unpaid (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders) or, if the request for a special meeting is received by the Corporation less than 90 days before the date fixed for the next annual or special meeting of stockholders, at the next annual or special meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on the Series B Preferred Shares for all past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment in full.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series B Preferred Shares shall have been paid in full or declared by the Corporation and set aside for payment in full, the holders of Series B Preferred Shares shall be divested of the voting rights set forth in Section 6(b) of this Article Third (subject to reversion in the event of each and every Preferred Dividend Default) and, if all accumulated dividends have been paid in full or declared by the Corporation and set aside for payment in full on all other classes or series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall forthwith terminate. Any

Preferred Stock Director elected by the holders of Series B Preferred Shares and any other such Parity Preferred Shares may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of a majority of the outstanding Series B Preferred Shares when they only have the voting rights set forth, or like those set forth, in Section 6(b) of this Article Third, and by the majority vote of the Series B Preferred Shares and all other classes or series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable (voting as a single class) when the Series B Preferred Shares and such Parity Preferred Stock is entitled to vote thereon. So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director so elected may be filled by written consent of the Preferred Stock Director so elected remaining in office or, if none remains in office, by a vote of the holders of a majority of the outstanding Series B Preferred Shares when they only have the voting rights set forth, or like those set forth, in Section 6(b) of this Article Third, and by the majority vote of the Series B Preferred Shares and other classes or series of Parity Preferred Stock upon which like voting

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rights have been conferred and are exercisable (voting as a single class) when the Series B Preferred Shares and such Parity Preferred Stock is entitled to vote thereon.

(d) So long as any Series B Preferred Stock remains outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the Series B Preferred Stock outstanding at the time (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares ranking senior to the Series B Preferred Stock with respect to payment of distributions or rights upon liquidation, dissolution or winding-up or reclassify any authorized shares of the Corporation into any such shares, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares, (ii) designate or create, or increase the authorized or issued amount of, any Parity Preferred Stock or reclassify any authorized shares of the Corporation into any such shares, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares, but only to the extent such Parity Preferred Stock is issued to an affiliate of the Corporation, or (iii) either (A) consolidate, merge into or with, or convey, transfer or lease its assets substantially as an entirety, to any corporation or other entity, or (B) amend, alter or repeal the provisions of the Corporation's Charter (including these Articles Supplementary) or Bylaws, whether by merger, consolidation or otherwise, in each case that would materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series B Preferred Stock or the holders thereof; provided, however, that with respect to the occurrence of any event set forth in (iii) above, so long as (a) the Corporation is the surviving entity and the Series B Preferred Stock remains outstanding with the terms thereof unchanged, or (b) the resulting, surviving or transferee entity is a corporation organized under the laws of any state and substitutes the Series B Preferred Stock for other preferred stock having substantially the same terms and same rights as the Series B Preferred Stock, including with respect to distributions, voting rights and rights upon liquidation, dissolution or winding-up, then the occurrence of any such event shall not be deemed materially and adversely affect such rights, privileges or voting powers of the holders of the Series B Preferred Stock and provided further that any increase in the amount of authorized Preferred Stock or the creation or issuance of any other class or series of Preferred Stock, or any increase in an amount of authorized shares of each class or series, in each case ranking either (a) junior to the Series B Preferred Stock with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding-up, or (b) on a parity with the Series B Preferred Stock with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding-up to the extent such Preferred Stock is not issued to an affiliate of the Corporation, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding

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Series B Preferred Shares shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

(7) RESTRICTIONS ON OWNERSHIP AND TRANSFER TO PRESERVE TAX BENEFIT.

(a) Definitions. for the purposes of Section 7 of these Articles Supplementary, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Series B Preferred Stock by a Person who is or would be treated as an owner of such Series B Preferred Stock either actually or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean one or more beneficiaries of a Trust, as determined pursuant to Section 7(c)(vi) of these Articles Supplementary, each of which shall be an organization described in Sections 170(b)(1)(A), 170(c)(2) and 501(c)(3) of the Code.

"Code" shall mean the Internal Revenue Code of 1986, as amended. All section references to the Code shall include any successor provisions thereof as may be adopted from time to time.

"Constructive Ownership" shall mean ownership of Series B Preferred Stock by a Person who is or would be treated as an owner of such Series B Preferred Stock either actually or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"IRS" means the United States Internal Revenue Service.

"Market Price" shall mean the last reported sales price reported on the New York Stock Exchange of the Series B Preferred Stock on the trading day immediately preceding the relevant date, or if the Series B Preferred Stock is not then traded on the New York Stock Exchange, the last reported sales price of the Series B Preferred Stock on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Series B Preferred Stock may be traded, or if the Series B Preferred Stock is not then

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traded over any exchange or quotation system, then the market price of the Series B Preferred Stock on the relevant date as determined in good faith by the Board of Directors of the Corporation.

"MGCL" shall mean the Maryland General Corporation Law, as amended from time to time, and any successor statute hereafter enacted.

"Operating Partnership" shall mean AMB Property, L.P., a Delaware limited partnership.

"Ownership Limit" shall mean 9.8% (by value) of the outstanding shares of capital stock of the Corporation.

"Partnership Agreement" shall mean the Agreement of Limited Partnership of the Operating Partnership, as such agreement may be amended from time to time.

"Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity; but does not include an underwriter acting in a capacity as such in a public offering of shares of Series B Preferred Stock provided that the ownership of such shares of Series B Preferred Stock by such underwriter would not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the Corporation failing to qualify as a REIT.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer (or other event) which results

in a transfer to a Trust, as provided in Section 7(b)(ii) of these Articles Supplementary, the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned shares of Series B Preferred Stock for another Person who is the beneficial transferee or owner of such shares, in which case the Purported Beneficial Transferee shall be such Person.

"Purported Record Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in Section 7(b)(ii) of these Articles Supplementary, the record holder of the Series B

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Preferred Stock if such Transfer had been valid under Section 7(b)(i) of these Articles Supplementary.

"REIT" shall mean a real estate investment trust under Sections 856 through 860 of the Code and, for purposes of taxation of the Corporation under applicable state law, comparable provisions of the law of such state.

"Restriction Termination Date" shall mean the first day after the date hereof on which the Board of Directors of the Corporation determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Series B Preferred Stock, (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Series B Preferred Stock or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for Series B Preferred Stock), whether voluntary or involuntary, whether such transfer has occurred of record or beneficially or Beneficially or Constructively (including but not limited to transfers of interests in other entities which result in changes in Beneficial or Constructive Ownership of Series B Preferred Stock), and whether such transfer has occurred by operation of law or otherwise.

"Trust" shall mean each of the trusts provided for in Section 7(c) of these Articles Supplementary.

"Trustee" shall mean any Person unaffiliated with the Corporation, or a Purported Beneficial Transferee, or a Purported Record Transferee, that is appointed by the Corporation to serve as trustee of a Trust.

(b) Restriction on Ownership and Transfers.

(i) Prior to the Restriction Termination Date:

(A) except as provided in Section 7(i) of these Articles Supplementary, no Person shall Beneficially Own Series B Preferred Stock which, taking into account any other capital stock of the Corporation Beneficially Owned by such Person, would cause such ownership to exceed the Ownership Limit;

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(B) except as provided in Section 7(i) of these Articles Supplementary, no Person shall Constructively Own Series B Preferred Stock which, taking into account any other capital stock of the Corporation Constructively Owned by such Person, would cause such ownership to exceed the Ownership Limit;

(C) no Person shall Beneficially or Constructively Own Series B Preferred Stock which, taking into account any other capital stock of the Corporation Beneficially or Constructively Owned by such Person, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise failing to qualify as a REIT (including but not limited to Beneficial or Constructive Ownership that would result in the Corporation owning (actually or Constructively) an

interest in a tenant that is described in Section 856(d) (2) (B) of the Code if the income derived by the Corporation (either directly or indirectly through one or more partnerships or limited liability companies) from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or comparable provisions of state law).

(ii) If, prior to the Restriction Termination Date, any Transfer or other event occurs that, if effective, would result in any Person Beneficially or Constructively Owning Series B Preferred Stock in violation of Section 7(b) (i) of these Articles Supplementary, (1) then that number of shares of Series B Preferred Stock that otherwise would cause such Person to violate Section 7(b) (i) of these Articles Supplementary (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Section 7(c), effective as of the close of business on the business day prior to the date of such Transfer or other event, and such Purported Beneficial Transferee shall thereafter have no rights in such shares or (2) if, for any reason, the transfer to the Trust described in clause (1) of this sentence is not automatically effective as provided therein to prevent any Person from Beneficially or Constructively Owning Series B Preferred Stock in violation of Section 7(b) (i) of these Articles Supplementary, then the Transfer of that number of shares of Series B Preferred Stock that otherwise would cause any Person to violate Section 7(b) (i) shall be void ab initio, and the Purported Beneficial Transferee shall have no rights in such shares.

(iii) Subject to Section 7(n) of this Article Third and notwithstanding any other provisions contained herein, prior to the Restriction Termination Date, any Transfer of Series B Preferred Stock that, if effective, would result in the capital stock of the Corporation being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio, and the intended transferee shall acquire no rights in such Series B Preferred Stock.

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It is expressly intended that the restrictions on ownership and Transfer described in this Section 7(b) shall apply to the exchange rights provided in Section 17.8 of the Partnership Agreement. Notwithstanding any of the provisions of the Partnership Agreement to the contrary, a partner of the Operating Partnership shall not be entitled to effect an exchange of an interest in the Operating Partnership for Series B Preferred Stock if the actual or beneficial or Beneficial or Constructive Ownership of Series B Preferred Stock would be prohibited under the provisions of this Section 7.

(c) Transfers of Series B Preferred Stock in Trust.

(i) Upon any purported Transfer or other event described in Section 7(b) (ii) of these Articles Supplementary, such Series B Preferred Stock shall be deemed to have been transferred to the Trustee in his capacity as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the business day prior to the purported Transfer or other event that results in a transfer to the Trust pursuant to Section 7(b) (ii). The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation, any Purported Beneficial Transferee, or any Purported Record Transferee. Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 7(c) (vi) of these Articles Supplementary.

(ii) Series B Preferred Stock held by the Trustee shall be issued and outstanding Series B Preferred Stock of the Corporation. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the shares of Series B Preferred Stock held by the Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends and shall not possess any rights to vote or other rights attributable to the shares of Series B Preferred Stock held in the Trust.

(iii) The Trustee shall have all voting rights and rights to dividends with respect to Series B Preferred Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or distribution paid prior to the discovery by the Corporation that shares of Series B Preferred Stock have been transferred to the Trustee shall be paid to the Trustee upon demand, and any dividend or distribution declared but unpaid shall be paid when due to the Trustee with respect to such Series B Preferred Stock. Any dividends or distributions so paid over to the Trustee shall be held in trust for the Charitable Beneficiary.

The Purported Record Transferee and Purported Beneficial

Transferee shall have no voting rights with respect to the Series B Preferred Stock held in the Trust and, subject to

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Maryland law, effective as of the date the Series B Preferred Stock has been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such Series B Preferred Stock prior to the discovery by the Corporation that the Series B Preferred Stock has been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding any other provision of these Articles Supplementary to the contrary, until the Corporation has received notification that the Series B Preferred Stock has been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(iv) Within 20 days of receiving notice from the Corporation that shares of Series B Preferred Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares of Series B Preferred Stock held in the Trust to a Person, designated by the Trustee, whose ownership of the shares of Series B Preferred Stock will not violate the ownership limitations set forth in Section 7(b)(i). Upon such sale, the interest of the Charitable Beneficiary in the shares of Series B Preferred Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this Section 7(c)(iv). The Purported Record Transferee shall receive the lesser of (1) the price paid by the Purported Record Transferee for the shares of Series B Preferred Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Series B Preferred Stock at Market Price, the Market Price of such shares of Series B Preferred Stock on the day of the event which resulted in the transfer of such shares of Series B Preferred Stock to the Trust) and (2) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares of Series B Preferred Stock held in the Trust. Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any dividends or other distributions thereon. If, prior to the discovery by the Corporation that shares of such Series B Preferred Stock have been transferred to the Trustee, such shares of Series B Preferred Stock are sold by a Purported Record Transferee then (i) such shares of Series B Preferred Stock shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Purported Record Transferee received an amount for such shares of Series B Preferred Stock that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this Section 7(c)(iv), such excess shall be paid to the Trustee upon demand.

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(v) Series B Preferred Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price paid by the Purported Record Transferee for the shares of Series B Preferred Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Series B Preferred Stock at Market Price, the Market Price of such shares of Series B Preferred Stock on the day of the event which resulted in the transfer of such shares of Series B Preferred Stock to the Trust) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer until the Trustee has sold the shares of Series B Preferred Stock held in the Trust pursuant to Section 7(c)(iv). Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares of Series B Preferred Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any dividends or other distributions held by the Trustee with respect to such Series B Preferred Stock shall thereupon be paid to the Charitable Beneficiary.

(vi) By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that the Series B Preferred Stock held in the Trust would not violate the restrictions set forth in Section 7(b)(i) in the

hands of such Charitable Beneficiary.

(d) Remedies For Breach. If the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall at any time determine in good faith that a Transfer or other event has taken place in violation of Section 7(b) of these Articles Supplementary or that a Person intends to acquire, has attempted to acquire or may acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of Series B Preferred Stock of the Corporation in violation of Section 7(b) of these Articles Supplementary, the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, causing the Corporation to redeem shares of Series B Preferred Stock, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers (or, in the case of events other than a Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of Section 7(b) (i) of these Articles Supplementary, shall automatically result in the transfer to a Trust as described in Section 7(b) (ii) and any Transfer in violation of Section 7(b) (iii) shall automatically be void ab initio irrespective of any action (or non-action) by the Board of Directors.

(e) Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares of Series B Preferred Stock in violation of Section 7(b) of these Articles Supplementary,

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or any Person who is a Purported Beneficial Transferee such that an automatic transfer to a Trust results under Section 7(b) (ii) of these Articles Supplementary, shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

(f) Owners Required To Provide Information. Prior to the Restriction Termination Date each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of Series B Preferred Stock and each Person (including the shareholder of record) who is holding Series B Preferred Stock for a beneficial owner or Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

(g) Remedies Not Limited. Nothing contained in these Articles Supplementary (but subject to Section 7(n) of these Articles Supplementary) shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its shareholders by preservation of the Corporation's status as a REIT.

(h) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 7 of these Articles Supplementary, including any definition contained in Section 7(a), the Board of Directors shall have the power to determine the application of the provisions of this Section 7 with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7(n) of these Articles Supplementary). In the event Section 7 requires an action by the Board of Directors and these Articles Supplementary fail to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 7. Absent a decision to the contrary by the Board of Directors (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 7(b)) acquired Beneficial or Constructive Ownership of Series B Preferred Stock in violation of Section 7(b) (i), such remedies (as applicable) shall apply first to the shares of Series B Preferred Stock which, but for such remedies, would have been actually owned by such Person, and second to shares of Series B Preferred Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Series B Preferred Stock based upon the relative number of the shares of Series B Preferred Stock held by each such Person.

(i) Exceptions.

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(i) Subject to Section 7(b)(i)(C), the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Beneficially Owning shares of Series B Preferred Stock in violation of Section 7(b)(i)(A) if the Board of Directors obtains any representations and undertakings from such Person as are reasonably necessary in the opinion of the Board of Directors to ascertain that no individual's Beneficial Ownership of such shares of Series B Preferred Stock will violate Section 7(b)(i)(A) or that any such violation will not cause the Corporation to fail to qualify as a REIT under the Code, and that any violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Section 7(b) of these Articles Supplementary) or attempted violation will result in such Series B Preferred Stock being transferred to a Trust in accordance with Section 7(b)(ii) of these Articles Supplementary.

(ii) Subject to Section 7(b)(i)(C), the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Constructively Owning Series B Preferred Stock in violation of Section 7(b)(i)(B), if the Corporation obtains any representations and undertakings from such Person as are reasonably necessary in the opinion of the Board of Directors to ascertain that such Person does not and will not own, actually or Constructively, an interest in a tenant of the Corporation (or a tenant of any entity owned in whole or in part by the Corporation) that would cause the Corporation to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and that any violation or attempted violation will result in such Series B Preferred Stock being transferred to a Trust in accordance with Section 7(b)(ii) of these Articles Supplementary. Notwithstanding the foregoing, the inability of a Person to make the certification described in this Section 7(i)(ii) shall not prevent the Board of Directors, in its sole discretion, from exempting such Person from the limitation on a Person Constructively Owning Series B Preferred Stock in violation of Section 7(b)(i)(B) if the Board of Directors determines that the resulting application of Section 856(d)(2)(B) of the Code would affect the characterization of less than 0.5% of the gross income (as such term is used in Section 856(c)(2) of the Code) of the Corporation in any taxable year, after taking into account the effect of this sentence with respect to all other capital stock of the Corporation to which this sentence applies.

(iii) Prior to granting any exception pursuant to Section 7(i)(i) or (ii) of these Articles Supplementary, the Board of Directors may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

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(j) Legends. Each certificate for Series B Preferred Stock shall bear substantially the following legends in addition to any legends required to comply with federal and state securities laws:

#### CLASS OF STOCK

"THE CORPORATION IS AUTHORIZED TO ISSUE CAPITAL STOCK OF MORE THAN ONE CLASS, CONSISTING OF COMMON STOCK AND ONE OR MORE CLASSES OF PREFERRED STOCK. THE BOARD OF DIRECTORS IS AUTHORIZED TO DETERMINE THE PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF ANY CLASS OF PREFERRED STOCK BEFORE THE ISSUANCE OF SHARES OF SUCH CLASS OF PREFERRED STOCK. THE CORPORATION WILL FURNISH, WITHOUT CHARGE, TO ANY STOCKHOLDER MAKING A WRITTEN REQUEST THEREFOR, A COPY OF THE CORPORATION'S CHARTER AND A WRITTEN STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES, CONVERSION OR OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS AND OTHER DISTRIBUTIONS, QUALIFICATIONS AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE CORPORATION HAS THE AUTHORITY TO ISSUE AND, IF THE CORPORATION IS AUTHORIZED TO ISSUE ANY PREFERRED OR SPECIAL CLASS IN SERIES, (i) THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT SET, AND (ii) THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET SUCH RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. REQUESTS FOR SUCH WRITTEN STATEMENT MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE."

#### RESTRICTION ON OWNERSHIP AND TRANSFER

"THE SHARES OF SERIES B PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN

FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE ARTICLES SUPPLEMENTARY FOR THE SERIES B PREFERRED STOCK, (i) NO PERSON MAY BENEFICIALLY OWN SHARES OF THE CORPORATION'S SERIES B PREFERRED STOCK WHICH, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION BENEFICIALLY OWNED BY SUCH PERSON, WOULD CAUSE SUCH OWNERSHIP TO EXCEED THE OWNERSHIP LIMIT OF 9.8%; (ii) NO PERSON MAY CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S SERIES B PREFERRED STOCK WHICH, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION CONSTRUCTIVELY OWNED BY SUCH PERSON, WOULD CAUSE SUCH OWNERSHIP TO EXCEED THE OWNERSHIP LIMIT OF 9.8%; (iii) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S SERIES B PREFERRED STOCK THAT, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION BENEFICIALLY OR CONSTRUCTIVELY OWNED BY SUCH PERSON, WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (iv) NO PERSON MAY TRANSFER SHARES OF SERIES B PREFERRED STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SERIES B PREFERRED STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SERIES B PREFERRED STOCK IN EXCESS OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE SERIES B PREFERRED STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO THE TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY REDEEM SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN

VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID AB INITIO. ALL TERMS IN THIS LEGEND WHICH ARE DEFINED IN THE ARTICLES SUPPLEMENTARY FOR THE SERIES B PREFERRED STOCK SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN SUCH ARTICLES SUPPLEMENTARY, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF SERIES B PREFERRED STOCK ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE."

(k) Exchange of Series B Preferred Units. So long as the Corporation remains the general partner of the Operating Partnership, the Board of Directors of the Corporation is hereby expressly vested with authority (subject to the restrictions on ownership, transfer and redemption of Series B Preferred Stock set forth in this Section 7) to issue, and shall issue to the extent provided in the Partnership Agreement, Series B Preferred Stock in exchange for Series B Preferred Units (as defined in the Partnership Agreement) (the "Series B Preferred Units").

(l) Reservation of Shares. Pursuant to the obligations of the Corporation under the Partnership Agreement to issue Series B Preferred Stock in exchange for Series B Preferred Units, the Board of Directors is hereby required to reserve and authorize for issuance a number of authorized but unissued shares of Series B Preferred Stock not less than the number of Series B Preferred Units issued to permit the Corporation to issue Series B Preferred Stock in exchange for Series B Preferred Units that may be exchanged for or converted into Series B Preferred Stock as provided in the Partnership Agreement.

(m) Severability. If any provision of this Section 7 or any application of any such provision is determined to be invalid by any Federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

(n) New York Stock Exchange. Nothing in this Section 7 shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange. The shares of Series B Preferred Stock that are the subject of such transaction shall continue to be subject to the provisions of this Section 7 after such settlement.

(o) Applicability of Section 7. The provisions set forth in this Section 7 shall apply to the Series B Preferred Stock notwithstanding any contrary provisions of the Series B Preferred Stock provided for elsewhere in these Articles Supplementary.

(8) CONVERSION. The Series B Preferred Stock is not convertible into or exchangeable for any other property or securities of the Corporation.

(9) NO SINKING FUND. No sinking fund shall be established for the retirement or redemption of Series B Preferred Stock.

(10) NO PREEMPTIVE RIGHTS. No holder of the Series B Preferred Stock of the Corporation shall, as such holder, have any preemptive rights to purchase or subscribe for additional shares of stock of the Corporation or any other security of the Corporation which it may issue or sell.

FOURTH: The Series B Preferred Stock has been classified and designated by the Board under the authority contained in the Charter.

FIFTH: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

SIXTH: These Articles Supplementary shall be effective at the time the State Department of Assessments and Taxation of Maryland accepts these Articles Supplementary for record

SEVENTH: The undersigned President of the Corporation acknowledges these Articles Supplementary to be the act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

(Signature Page Follows)

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IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its President and attested to by its Assistant Secretary on this 11th day of November, 1998.

AMB PROPERTY CORPORATION

BY: /s/ HAMID R. MOGHADAM

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Hamid R. Moghadam  
President and Chief Executive Officer

[SEAL]

ATTEST:

/s/ MICHAEL A. COKE

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Michael A. Coke

Assistant Secretary

AMB PROPERTY CORPORATION  
 ARTICLES SUPPLEMENTARY  
 ESTABLISHING AND FIXING THE RIGHTS AND  
 PREFERENCES OF 8.75% SERIES C CUMULATIVE  
 REDEEMABLE PREFERRED STOCK

AMB Property Corporation, a corporation organized and existing under the laws of the State of Maryland (the "Corporation"), certifies to the State Department of Assessments and Taxation of Maryland (the "Department") that:

FIRST: Pursuant to the authority expressly vested in the Board of Directors of the Corporation (sometimes referred to herein as the "Board") by Article IV of the Articles of Incorporation of the Corporation filed with the Department on November 24, 1997, which comprises, together with the Articles Supplementary filed by the Corporation on July 23, 1998 establishing a class of Preferred Stock of the Corporation, par value \$0.01 per share (the "Preferred Stock"), designated as the "8 1/2% Series A Cumulative Redeemable Preferred Stock" (the "Series A Preferred Stock"), the Articles Supplementary filed by the Corporation on November 12, 1998 (the "Series B Articles Supplementary") establishing a class of Preferred Stock designated as the "8 5/8% Series B Cumulative Redeemable Preferred Stock" (the "Series B Preferred Stock"), and these Articles Supplementary, the charter (the "Charter") of the Corporation, and Section 2-105 of the Maryland General Corporation Law (the "MGCL"), the Board of Directors of the Corporation, on September 3, 1998, adopted resolutions authorizing the Corporation, among other things, to issue up to a stated maximum number of shares of Preferred Stock of the Corporation, having a stated maximum aggregate liquidation preference and dividend rate and certain other stated terms applicable to the issuance thereof, and appointing, pursuant to the MGCL and the powers contained in the Bylaws of the Corporation, a committee (the "Committee") of the Board of Directors comprised of Hamid R. Moghadam and delegating to the Committee, to the fullest extent permitted by Maryland law and the Charter and Bylaws of the Corporation, all powers of the Board of Directors with respect to classifying, authorizing, approving, ratifying and/or confirming the terms of the Preferred Stock to be issued, including, without limitation, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption, and determining the consideration per share to be received in respect of the issuance and sale of each share of Preferred Stock to be issued and sold, and the number of shares of Preferred Stock to be so classified or reclassified and issued by the Corporation, subject to the limitations set forth in the resolutions of the Board of Directors adopted on September 3, 1998.

SECOND: Pursuant to the authority conferred upon the Committee as aforesaid, the Committee has on November 23, 1998, adopted resolutions classifying and designating as a separate class of Preferred Stock as the 8.75% Series C Cumulative Redeemable Preferred Stock, with the preferences, conversions and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption and other terms and conditions of such 8.75% Series C Cumulative Redeemable Preferred Stock (within the limitations

set by the Board of Directors in the resolutions adopted on September 3, 1998 and referred to in Article First of these Articles Supplementary) and establishing 2,200,000 as the number of shares to be so classified and designated, and authorizing the issuance of up to 2,200,000 shares of 8.75% Series C Cumulative Redeemable Preferred Stock.

THIRD: The separate class of Preferred Stock of the Corporation created by the resolutions duly adopted by the Board of Directors of the Corporation and by the Committee and referred to in Articles First and Second of these Articles Supplementary shall have the designation, number of shares, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption and other terms and conditions as follows (and which, upon any restatement of the Charter, may be made a part of Article IV thereof, with any necessary or appropriate changes to the numeration or lettering of the sections or subsections hereof):

(1) DESIGNATION AND NUMBER. A class of Preferred Stock, designated the "8.75% Series C Cumulative Redeemable Preferred Stock" (the "Series C Preferred Stock"), is hereby established. The number of shares of Series C Preferred Stock shall be 2,200,000 (the "Series C Preferred Shares").

(2) RANK. The Series C Preferred Shares will rank, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, (a) senior to all classes or series of Common Stock (as defined in the Charter) and to all equity securities of the Corporation the terms of which provide that such equity securities shall

rank junior to such Series C Preferred Shares; (b) on a parity with the Series A Preferred Stock and Series B Preferred Stock and all equity securities issued by the Corporation other than those referred to in clauses (a) and (c) (it being the intent of the Corporation that the Series C Preferred Stock be on a parity with the Series A Preferred Stock and the Series B Preferred Stock with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, notwithstanding any provision contained in these Articles Supplementary, which, if given effect, would make the Series C Preferred Stock not in parity with the Series A Preferred Stock and the Series B Preferred Stock; and any such provision contained in these Articles Supplementary shall be of no force or effect); and (c) junior to all equity securities issued by the Corporation which rank senior to the Series C Preferred Shares in accordance with Section 6(d) of this Article Third. The term "equity securities" does not include convertible debt securities, until the same are converted into equity securities.

(3) DIVIDENDS.

(a) Holders of Series C Preferred Shares shall be entitled to receive, if, when and as authorized by the Board, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 8.75% of the \$50.00 liquidation preference per annum (equivalent to \$4.375 per annum per share). Such dividends shall accumulate on a daily basis computed on the basis of a 360-day year consisting of twelve 30-day months and be cumulative, shall accrue from the original date of issuance and shall be payable quarterly (such quarterly periods for purposes of payment and accrual will be the quarterly periods ending on the dates specified in this sentence and not calendar year quarters) in equal amounts in arrears on the 15th day of each January, April, July and October, or, if not a business day, the next succeeding business day (each a "Dividend Payment Date"). Dividends shall be payable to holders of

record as they appear in the share records of the Corporation at the close of business on the applicable record date (each, a "Dividend Record Date"), which shall be the date designated by the Board for the payment of dividends that is not more than 30 nor less than 10 days prior to the applicable payment date therefor. Any dividend payable on the Series C Preferred Shares for any partial dividend period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. If any date on which distributions are to be made on the Series C Preferred Stock is not a business day, then payment of the distribution to be made on such date will be made on the next succeeding day that is a business day (and without any interest or other payment in respect of any such delay) except that, if such business day is in the next succeeding calendar year, such payment shall be made on the immediately preceding business day, in each case with the same force and effect as if made on such date. Notwithstanding any provision to the contrary contained herein, each outstanding share of Series C Preferred Stock shall be entitled to receive, and shall receive, a dividend with respect to any Dividend Record Date equal to the dividend paid with respect to each other share of Series C Preferred Stock which is outstanding on such date which shall be equal to the greatest dividend per share payable on any such share on such date. In addition, notwithstanding anything to the contrary set forth herein, each share of Series C Preferred Stock shall also continue to accrue all accrued and unpaid distributions up to the exchange date on any Series C Preferred Unit (as defined in the Third Amended and Restated Limited Partnership Agreement of AMB Property II, L.P. dated as of November 24, 1998, as amended and supplemented from time to time (the "Subsidiary Partnership Agreement")) validly exchanged into such share of Series C Preferred Stock in accordance with the provisions of the Subsidiary Partnership Agreement.

(b) No dividend on the Series C Preferred Shares shall be authorized by the Board or be paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding anything to the contrary contained herein, dividends on the Series C Preferred Shares shall accumulate whether or not restrictions exist in respect thereof, whether or not there are funds legally available for the payment thereof and whether or not such dividends are declared or authorized. Accrued but unpaid dividends on the Series C Preferred Shares will accumulate as of the Dividend Payment Date on which they first become payable or on the date of redemption, as the case may be.

(d) If any Series C Preferred Shares are outstanding, no full dividends will be declared or paid or set apart for payment on any other equity securities of the Corporation of any other class or series ranking, as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the

Corporation, junior to or on a parity with the Series C Preferred Shares (including the Series A Preferred Stock and Series B Preferred Stock) unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof irrevocably set apart in trust for such payment on the Series C Preferred Shares for all dividend periods. When dividends are not paid in full (or a sum

sufficient for such full payment is not so set apart) upon the Series C Preferred Shares and any other equity securities ranking as to distributions on a parity with the Series C Preferred Shares (including the Series A Preferred Stock and Series B Preferred Stock), all dividends declared upon the Series C Preferred Shares and any other equity securities of the Corporation ranking on a parity with the Series C Preferred Stock as to distributions and upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock and Series B Preferred Stock) shall be declared pro rata so that the amount of dividends declared per Series C Preferred Share and each such other equity securities shall in all cases bear to each other the same ratio that accumulated dividends per Series C Preferred Share and such other equity securities (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other equity securities do not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series C Preferred Shares which may be in arrears.

(e) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series C Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is irrevocably set apart in trust for payment for all dividend periods, no dividends (other than in Common Stock or other equity securities of the Corporation ranking junior to the Series C Preferred Shares as to distributions and upon voluntary or involuntary liquidation, dissolution and winding up of the Corporation) shall be declared or paid or set aside for payment nor shall any other dividend be declared or made upon the Common Stock or any other equity securities of the Corporation ranking as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation junior to or on a parity with the Series C Preferred Stock (including the Series A Preferred Stock and Series B Preferred Stock), nor shall any Common Stock or any other equity securities of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to distributions or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock and Series B Preferred Stock) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such securities) by the Corporation (except by conversion into or exchange for other equity securities of the Corporation ranking junior to the Series C Preferred Stock as to distributions and upon voluntary and involuntary liquidation, dissolution and winding up of the Corporation, and except pursuant to Section 7 of this Article Third to ensure the Corporation's continued status as a REIT or comparable Charter provisions with respect to other classes or series of the Corporation's stock).

(f) Accumulated but unpaid dividends on the Series C Preferred Shares will not bear interest and holders of Series C Preferred Shares shall not be entitled to any dividend in excess of full cumulative dividends as described above. Any dividend payment made on the Series C Preferred Shares shall first be credited against the earliest accumulated but unpaid dividend due with respect to such shares which remains payable.

(g) If, for any taxable year, the Corporation elects to designate as a "capital gain dividend" (as defined in Section 857 of the Code), any portion (the "Capital Gains Amount") of the dividends paid or made available for the year to holders of every class or series of stock of

the Corporation, the portion of the Capital Gains Amount that shall be allocable to holders of the Series C Preferred Stock shall be the amount that the total dividends (as determined for Federal income tax purposes) paid or made available to the holders of the Series C Preferred Stock for the year bears to the aggregate amount of dividends (as determined for Federal income tax purposes) paid or made available to the holders of all classes or series of stock of the Corporation for such year.

#### (4) LIQUIDATION PREFERENCE.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of Series C Preferred Shares then outstanding shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders remaining

after payment or provision for payment of all debts and liabilities of the Corporation, a liquidation preference in cash of \$50.00 per share, plus an amount equal to any accumulated or accrued and unpaid dividends to the date of such payment, before any distribution of assets is made to holders of Common Stock or any other equity securities of the Corporation that rank junior to the Series C Preferred Shares as to liquidation rights.

(b) If, upon any such voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets of the Corporation are insufficient to make full payment to holders of Series C Preferred Shares and the corresponding amounts payable on all shares of other classes or series of equity securities of the Corporation ranking on a parity with the Series C Preferred Shares as to liquidation rights (including the Series A Preferred Stock and Series B Preferred Stock), then the holders of the Series C Preferred Shares and all other such classes or series of equity securities shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series C Preferred Shares at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(d) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C Preferred Shares will have no right or claim to any of the remaining assets of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other entity, a merger of another entity with or into the Corporation, a statutory share exchange by the Corporation or a sale, lease, transfer or conveyance of all or substantially all of the property or business of the Corporation shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

(f) In determining whether a distribution (other than upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation) by dividend, redemption or other

acquisition of shares of stock of the Corporation or otherwise is permitted under the MGCL, no effect shall be given to amounts that would be needed, if the Corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of the Series C Preferred Shares whose preferential rights upon dissolution are superior to those receiving the distribution.

#### (5) OPTIONAL REDEMPTION.

(a) The Series C Preferred Shares are not redeemable prior to November 24, 2003. To ensure that the Corporation remains a qualified real estate investment trust ("REIT") for federal income tax purposes, however, the Series C Preferred Shares shall be subject to the provisions of Section 7 of this Article Third pursuant to which Series C Preferred Shares owned by a stockholder in excess of the Ownership Limit (as defined in Section 7 of this Article Third) or certain other limitations shall automatically be transferred to a Trust for the benefit of a Charitable Beneficiary (as defined in Section 7 of this Article Third) and the Corporation shall have the right to purchase such shares, as provided in Section 7 of this Article Third. On and after November 24, 2003, the Corporation, at its option, upon giving notice as provided below, may redeem the Series C Preferred Shares, in whole or from time to time in part, for cash, at a redemption price of \$50.00 per share, plus all accumulated and unpaid dividends on such Series C Preferred Shares to the date fixed for redemption.

(b) The redemption price of the Series C Preferred Shares (other than any portion thereof consisting of accumulated and unpaid dividends) is payable solely from the sale proceeds of other equity securities of the Corporation, and not from any other source. For purposes of the preceding sentence, "equity securities" means any equity securities (including Common Stock and Preferred Stock (as defined in the Charter)), depositary shares in respect of any of the foregoing, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(c) If fewer than all of the outstanding Series C Preferred Shares are to be redeemed, the shares to be redeemed shall be selected pro rata (as nearly as practicable without creating fractional shares).

(d) Notwithstanding anything to the contrary contained herein, unless full cumulative dividends on all Series C Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no Series C Preferred Shares shall be redeemed unless all outstanding Series C Preferred Shares are simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase by the Corporation of Series C Preferred Shares pursuant to Section 7 of this Article Third or otherwise in order to ensure that the Corporation remains qualified as a REIT for Federal or state income tax purposes or the purchase or acquisition of Series C Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series C Preferred Shares. In addition, unless full cumulative dividends on all outstanding Series C Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment

thereof irrevocably set apart in trust for payment for all dividend periods, the Corporation shall not purchase or otherwise acquire directly or indirectly any Series C Preferred Shares or any equity securities of the Corporation ranking junior to or on a parity with the Series C Preferred Shares as to dividends or upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (including the Series A Preferred Stock and Series B Preferred Stock) (except by conversion into or exchange for equity securities of the Corporation ranking junior to the Series C Preferred Shares as to dividends and upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation and except pursuant to Section 7 of this Article Third or comparable Charter provisions with respect to other classes or series of the Corporation's stock).

(e) The holders of shares of Series C Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payable with respect to the shares of Series C Preferred Stock held on the corresponding Dividend Payment Date notwithstanding the redemption thereof between such Dividend Record Date and the corresponding Dividend Payment Date or the Corporation's default in the payment of the dividend due. Except as provided herein, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series C Preferred Shares to be redeemed.

(f) The following provisions set forth the procedures for Redemption:

(i) Notice of redemption will be given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date. A similar notice will be (i) faxed and (ii) mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series C Preferred Shares to be redeemed at their respective addresses as they appear on the share records of the Corporation. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series C Preferred Shares except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which the Series C Preferred Shares may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of Series C Preferred Shares to be redeemed; (D) the place or places where the certificates evidencing shares of Series C Preferred Shares are to be surrendered for payment of the redemption price; and (E) that dividends on the Series C Preferred Shares to be redeemed will cease to accumulate on such redemption date. If fewer than all of the Series C Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series C Preferred Shares to be redeemed from such holder.

(iii) On or after the redemption date, each holder of Series C Preferred Shares to be redeemed shall present and surrender the certificates representing such holder's Series C Preferred Shares to the Corporation at the place designated in the notice of redemption and shall be entitled to the redemption price and any accrued or accumulated and unpaid dividends payable upon such redemption upon such surrender and thereupon the redemption price of such shares (including all accumulated and unpaid dividends up to the redemption date) shall be paid to or on

the order of the person whose name appears on such certificate representing



Series C Preferred Shares as the owner thereof and each surrendered certificate shall be canceled. If fewer than all the shares represented by any such certificate representing Series C Preferred Shares are to be redeemed, a new certificate shall be issued representing the unredeemed shares.

(iv) If notice of redemption of any Series C Preferred Shares has been given and if the funds necessary for such redemption have been irrevocably set aside by the Corporation in trust for the benefit of the holders thereof, then from and after the redemption date all dividends on such Series C Preferred Shares shall cease to accumulate and any such Series C Preferred Shares will no longer be deemed outstanding and all rights of the holders thereof will terminate, except the right to receive the redemption price (including all accrued or accumulated and unpaid dividends up to the redemption date) and such shares shall not thereafter be transferred (except with the consent of the Corporation) on the Corporation's stock transfer records. At its election, the Corporation, prior to a redemption date, may irrevocably deposit the redemption price (including accumulated and unpaid dividends to the redemption date) of the Series C Preferred Shares so called for redemption in trust for the holders thereof with a bank or trust company, in which case the redemption notice to holders of the Series C Preferred Shares to be redeemed shall (A) state the date of such deposit, (B) specify the office of such bank or trust company as the place of payment of the redemption price and (C) require such holders to surrender the certificates representing such shares at such place on or about the date fixed in such redemption notice (which may not be later than the redemption date) against payment of the redemption price (including all accrued or accumulated and unpaid dividends to the redemption date). Any monies so deposited which remain unclaimed by the holders of the Series C Preferred Shares at the end of two years after the redemption date shall be returned by such bank or trust company to the Corporation.

(g) Any Series C Preferred Shares that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without further designation as to series or class until such shares are once more designated as part of a particular series or class by the Board.

(6) VOTING RIGHTS.

(a) Holders of the Series C Preferred Shares will not have any voting rights, except as set forth below.

(b) (i) Whenever dividends on any Series C Preferred Shares shall remain unpaid for six or more quarterly periods (whether or not consecutive) (a "Preferred Dividend Default"), the holders of such Series C Preferred Shares (voting as a single class with all other equity securities of the Corporation ranking on a parity with the Series C Preferred Shares as to dividends and upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation upon which like voting rights have been conferred and are exercisable, including the Series A Preferred Stock and Series B Preferred Stock ("Parity Preferred Stock")) will be entitled to vote for the election of two additional directors of the Corporation (the "Preferred Stock Directors"), who will be elected by a plurality of the votes cast in such election for a one-year term and until their successors are duly elected and shall qualify (or until such director's right to hold such

office terminates as provided herein, whichever occurs earlier, subject to such director's earlier death, disqualification, resignation or removal), at a special meeting called by the holders of at least 20% of the outstanding Series C Preferred Shares or the holders of shares of any other class or series of Parity Preferred Stock with respect to which dividends are so unpaid (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders) or, if the request for a special meeting is received by the Corporation less than 90 days before the date fixed for the next annual or special meeting of stockholders, at the next annual or special meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on the Series C Preferred Shares for all past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof irrevocably set aside in trust for payment in full.

(ii) At any time when the voting rights described in Section 6(b)(i) above shall have vested, a proper officer of the Corporation shall call or cause to be called, a special meeting of the holders of Series C Preferred Stock and all the series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable (collectively, the "Parity Securities") by mailing or causing to be mailed to such holders a notice of such special meeting to be held not less than ten and not more than 45 days after the date such notice is given. The record date for determining holders of the Parity Securities entitled to notice of and to vote at such special meeting will be the close of business on the third business day preceding the day on which such notice is mailed. At any such special meeting, all of the holders of the Parity

Securities, by plurality vote, voting together as a single class without regard to series will be entitled to elect two directors on the basis of one vote per \$25.00 of liquidation preference to which such Parity Securities are entitled by their terms (excluding amounts in respect of accumulated and unpaid dividends) and not cumulatively. Notice of all meetings at which holders of the Series C Preferred Shares shall be entitled to vote will be given to such holders at their addresses as they appear in the transfer records. If a Preferred Dividend Default shall terminate after the notice of a special meeting has been given but before such special meeting has been held, the Corporation shall, as soon as practicable after such termination, mail or cause to be mailed notice of such termination to holders of the Series C Preferred Shares that would have been entitled to vote at such special meeting.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series C Preferred Shares shall have been paid in full or declared by the Corporation and irrevocably set aside in trust for payment in full, the holders of Series C Preferred Shares shall be divested of the voting rights set forth in Section 6(b) of this Article Third (subject to reversion in the event of each and every Preferred Dividend Default) and, if all accumulated dividends have been paid in full or declared by the Corporation and irrevocably set aside in trust for payment in full on all other classes or series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall forthwith terminate. Any Preferred Stock Director elected by the holders of Series C Preferred Shares and any other such Parity Preferred Shares may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of a majority of the outstanding Series C Preferred Shares when they have the voting rights set forth, or like those set forth, in Section 6(b) of this

Article Third, by the majority vote of the Series C Preferred Shares and all other classes or series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable (voting as a single class) when the Series C Preferred Shares and such Parity Preferred Stock is entitled to vote thereon. So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director so elected may be filled by written consent of the Preferred Stock Director so elected remaining in office or, if none remains in office, by a vote of the holders of a majority of the outstanding Series C Preferred Shares when they only have the voting rights set forth, or like those set forth, in Section 6(b) of this Article Third and by the majority vote of the Series C Preferred Shares and other classes or series of Parity Preferred Stock upon which like voting rights have been conferred and are exercisable (voting as a single class) when the Series C Preferred Shares and such Parity Preferred Stock is entitled to vote thereon.

(d) So long as any Series C Preferred Stock remains outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the Series C Preferred Stock outstanding at the time (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares ranking senior to the Series C Preferred Stock with respect to payment of distributions or rights upon liquidation, dissolution or winding-up or reclassify any authorized shares of the Corporation into any such shares, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares, (ii) designate or create, or increase the authorized or issued amount of, any Parity Preferred Stock or reclassify any authorized shares of the Corporation into any such shares, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares, but only to the extent such Parity Preferred Stock is issued to an affiliate of the Corporation, or (iii) either (A) consolidate, merge into or with, or convey, transfer or lease its assets substantially as an entirety, to any corporation or other entity, or (B) amend, alter or repeal the provisions of the Corporation's Charter (including these Articles Supplementary) or Bylaws, whether by merger, consolidation or otherwise, in each case that would materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series C Preferred Stock or the holders thereof; provided, however, that with respect to the occurrence of any event set forth in (A) above, so long as (a) the Corporation is the surviving entity and the Series C Preferred stock remains outstanding with the terms thereof unchanged, or (b) the resulting, surviving or transferee entity is a corporation, a business trust or like entity organized under the laws of any state and substitutes for the Series C Preferred Stock other preferred stock or preferred shares having substantially the same terms and same rights as the Series C Preferred Stock, including with respect to distributions, voting rights and rights upon liquidation, dissolution or winding-up, then the occurrence of any such event shall not be deemed to materially and adversely affect such rights, privileges or voting powers of the holders of the Series C Preferred Stock and provided further that any increase in the amount of authorized Preferred Stock or the creation or issuance of any other class or series of Preferred Stock, or any increase in an amount of authorized shares of each class or series, in each case ranking either (a) junior to the Series C Preferred Stock with respect to payment of distributions

and the distribution of assets upon liquidation, dissolution or winding-up, or (b) on a parity with the Series C Preferred Stock with respect to payment of distributions and the distribution of assets upon liquidation, dissolution or winding-up to the extent such Preferred Stock is not issued

to an affiliate of the Corporation, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series C Preferred Shares shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust to effect such redemption.

(7) RESTRICTIONS ON OWNERSHIP AND TRANSFER TO PRESERVE TAX BENEFIT.

(a) Definitions. for the purposes of Section 7 of these Articles Supplementary, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Series C Preferred Stock by a Person who is or would be treated as an owner of such Series C Preferred Stock either actually or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean one or more beneficiaries of a Trust, as determined pursuant to Section 7(c)(vi) of these Articles Supplementary, each of which shall be an organization described in Sections 170(b)(1)(A), 170(c)(2) and 501(c)(3) of the Code.

"Code" shall mean the Internal Revenue Code of 1986, as amended. All section references to the Code shall include any successor provisions thereof as may be adopted from time to time.

"Constructive Ownership" shall mean ownership of Series C Preferred Stock by a Person who is or would be treated as an owner of such Series C Preferred Stock either actually or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"IRS" means the United States Internal Revenue Service.

"Market Price" shall mean the last reported sales price reported on the New York Stock Exchange of the Series C Preferred Stock on the trading day immediately preceding the relevant date, or if the Series C Preferred Stock is not then traded on the New York Stock Exchange, the last reported sales price of the Series C Preferred Stock on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Series C Preferred Stock may be traded, or if the Series C Preferred Stock is not then traded over any exchange or quotation system, then the market price of the Series

C Preferred Stock on the relevant date as determined in good faith by the Board of Directors of the Corporation.

"MGCL" shall mean the Maryland General Corporation Law, as amended from time to time, and any successor statute hereafter enacted.

"Operating Partnership" shall mean AMB Property, L.P., a Delaware limited partnership.

"Ownership Limit" shall mean 9.8% (by value) of the outstanding shares of capital stock of the Corporation.

"Subsidiary Partnership Agreement" shall mean the Agreement of Limited Partnership of the Subsidiary Operating Partnership, as such agreement may be amended from time to time.

"Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity; but does not include an underwriter acting in a capacity as such in a public offering of shares of Series C Preferred Stock provided that the ownership of such shares of Series C Preferred Stock by such underwriter would not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the Corporation failing to qualify as a REIT.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in Section 7(b)(ii) of these Articles Supplementary, the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned shares of Series C Preferred Stock for another Person who is the beneficial transferee or owner of such shares, in which case the Purported Beneficial Transferee shall be such Person.

"Purported Record Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in Section 7(b)(ii) of these Articles Supplementary, the record holder of the Series C Preferred Stock if such Transfer had been valid under Section 7(b)(i) of these Articles Supplementary.

"REIT" shall mean a real estate investment trust under Sections 856 through 860 of the Code and, for purposes of taxation of the Corporation under applicable state law, comparable provisions of the law of such state.

"Restriction Termination Date" shall mean the first day after the date hereof on which the Board of Directors of the Corporation determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

"Subsidiary Operating Partnership" shall mean AMB Property II, L.P., a Delaware limited partnership.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Series C Preferred Stock, (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Series C Preferred Stock or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for Series C Preferred Stock), whether voluntary or involuntary, whether such transfer has occurred of record or beneficially or Beneficially or Constructively (including but not limited to transfers of interests in other entities which result in changes in Beneficial or Constructive Ownership of Series C Preferred Stock), and whether such transfer has occurred by operation of law or otherwise.

"Trust" shall mean each of the trusts provided for in Section 7(c) of these Articles Supplementary.

"Trustee" shall mean any Person unaffiliated with the Corporation, or a Purported Beneficial Transferee, or a Purported Record Transferee, that is appointed by the Corporation to serve as trustee of a Trust.

(b) Restriction on Ownership and Transfers.

(i) Prior to the Restriction Termination Date:

(A) except as provided in Section 7(i) of these Articles Supplementary, no Person shall Beneficially Own Series C Preferred Stock which, taking into account any other capital stock of the Corporation Beneficially

Owned by such Person, would cause such ownership to exceed the Ownership Limit;

(B) except as provided in Section 7(i) of these Articles Supplementary, no Person shall Constructively Own Series C Preferred Stock which, taking into account any other capital stock of the Corporation Constructively Owned by such Person, would cause such ownership to exceed the Ownership Limit;

(C) no Person shall Beneficially or Constructively Own Series C Preferred Stock which, taking into account any other capital stock of the Corporation Beneficially or Constructively Owned by such Person, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise failing to qualify as a REIT (including but not limited to Beneficial or Constructive Ownership that would result in the Corporation owning (actually or Constructively) an interest in a tenant that is described in

Section 856(d)(2)(B) of the Code if the income derived by the Corporation (either directly or indirectly through one or more partnerships or limited liability companies) from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or comparable provisions of state law).

(ii) If, prior to the Restriction Termination Date, any Transfer or other event occurs that, if effective, would result in any Person Beneficially or Constructively Owning Series C Preferred Stock in violation of Section 7(b)(i) of these Articles Supplementary, (1) then that number of shares of Series C Preferred Stock that otherwise would cause such Person to violate Section 7(b)(i) of these Articles Supplementary (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Section 7(c), effective as of the close of business on the business day prior to the date of such Transfer or other event, and such Purported Beneficial Transferee shall thereafter have no rights in such shares or (2) if, for any reason, the transfer to the Trust described in clause (1) of this sentence is not automatically effective as provided therein to prevent any Person from Beneficially or Constructively Owning Series C Preferred Stock in violation of Section 7(b)(i) of these Articles Supplementary, then the Transfer of that number of shares of Series C Preferred Stock that otherwise would cause any Person to violate Section 7(b)(i) shall be void ab initio, and the Purported Beneficial Transferee shall have no rights in such shares.

(iii) Subject to Section 7(n) of this Article Third and notwithstanding any other provisions contained herein, prior to the Restriction Termination Date, any Transfer of Series C Preferred Stock that, if effective, would result in the capital stock of the Corporation being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio, and the intended transferee shall acquire no rights in such Series C Preferred Stock.

It is expressly intended that the restrictions on ownership and Transfer described in this Section 7(b) shall apply to the exchange rights provided in Section 16.8 of the Subsidiary Partnership Agreement. Notwithstanding any of the provisions of the Subsidiary Partnership Agreement to the contrary, a partner of the Subsidiary Operating Partnership shall not be entitled to effect an exchange of an interest in the Subsidiary Operating Partnership for Series C Preferred Stock if the actual or beneficial or Beneficial or Constructive Ownership of Series C Preferred Stock would be prohibited under the provisions of this Section 7.

(c) Transfers of Series C Preferred Stock in Trust.

(i) Upon any purported Transfer or other event described in Section 7(b)(ii) of these Articles Supplementary, such Series C Preferred Stock shall be deemed to have been transferred to the Trustee in his capacity as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the business day prior to the purported Transfer or other event that results in a transfer to the Trust pursuant to Section 7(b)(ii). The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation, any Purported Beneficial Transferee, or any Purported Record Transferee. Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 7(c)(vi) of these Articles Supplementary.

(ii) Series C Preferred Stock held by the Trustee shall be

issued and outstanding Series C Preferred Stock of the Corporation. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the shares of Series C Preferred Stock held by the Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends and shall not possess any rights to vote or other rights attributable to the shares of Series C Preferred Stock held in the Trust.

(iii) The Trustee shall have all voting rights and rights to dividends with respect to Series C Preferred Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or distribution paid prior to the discovery by the Corporation that shares of Series C Preferred Stock have been transferred to the Trustee shall be paid to the Trustee upon demand, and any dividend or distribution declared but unpaid shall be paid when due to the Trustee with respect to such Series C Preferred Stock. Any dividends or distributions so paid over to the Trustee shall be held in trust for the Charitable Beneficiary.

The Purported Record Transferee and Purported Beneficial Transferee shall have no voting rights with respect to the Series C Preferred Stock held in the Trust and, subject to Maryland law, effective as of the date the Series C Preferred Stock has been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such Series C Preferred Stock prior to the discovery by the Corporation that the Series C Preferred Stock has been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding any other provision of these Articles Supplementary to the contrary, until the Corporation has received notification that the Series C Preferred Stock has been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(iv) Within 20 days of receiving notice from the Corporation that shares of Series C Preferred Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares of Series C Preferred Stock held in the Trust to a Person, designated by the Trustee, whose ownership of the shares of Series C Preferred Stock will not violate the ownership limitations set forth in Section 7(b)(i). Upon such sale, the interest of the Charitable Beneficiary in the shares of Series C Preferred Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this Section 7(c)(iv). The Purported Record Transferee shall receive the lesser of (1) the price paid by the Purported Record Transferee for the shares of Series C Preferred Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Series C Preferred Stock at Market Price, the Market Price of such shares of Series C Preferred Stock on the day of the event

which resulted in the transfer of such shares of Series C Preferred Stock to the Trust) and (2) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares of Series C Preferred Stock held in the Trust. Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any dividends or other distributions thereon. If, prior to the discovery by the Corporation that shares of such Series C Preferred Stock have been transferred to the Trustee, such shares of Series C Preferred Stock are sold by a Purported Record Transferee then (i) such shares of Series C Preferred Stock shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Purported Record Transferee received an amount for such shares of Series C Preferred Stock that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this Section 7(c)(iv), such excess shall be paid to the Trustee upon demand.

(v) Series C Preferred Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price paid by the Purported Record Transferee for the shares of Series C Preferred Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Series C Preferred Stock at Market Price, the Market Price of such shares of Series C Preferred Stock on the day of the event which resulted in the transfer of such shares of Series C Preferred Stock to the Trust) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation

shall have the right to accept such offer until the Trustee has sold the shares of Series C Preferred Stock held in the Trust pursuant to Section 7(c)(iv). Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares of Series C Preferred Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any dividends or other distributions held by the Trustee with respect to such Series C Preferred Stock shall thereupon be paid to the Charitable Beneficiary.

(vi) By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that the Series C Preferred Stock held in the Trust would not violate the restrictions set forth in Section 7(b)(i) in the hands of such Charitable Beneficiary.

(d) Remedies For Breach. If the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall at any time determine in good faith that a Transfer or other event has taken place in violation of Section 7(b) of these Articles Supplementary or that a Person intends to acquire, has attempted to acquire or may acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of Series C Preferred Stock of the Corporation in violation of Section 7(b) of these Articles Supplementary, the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, causing the Corporation to redeem shares of Series C Preferred Stock, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers (or, in the case of events other than a Transfer, ownership or Constructive Ownership

or Beneficial Ownership) in violation of Section 7(b)(i) of these Articles Supplementary, shall automatically result in the transfer to a Trust as described in Section 7(b)(ii) and any Transfer in violation of Section 7(b)(iii) shall automatically be void ab initio irrespective of any action (or non-action) by the Board of Directors.

(e) Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares of Series C Preferred Stock in violation of Section 7(b) of these Articles Supplementary, or any Person who is a Purported Beneficial Transferee such that an automatic transfer to a Trust results under Section 7(b)(ii) of these Articles Supplementary, shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

(f) Owners Required To Provide Information. Prior to the Restriction Termination Date each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of Series C Preferred Stock and each Person (including the shareholder of record) who is holding Series C Preferred Stock for a beneficial owner or Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

(g) Remedies Not Limited. Nothing contained in these Articles Supplementary (but subject to Section 7(n) of these Articles Supplementary) shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its shareholders by preservation of the Corporation's status as a REIT.

(h) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 7 of these Articles Supplementary, including any definition contained in Section 7(a), the Board of Directors shall have the power to determine the application of the provisions of this Section 7 with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7(n) of these Articles Supplementary). In the event Section 7 requires an action by the Board of Directors and these Articles Supplementary fail to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 7. Absent a decision to the contrary by the Board of Directors (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 7(b)) acquired Beneficial or Constructive Ownership of Series C Preferred Stock in violation of Section 7(b)(i), such remedies (as applicable) shall apply first to the shares of Series C Preferred Stock which, but for such remedies, would have been actually owned by such Person, and second to shares of Series C Preferred Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Series C

Preferred Stock based upon the relative number of the shares of Series C Preferred Stock held by each such Person.

(i) Exceptions.

(i) Subject to Section 7(b)(i)(C), the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Beneficially Owning shares of Series C Preferred Stock in violation of Section 7(b)(i)(A) if the Board of Directors obtains any representations and undertakings from such Person as are reasonably necessary in the opinion of the Board of Directors to ascertain that no individual's Beneficial Ownership of such shares of Series C Preferred Stock will violate Section 7(b)(i)(A) or that any such violation will not cause the Corporation to fail to qualify as a REIT under the Code, and that any violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Section 7(b) of these Articles Supplementary) or attempted violation will result in such Series C Preferred Stock being transferred to a Trust in accordance with Section 7(b)(ii) of these Articles Supplementary.

(ii) Subject to Section 7(b)(i)(C), the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Constructively Owning Series C Preferred Stock in violation of Section 7(b)(i)(B), if the Corporation obtains such representations and undertakings from such Person as are reasonably necessary in the opinion of the Board of Directors to ascertain that such Person does not and will not own, actually or Constructively, an interest in a tenant of the Corporation (or a tenant of any entity owned in whole or in part by the Corporation) that would cause the Corporation to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and that any violation or attempted violation will result in such Series C Preferred Stock being transferred to a Trust in accordance with Section 7(b)(ii) of these Articles Supplementary. Notwithstanding the foregoing, the inability of a Person to make the certification described in this Section 7(i)(ii) shall not prevent the Board of Directors, in its sole discretion, from exempting such Person from the limitation on a Person Constructively Owning Series C Preferred Stock in violation of Section 7(b)(i)(B) if the Board of Directors determines that the resulting application of Section 856(d)(2)(B) of the Code would affect the characterization of less than 0.5% of the gross income (as such term is used in Section 856(c)(2) of the Code) of the Corporation in any taxable year, after taking into account the effect of this sentence with respect to all other capital stock of the Corporation to which this sentence applies.

(iii) Prior to granting any exception pursuant to Section 7(i)(i) or (ii) of these Articles Supplementary, the Board of Directors may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

(j) Legends. Each certificate for Series C Preferred Stock shall bear substantially the following legends in addition to any legends required to comply with federal and state securities laws:

#### CLASSES OF STOCK

"THE CORPORATION IS AUTHORIZED TO ISSUE CAPITAL STOCK OF MORE THAN ONE CLASS, CONSISTING OF COMMON STOCK AND ONE

OR MORE CLASSES OF PREFERRED STOCK. THE BOARD OF DIRECTORS IS AUTHORIZED TO DETERMINE THE PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF ANY CLASS OF PREFERRED STOCK BEFORE THE ISSUANCE OF SHARES OF SUCH CLASS OF PREFERRED STOCK. THE CORPORATION WILL FURNISH, WITHOUT CHARGE, TO ANY STOCKHOLDER MAKING A WRITTEN REQUEST THEREFOR, A COPY OF THE CORPORATION'S CHARTER AND A WRITTEN STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES, CONVERSION OR OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS AND OTHER DISTRIBUTIONS, QUALIFICATIONS AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE CORPORATION HAS THE AUTHORITY TO ISSUE AND, IF THE CORPORATION IS AUTHORIZED TO ISSUE ANY PREFERRED OR SPECIAL CLASS IN SERIES, (i) THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT SET, AND (ii) THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET SUCH RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. REQUESTS FOR SUCH WRITTEN STATEMENT MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE."



RESTRICTION ON OWNERSHIP AND TRANSFER

"THE SHARES OF SERIES C PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE ARTICLES SUPPLEMENTARY FOR THE SERIES C PREFERRED STOCK, (i) NO PERSON MAY BENEFICIALLY OWN SHARES OF THE CORPORATION'S SERIES C PREFERRED STOCK WHICH, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION BENEFICIALLY OWNED BY SUCH PERSON, WOULD CAUSE SUCH OWNERSHIP TO EXCEED THE OWNERSHIP LIMIT OF 9.8%; (ii) NO PERSON MAY CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S SERIES C PREFERRED STOCK WHICH, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION CONSTRUCTIVELY OWNED BY SUCH PERSON, WOULD CAUSE SUCH

OWNERSHIP TO EXCEED THE OWNERSHIP LIMIT OF 9.8%; (iii) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S SERIES C PREFERRED STOCK THAT, TAKING INTO ACCOUNT ANY OTHER CAPITAL STOCK OF THE CORPORATION BENEFICIALLY OR CONSTRUCTIVELY OWNED BY SUCH PERSON, WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (iv) NO PERSON MAY TRANSFER SHARES OF SERIES C PREFERRED STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SERIES C PREFERRED STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SERIES C PREFERRED STOCK IN EXCESS OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE SERIES C PREFERRED STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO THE TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY REDEEM SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID AB INITIO. ALL TERMS IN THIS LEGEND WHICH ARE DEFINED IN THE ARTICLES SUPPLEMENTARY FOR THE SERIES C PREFERRED STOCK SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN SUCH ARTICLES SUPPLEMENTARY, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF SERIES C PREFERRED STOCK ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE."

(k) Exchange of Series C Preferred Units. The Corporation is hereby expressly vested with authority (subject to the restrictions on ownership, transfer and redemption of Series C Preferred Stock set forth in this Section 7) to issue, and, so long as AMB Property Holding Corporation, a Maryland corporation, remains the general partner of the Subsidiary Operating Partnership, and the Operating Partnership remains a limited partner of the Subsidiary Operating Partnership, the Corporation shall issue to the extent provided above and in the Subsidiary

Partnership Agreement, Series C Preferred Stock in exchange for Series C Preferred Units (as defined in the Subsidiary Partnership Agreement) (the "Series C Preferred Units").

(l) Reservation of Shares. Pursuant to the obligations of the Corporation under the Subsidiary Partnership Agreement to issue Series C Preferred Stock in exchange for Series C Preferred Units, the Board of Directors is hereby required to reserve and authorize for issuance a number of authorized but unissued shares of Series C Preferred Stock not less than the number of Series C Preferred Units issued to permit the Corporation to issue Series C Preferred Stock in exchange for Series C Preferred Units that may be exchanged for or converted into Series C Preferred Stock as provided in the Subsidiary Partnership Agreement.

(m) Severability. If any provision of this Section 7 or any application of any such provision is determined to be invalid by any Federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

(n) New York Stock Exchange. Nothing in this Section 7 shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange. The shares of Series C Preferred Stock that are the subject of such transaction shall continue to be subject to the provisions of this Section 7 after such settlement.

(o) Applicability of Section 7. The provisions set forth in this Section 7 shall apply to the Series C Preferred Stock notwithstanding any contrary provisions of the Series C Preferred Stock provided for elsewhere in these Articles Supplementary.

(8) CONVERSION. The Series C Preferred Stock is not convertible into or exchangeable for any other property or securities of the Corporation.

(9) NO SINKING FUND. No sinking fund shall be established for the retirement or redemption of Series C Preferred Stock.

(10) NO PREEMPTIVE RIGHTS. No holder of the Series C Preferred Stock of the Corporation shall, as such holder, have any preemptive rights to purchase or subscribe for additional shares of stock of the Corporation or any other security of the Corporation which it may issue or sell.

FOURTH: The Series C Preferred Stock has been classified and designated by the Board under the authority contained in the Charter.

FIFTH: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

SIXTH: These Articles Supplementary shall be effective at the time the State Department of Assessments and Taxation of Maryland accepts these Articles Supplementary for record.

SEVENTH: The undersigned President of the Corporation acknowledges these Articles Supplementary to be the act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

(Signature Page Follows)

IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its President and attested to by its Secretary on this 23rd day of November, 1998.

AMB PROPERTY CORPORATION

By: /s/ HAMID R. MOGHADAM

-----  
Hamid R. Moghadam  
President and Chief Executive Officer

[SEAL]

ATTEST:

/s/ DAVID S. FRIES

-----  
David S. Fries  
Secretary

December 3, 1998

AMB Property Corporation  
505 Montgomery Street  
San Francisco, California 94111

Re: AMB Property Corporation, a Maryland corporation (the "Company")-  
Registration Statement on Form S-3 pertaining to the issuance of up  
to 2,542,163 shares (the "Shares") of common stock of the Company,  
par value \$.01 per share (the "Common Stock") filed on or about  
December 2, 1998

Ladies and Gentlemen:

You have requested our opinion, as special Maryland corporate counsel to AMB Property Corporation, a Maryland corporation (the "Company"), with respect to the matters set forth below in connection with the registration of the issuance and resale of the Shares, covered by the above-referenced Registration Statement (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"). The Shares are to be issued in exchange for up to 2,542,163 units of limited partnership interest (the "Units") in AMB Property, L.P., a Delaware limited partnership (the "Operating Partnership"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the Registration Statement.

In our capacity as special Maryland corporate counsel to the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"): The Registration Statement and the related form of prospectus (the "Prospectus") included therein in the form in which it was transmitted to the Commission under the Act; The charter of the Company (the "Charter"), consisting of Articles of Incorporation filed with the Maryland State Department of Assessments and Taxation (the "Department") on November 24, 1997, and Articles Supplementary filed on July 23, 1998, November 12, 1998, and November \_\_, 1998; The Bylaws of the Company (the "Bylaws"), which were duly adopted by the Board of Directors of the Company on November 24, 1997; Certain resolutions adopted and actions taken by the Board of Directors of the Company (the "Board of Directors") on or before the date hereof and in full force and effect on the date hereof including, but not limited to, those certain resolutions adopted by the Board of Directors on November 24, 1997 relating to the sale, issuance and registration of the Shares, certified as of a recent date by an officer of the Company (the "Resolutions"); A status certificate of recent date issued by the Department to the effect that the Company is duly incorporated and existing under the laws of the State of Maryland; The form of certificate representing a share of Common Stock, certified as of a recent date by an officer of the Company; The Third Amended and Restated Partnership Agreement of the Operating Partnership certified as of a recent date by an Officer of the Company (the "Partnership Agreement"); A Certificate of Officers of the Company of recent date to the effect that, among other things, the Charter and Bylaws of the Company and the resolutions and actions by the Board of Directors which we have examined are true, correct and complete, have not been rescinded or modified and are in full force and effect on the date of such certificate; and Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth in this letter, subject to the assumptions, limitations and qualifications stated herein.

AMB Property Corporation  
December 3, 1998  
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In expressing the opinion set forth below, we have assumed, and so far as is known to us there are no facts inconsistent with, the following: (a) Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding; (b) Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so; (c) Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so; (d) All Documents submitted to us as originals are authentic. The form and content of the Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all such Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All statements and information contained in the Documents are true and complete. There are no modifications or amendments to the Documents, and there has been no waiver of any of the provisions of the Documents, by action or omission of the parties or otherwise; (e) The Resolutions adopted and the actions taken and to be taken by the Board of Directors including, but not limited to, the adoption of all resolutions and the taking of all action necessary to authorize

the issuance and sale of the Shares have occurred at duly called meetings at which a quorum of the incumbent directors of the Company were or are present and acting throughout, or by unanimous written consent of all incumbent directors, all in accordance with the Charter and Bylaws of the Company and applicable law; (f) The number of shares of Common Stock to be offered and sold under the Registration Statement will not, in the aggregate, exceed the number of shares of Common Stock authorized in the Charter of the Company, less the number of shares of Common Stock authorized and reserved for issuance and/or issued and outstanding on the date on which the Shares are authorized or the date on which the Shares are issued and delivered, and none of the Shares will be issued, sold or transferred in violation of the provisions of the Charter of the Company; (g) The phrase "known to us" is limited to the actual knowledge, without independent inquiry, of the lawyers at our firm who have performed legal services in connection with the issuance of this opinion.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.
2. The Shares are duly authorized and, upon issuance in accordance with the Prospectus, the Resolutions, the Partnership Agreement and the Charter, and upon due execution, countersignature and delivery of certificates representing the Shares, when and if delivered against payment of the consideration therefor as set by the Board of Directors, the Shares will be validly issued, fully paid and nonassessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement and further consent to the filing of this opinion as an exhibit to applications to the securities commissioners of the various states of the United States for registration of the Securities. We also consent to the identification of our firm as Maryland counsel to the Company in the section of the Prospectus (which is a part of the Registration Statement) entitled "Legal Matters." In giving these consents, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Act.

This opinion is limited to the present corporate laws of the State of Maryland and we express no opinion with respect to the laws of any other jurisdiction. Furthermore, the opinions presented in this letter are limited to the

AMB Property Corporation  
December 3, 1998  
Page 3

matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly set forth herein. Without limiting the generality of the foregoing, we express no opinion with respect to any securities laws or with respect to the action required for the Operating Partnership to authorize, execute or deliver any of the Units or any other document, instrument or agreement.

The opinions set forth in this letter are rendered as of the date hereof and are necessarily limited to laws now in effect and facts and circumstances presently existing and brought to our attention. We assume no obligation to supplement this opinion if any applicable law is changed after the date hereof or if we become aware of any facts or circumstances which now exist or which occur or arise in the future and may change the opinions expressed herein after the date hereof.

The opinions expressed in this letter are for your use and the use of your securities counsel, Latham & Watkins, in connection with the filing of the Registration Statement and the rendering of opinions by Latham & Watkins in connection therewith, and may not be relied upon by you or Latham & Watkins for any other purpose, without our prior written consent.

Very truly yours,

/s/ BALLARD SPAHR ANDREWS & INGERSOLL, LLP

[Letterhead of Latham & Watkins]

December 3, 1998

AMB Property Corporation  
505 Montgomery Street  
San Francisco, California 94111

Re: AMB Property Corporation  
Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to AMB Property Corporation, a Maryland corporation (the "Company"), in connection with the registration statement on Form S-3 being filed by the Company on the date hereof with the Securities and Exchange Commission in connection with the registration, under the Securities Act of 1933, as amended, of 2,542,163 shares of the Company's common stock, par value \$.01 per share (together with all exhibits thereto and documents incorporated by reference therein, the "Registration Statement").

In our capacity as such counsel, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and other instruments, as we have deemed necessary or appropriate for purposes of this opinion. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon,

AMB Property Corporation  
December 3, 1998  
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the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of the United States and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws, the laws of any state or other jurisdiction or as to any matters of municipal law or the laws of any other local agencies with any state.

Based upon certain representations from the Company, including the facts set forth in the Registration Statement, it is our opinion that the information in the Registration Statement set forth under the caption "Certain Federal Income Tax Considerations," to the extent that it constitutes matters of law, summaries of legal matters, documents or proceedings, or legal conclusions, has been reviewed by us and is correct in all material respects.

No opinion is expressed as to any matter not discussed herein.

This opinion is only being rendered to you as of the date of this letter, and we undertake no obligation to update this opinion subsequent to the date hereof. This opinion is based on various statutory provisions, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters, all of which are subject to change either prospectively or retroactively. Also, any variation or difference in the facts from those set forth in the Registration Statement may affect the conclusions stated herein.

This opinion is rendered to you and is solely for your benefit in connection with the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. This opinion may not be relied upon by you for any other purpose, or furnished to, quoted to or relied upon by any other person, firm or corporation for any purpose, without our prior written consent.

Very truly yours,



## CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference in this registration statement, of our reports dated as follows:

<TABLE>	<S>	<C>	<C>
	-	AMB Property Corporation and subsidiaries	January 27, 1998
	-	AMB Contributed Properties	March 27, 1998
	-	Crysen Corridor Warehouse	February 24, 1998
	-	Boston Industrial Portfolio	March 27, 1998
	-	The Jamesburg Property	March 27, 1998
	-	Orlando Central Park	March 27, 1998
	-	Totem Lake Malls	March 27, 1998
	-	Dallas Warehouse Portfolio (Garland Industrial Portfolio)	April 21, 1998
	-	Twin Cities Office/Showroom Portfolio (Minnetonka Industrial Portfolio)	May 1, 1998
	-	Willow Park Portfolio	June 8, 1998
	-	Amberjack Portfolio	July 9, 1998
	-	Willow Lake Portfolio	July 21, 1998
	-	National Distribution Portfolio	July 31, 1998
	-	Mawah Portfolio	July 31, 1998
	-	Cabot Industrial Portfolio	October 27, 1997
	-	Cabot Business Park	October 29, 1997
	-	Manhattan Village Shopping Center	October 17, 1997
	-	Weslayan Plaza	October 17, 1997
	-	Silicon Valley R&D Portfolio	October 17, 1997

</TABLE>

and to all references to our Firm included in this registration statement.

/s/ ARTHUR ANDERSEN LLP

San Francisco, California  
November 30, 1998

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THIRD AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
AMB PROPERTY, L.P.

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THIRD AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
AMB PROPERTY, L.P.

THIS THIRD AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP, dated as of November 12, 1998, is entered into by and among AMB Property Corporation, a Maryland corporation (the "Company"), as the General Partner, and the Persons whose names are set forth on Exhibit A attached hereto, as the Limited Partners (the "Existing Limited Partners"), together with any other Persons who become Partners in the Partnership as provided herein.

WHEREAS, the General Partner and the Existing Limited Partners are parties to that certain Second Amended and Restated Agreement of Limited Partnership, dated July 27, 1998, as amended;

WHEREAS, pursuant to Section 4.3.C of the Partnership Agreement, the General Partner may, in its sole and absolute discretion subject to Delaware law, in connection with any Capital Contribution, issue additional Partnership Interests in one or more classes, or one or more series of any such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, and duties, including rights, powers, and duties senior to then existing Limited Partnership Interests;

WHEREAS, on the date hereof, Greene Street 1998 Exchange Fund, L.P., a Delaware limited partnership ("Contributor") has made a Capital Contribution of \$65,000,000, in cash, to the Partnership in exchange for which Contributor is entitled to receive an aggregate of 1,300,000 Series B Preferred Units in the Partnership with rights, preferences, exchange and other rights, voting powers and restrictions, limitations as to distributions, qualifications and terms and conditions as set forth herein;

WHEREAS, pursuant to the authority granted to the General Partner under the Partnership Agreement, the General Partner desires to amend and restate the Partnership Agreement to reflect (i) the issuance of the Series B Preferred Units, (ii) the admission of the Contributor as an Additional Limited Partner and holder of a certain number of Series B Preferred Units and (iii) certain other matters described herein;

WHEREAS, Contributor desires to become a party to the Partnership Agreement as a Limited Partner and to be bound by all terms, conditions and other provisions of the Partnership Agreement; and

WHEREAS, by virtue of the execution of this Agreement by the Company in its capacity as General Partner of the Partnership, the General Partner hereby consent to the amendment and restatement of the Second Amended

and Restated Agreement of Limited Partnership.

NOW, THEREFORE, for good and adequate consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.  
DEFINED TERMS AND RULES OF CONSTRUCTION

Section 1.1. Definitions

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

"Act" means the Delaware Revised Uniform Limited Partnership Act, as it may be amended from time to time, and any successor to such statute.

"Additional Funds" shall have the meaning set forth in Section 4.3.A.

"Additional Limited Partner" means a Person admitted to the Partnership as a Limited Partner pursuant to Section 12.2 and who is shown as such on the books and records of the Partnership.

"Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (i) decrease such deficit by any amounts which such Partner is obligated to restore pursuant to this Agreement or is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentence of each of Regulations Sections 1.704-2(i)(5) and 1.704-2(g); and
- (ii) increase such deficit by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjustment Date" shall have the meaning set forth in Section 4.3.E.

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person.

"Agreed Value" means (i) in the case of any Contributed Property set forth in Exhibit A and as of the time of its contribution to the Partnership, the Agreed Value of such property as set forth in Exhibit A; (ii) in the case of any Contributed Property not set forth in Exhibit A and as of the time of its contribution to the Partnership, the fair market value of such property or other consideration as determined by the General Partner, reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed; and (iii) in the case of any property distributed to a Partner by the Partnership,

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the fair market value of such property as determined by the General Partner at the time such property is distributed, reduced by any indebtedness either assumed by such Partner upon such distribution or to which such property is subject at the time of the distribution as determined under Section 752 of the Code and the Regulations thereunder.

"Agreement" means this Third Amended and Restated Agreement of Limited Partnership, as it may be amended, modified, supplemented or restated from time to time.

"Appraisal" means with respect to any assets, the opinion of an independent third party experienced in the valuation of similar assets, selected by the General Partner in good faith; such opinion may be in the form of an opinion by such independent third party that the value for such asset as set by the General Partner is fair, from a financial point of view, to the Partnership.

"Assignee" means a Person to whom one or more Partnership Units have been transferred in a manner permitted under this Agreement, but who has not become a Substituted Limited Partner, and who has the rights set forth in Section 11.5.

"Available Cash" means, with respect to any period for which such calculation is being made, (i) the sum of:

(a) the Partnership's Net Income or Net Loss (as the case may be) for such period,

(b) Depreciation and all other noncash charges deducted in determining Net Income or Net Loss for such period,

(c) the amount of any reduction in reserves of the Partnership referred to in clause (ii)(f) below (including, without limitation, reductions resulting because the General Partner determines such amounts are no longer necessary),

(d) the excess of the net proceeds from the sale, exchange, disposition, or refinancing of Partnership property for such period over the gain (or loss, as the case may be) recognized from any such sale, exchange, disposition, or refinancing during such period (excluding Terminating Capital Transactions), and

(e) all other cash received by the Partnership for such period that was not included in determining Net Income or Net Loss for such period;

(ii) less the sum of:

(a) all principal debt payments made during such period by the Partnership,

(b) capital expenditures made by the Partnership during such period,

(c) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clauses (ii)(a) or (b),

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(d) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period,

(e) any amount included in determining Net Income or Net Loss for such period that was not received by the Partnership during such period,

(f) the amount of any increase in reserves established during such period which the General Partner determines are necessary or appropriate in its sole and absolute discretion, and

(g) the amount of any working capital accounts and other cash or similar balances which the General Partner determines to be necessary or appropriate in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include any cash received or reductions in reserves, or take into account any disbursements made or reserves established, after commencement of the dissolution and liquidation of the Partnership.

"Board of Directors" means the Board of Directors of the General Partner.

"Business Day" means each day, other than a Saturday or a Sunday, which is not a day on which banking institutions in Los Angeles, California or New York, New York are authorized or required by law, regulation or executive order to close.

"Capital Account" means, with respect to any Partner, the Capital Account maintained for such Partner in accordance with the following provisions:

(i) To each Partner's Capital Account there shall be added such Partner's Capital Contributions, such Partner's share of Net Income and any items in the nature of income or gain which are specially allocated pursuant to Section 6.3, and the amount of any Partnership liabilities assumed by such

Partner or which are secured by any property distributed to such Partner.

(ii) From each Partner's Capital Account there shall be subtracted the amount of cash and the Gross Asset Value of any property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 6.3 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership.

(iii) In the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(iv) In determining the amount of any liability for purposes of subsections (i) and (ii) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

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(v) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership, the General Partner, or the Limited Partners) are computed in order to comply with such Regulations, the General Partner may make such modification; provided that, it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article 13 of this Agreement upon the dissolution of the Partnership. The General Partner also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b) (2) (iv) (q) and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"Capital Contribution" means, with respect to any Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership by such Partner.

"Cash Amount" means, with respect to any Partnership Units subject to a Redemption, an amount of cash equal to the Deemed Partnership Interest Value attributable to such Partnership Units.

"Certificate" means the Certificate of Limited Partnership relating to the Partnership filed in the office of the Secretary of State of Delaware, as amended from time to time in accordance with the terms hereof and the Act.

"Charter" means the Company's Articles of Incorporation as of November 24, 1997, as amended by the Articles Supplementary filed with the Maryland Department of Assessments and Taxation on July 23, 1998, as further amended by the Articles Supplementary filed with the Maryland Department of Assessments and Taxation on November 12, 1998 and as further amended or restated from time to time.

"Code" means the Internal Revenue Code of 1986, as amended from time to time or any successor statute thereto, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Common Unit" means each Partnership Unit that is not entitled to any preference with respect to any other Partnership Unit as to distribution or voluntary or involuntary liquidation, dissolution or winding up of the Partnership.

"Consent" means the consent to, approval of, or vote on a proposed action by a Partner given in accordance with Article 14 hereof.

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"Consent of the Limited Partners" means the Consent of a Majority in Interest of the Limited Partners, other than the Preferred Limited Partners, which Consent shall be obtained prior to the taking of any action for

which it is required by this Agreement and may be given or withheld by a Majority in Interest of the Limited Partners, unless otherwise expressly provided herein, in their sole and absolute discretion.

"Consent of the Partners" means the Consent of Partners, other than the Preferred Limited Partners, holding Percentage Interests that in the aggregate are equal to or greater than a majority of the aggregate Percentage Interests of all Partners, other than the Preferred Limited Partners, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and may be given or withheld by such Partners, in their sole and absolute discretion.

"Constructively Own" means ownership under the constructive ownership rules described in Exhibit C.

"Contributed Property" means each property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Partnership (or, to the extent provided in applicable regulations, deemed contributed by the Partnership on termination and reconstitution thereof pursuant to Section 708 of the Code).

"Debt" means, as to any Person, as of any date of determination: (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (ii) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (iii) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (iv) lease obligations of such Person which, in accordance with generally accepted accounting principles, should be capitalized.

"Deemed Partnership Interest Value" means, as of any date with respect to any class of Partnership Interests, the Deemed Value of the Partnership Interests of such class multiplied by the applicable Partner's Percentage Interest of such class.

"Deemed Value of the Partnership Interests" means, as of any date with respect to any class or series of Partnership Interests, (i) the total number of Partnership Units of the General Partner in such class or series of Partnership Interests (as provided for in Sections 4.1 and 4.3.C) issued and outstanding as of the close of business on such date multiplied by the Fair Market Value determined as of such date of a share of capital stock of the General Partner which corresponds to such class or series of Partnership Interests; (ii) divided by the Percentage Interest of the General Partner in such class or series of Partnership Interests on such date; provided, that if no outstanding shares of capital stock of the General Partner correspond to a class of series of Partnership Interests, the Deemed Value of the Partnership Interests with respect to such class or series shall be equal to an amount reasonably determined by the General Partner.

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"Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the Federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

"Effective Date" means the date of closing of the initial public offering of REIT Shares upon which date contributions set forth on Exhibit A shall become effective.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agreements" means one or more of the agreements between the Company, the Partnership and one or more of the Performance Investors, dated as of the closing of the date of the initial public offering of the common stock of the General Partner, pursuant to which the Performance Investors have deposited their Performance Shares in escrow for possible transfer to the General Partner or the Partnership (as applicable).

"Excess Performance Capital" means, with respect to a

Performance Partner, an amount equal to the number of Partnership Units held by such Performance Partner, multiplied by the excess of (i) the Capital Account per Partnership Unit for such Performance Partner; over (ii) the Capital Account per Partnership Unit for a Limited Partner which is not a PLP or a Performance Partner. For purposes of (ii) above, it shall be assumed that the Limited Partner has no special arrangements with the Partnership, other than as set forth in this Agreement, which would cause its Capital Account per Partnership Unit to be different from the Capital Account per Partnership Unit of other Limited Partners who are not Performance Partners or PLPs. If the Partner described in (ii) above does not exist, the amount used for purposes of (ii) shall be the projected Capital Account balance per Partnership Unit for such Partner, determined in the reasonable discretion of the General Partner. For purposes of this definition, to the extent the Capital Account of a Partner which owns both Common Units and Preference Units is being considered, such Capital Account shall be equal to such Partner's Capital Account determined without regard to the adjustments arising from or as a result of the acquisition or ownership of Preference Units by such Partner.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

"Fair Market Value" means, with respect to any share of capital stock of the General Partner, the average of the daily market price for the ten (10) consecutive trading days immediately preceding the date with respect to which "Fair Market Value" must be determined hereunder or, if such date is not a Business Day, the immediately preceding Business Day. The market price for each such trading day shall be (i) if such shares are listed or admitted to trading

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on any securities exchange or the Nasdaq National Market, the closing price, regular way, on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices on such day, (ii) if such shares are not listed or admitted to trading on any securities exchange or the Nasdaq National Market, the last reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the General Partner or (iii) if such shares are not listed or admitted to trading on any securities exchange or the Nasdaq National Market and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reliable quotation source designated by the General Partner, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than ten (10) days prior to the date in question) for which prices have been so reported; provided, that if there are no bid and asked prices reported during the ten (10) days prior to the date in question, the Fair Market Value of such shares shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate. In the event the REIT Shares Amount for such shares includes rights that a holder of such shares would be entitled to receive, then the Fair Market Value of such rights shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate; provided, that in connection with determining the Deemed Value of the Partnership Interests for purposes of determining the number of additional Partnership Units issuable upon a Capital Contribution funded by an underwritten public offering of shares of capital stock of the General Partner, the Fair Market Value of such shares shall be the public offering price per share of such class of capital stock sold. Notwithstanding the foregoing, the General Partner in its reasonable discretion may use a different "Fair Market Value" for purposes of making the determinations under subparagraph (ii) of the definition of "Gross Asset Value" and Section 4.3.E. in connection with the contribution of Property to the Partnership by a third-party, provided such value shall be based upon the value per REIT Share (or per Partnership Unit) agreed upon by the General Partner and such third-party for purposes of such contribution.

"Funding Debt" means the incurrence of any Debt by or on behalf of the General Partner for the purpose of providing funds to the Partnership.

"General Partner" means the Company or its successors as general partner of the Partnership.

"General Partner Interest" means a Partnership Interest held by the General Partner. A General Partner Interest may be expressed as a number of Partnership Units.

"General Partner Loan" shall have the meaning set forth in Section 4.3.B.

"General Partner Payment" shall have the meaning set forth in Section 15.11.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for Federal income tax purposes, except as follows:

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(i) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the General Partner (as set forth on Exhibit A attached hereto, as such Exhibit may be amended from time to time); provided, that if the contributing Partner is the General Partner then, except with respect to the General Partner's initial Capital Contribution which shall be determined as set forth on Exhibit A, or capital contributions of cash, REIT Shares or other shares of capital stock of the General Partner, the determination of the fair market value of the contributed asset shall be determined by (a) the price paid by the General Partner if the asset is acquired by the General Partner contemporaneously with its contribution to the Partnership or (b) by Appraisal if otherwise acquired by the General Partner.

(ii) Immediately prior to the times listed below, the Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner using such reasonable method of valuation as it may adopt; provided, however, that for such purpose, the net value of all of the Partnership assets, in the aggregate, shall be equal to the Deemed Value of the Partnership Interests of all classes of Partnership Interests then outstanding, regardless of the method of valuation adopted by the General Partner:

- (a) the acquisition of an additional interest in the Partnership by a new or existing Partner in exchange for more than a de minimis Capital Contribution, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;
- (b) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership property as consideration for an interest in the Partnership if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership; the Partners agree that such an adjustment is appropriate when the Partnership effects a Redemption;
- (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);
- (d) the issuance of Performance Units; and
- (e) at such other times as the General Partner shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Gross Asset Value of any Partnership asset distributed to a Partner shall be the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner; provided, that if the distributee is the General Partner, or if the distributee and the General Partner cannot agree on such a determination, by Appraisal.

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(iv) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that the General Partner reasonably determines that an adjustment pursuant to subparagraph (ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

(v) If the Gross Asset Value of a Partnership asset has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account



with respect to such asset for purposes of computing Net Income and Net Losses.

"Holder" means either the Partner or Assignee owning a Partnership Unit.

"Immediate Family" means, with respect to any natural Person, such natural Person's estate or heirs or current spouse or former spouse, parents, parents-in-law, children, siblings and grandchildren and any trust or estate, all of the beneficiaries of which consist of such Person or such Person's spouse, former spouse, parents, parents-in-law, children, siblings or grandchildren.

"IMS" means AMB Investment Management, Inc., a Maryland corporation, and any of its direct or indirect subsidiaries.

"Incapacity" or "Incapacitated" means: (i) as to any individual Partner, death, total physical disability or entry by a court of competent jurisdiction adjudicating him or her incompetent to manage his or her Person or his or her estate; (ii) as to any corporation which is a Partner, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (iii) as to any partnership which is a Partner, the dissolution and commencement of winding up of the partnership; (iv) as to any estate which is a Partner, the distribution by the fiduciary of the estate's entire interest in the Partnership; (v) as to any trustee of a trust which is a Partner, the termination of the trust (but not the substitution of a new trustee); or (vi) as to any Partner, the bankruptcy of such Partner. For purposes of this definition, bankruptcy of a Partner shall be deemed to have occurred when (a) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect, (b) the Partner is adjudged as bankrupt or insolvent, or a final and nonappealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner, (c) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors, (d) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (b) above, (e) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for the Partner or for all or any substantial part of the Partner's properties, (f) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred and

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twenty (120) days after the commencement thereof, (g) the appointment without the Partner's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment or (h) an appointment referred to in clause (g) is not vacated within ninety (90) days after the expiration of any such stay.

"Indemnitee" means (i) any Person subject to a claim or demand or made or threatened to be made a party to, or involved or threatened to be involved in, an action, suit or proceeding by reason of his or her status as (a) the General Partner or (b) a director, officer, employee or agent of the Partnership or the General Partner and (ii) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time, in its sole and absolute discretion.

"IRS" means the Internal Revenue Service, which administers the internal revenue laws of the United States.

"Junior Units" means Partnership Units representing any class or series of Partnership Interest ranking, as to distributions or voluntary or involuntary liquidation, dissolution or winding up of the Partnership, junior to the Series A Preferred Units and the Series B Preferred Units.

"Limited Partner" means any Person (including any PLP) named as a Limited Partner in Exhibit A attached hereto, as such Exhibit may be amended from time to time, any Substituted Limited Partner or Additional Limited Partner, in such Person's capacity as a Limited Partner in the Partnership.

"Limited Partnership Interest" means a Partnership Interest of a Limited Partner representing a fractional part of the Partnership Interests of all Limited Partners and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Limited Partnership Interest may be expressed as a number of Partnership Units.

"Liquidating Events" shall have the meaning set forth in

"Liquidator" shall have the meaning set forth in Section

13.2.A.

"Majority in Interest of the Limited Partners" means Limited Partners (other than the General Partner and any Limited Partner 50% or more of whose equity is owned, directly or indirectly, by the General Partner, and any Preferred Limited Partner) holding Percentage Interests that in the aggregate are greater than fifty percent (50%) of the aggregate Percentage Interests of all Limited Partners (other than the General Partner and any Limited Partner 50% or more of whose equity is owned, directly or indirectly, by the General Partner and any Preferred Limited Partner).

"Majority in Interest of Partners" means Partners (other than Preferred Limited Partners) holding Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Partners (other than Preferred Limited Partners).

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"Net Income" or "Net Loss" means for each fiscal year of the Partnership, an amount equal to the Partnership's taxable income or loss for such fiscal year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Partnership that is exempt from Federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of Net Income or Net Loss shall be added to such taxable income or loss;

(ii) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of Net Income or Net Loss shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subparagraph (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss; in the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of all Partnership assets in a Terminating Capital Transaction for purposes of computing Net Income or Net Loss as set forth in Article 6;

(iv) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year;

(vi) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(vii) Notwithstanding any other provision of this definition of Net Income or Net Loss, any items which are specially allocated pursuant to Section 6.3 shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Section 6.3 shall be

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determined by applying rules analogous to those set forth in this definition of Net Income or Net Loss.

"New Securities" means (i) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or other shares of capital stock of the General Partner, excluding grants under any Stock Incentive Plan or (ii) any Debt issued by the General Partner that provides any of the rights described in clause (i).

"Nonrecourse Deductions" shall have the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

"Notice of Redemption" means the Notice of Redemption substantially in the form of Exhibit B to this Agreement.

"Offering Costs" means the aggregate amounts expended by the General Partner which related to the organization of the Partnership and the General Partner, or to the initial public offering or subsequent offerings of REIT Shares or other shares of capital stock of the General Partner, the net proceeds of which were used to make a contribution to the Partnership, in each case to the extent such expenses of the General Partner were not reimbursed by the Partnership.

"Parity Preferred Unit" means any class or series of Partnership Interests of the Partnership now or hereafter authorized, issued or outstanding expressly designated by the Partnership to rank on a parity with the Series A Preferred Units and the Series B Preferred Units with respect to distributions or rights upon voluntary or involuntary liquidation, winding up or dissolution of the Partnership, or both, as the context may require.

"Partner" means a General Partner or a Limited Partner, and "Partners" means the General Partner and the Limited Partners.

"Partner Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"Partner Nonrecourse Debt" shall have the meaning set forth in Regulations Section 1.704-2(b)(4).

"Partner Nonrecourse Deductions" shall have the meaning set forth in Regulations Section 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

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"Partnership" means the limited partnership formed under the Act and pursuant to this Agreement, and any successor thereto.

"Partnership Interest" means an ownership interest in the Partnership of either a Limited Partner or the General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. There may be one or more classes of Partnership Interests as provided in Section 4.3. A Partnership Interest may be expressed as a number of Partnership Units. Unless otherwise expressly provided for by the General Partner at the time of the original issuance of any Partnership Interests, all Partnership Interests (whether of a Limited Partner or a General Partner) shall be of the same class. The Partnership Interests represented by the Common Units (including Performance Units), the Series A Preferred Units and the Series B Preferred Units are the only Partnership Interests and each such type of unit is a separate class of Partnership Interest for all purposes of this Agreement.

"Partnership Minimum Gain" shall have the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Partnership Minimum Gain, as well as any net increase or decrease in Partnership Minimum Gain, for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"Partnership Record Date" means the record date established by the General Partner for the distribution of Available Cash with respect to Common Units pursuant to Section 5.1 which record date shall be the same as the record date established by the General Partner for a distribution to its stockholders of some or all of its portion of such distribution.

"Partnership Unit" means, with respect to any class of Partnership Interest, a fractional, undivided share of such class of Partnership

Interest issued pursuant to Sections 4.1 and 4.3 (including Performance Units). The ownership of Partnership Units may be evidenced by a certificate for units substantially in the form of Exhibit D-1 or D-2 hereto or as the General Partner may determine with respect to any class of Partnership Units issued from time to time under Sections 4.1 and 4.3.

"Partnership Year" means the fiscal year of the Partnership, which shall be the calendar year.

"Percentage Interest" means, as to a Partner holding a class of Partnership Interests, its interest in the Partnership as determined by dividing the Partnership Units of such class owned by such Partner by the total number of Partnership Units of such class then outstanding as specified in Exhibit A attached hereto, as such Exhibit may be amended from time to time. If the Partnership issues more than one class of Partnership Interest, the interest in the Partnership among the classes of Partnership Interests shall be determined as set forth in the amendment to the Partnership Agreement setting forth the rights and privileges of such additional classes of Partnership Interest, if any, as contemplated by Section 4.3.C.

"Performance Amount" means, with respect to a PLP on a specified date, (i) in the case of a Redemption, a number of Performance Units equal to (a) the amount of such PLP's

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Capital Account balance immediately following the revaluation of the Partnership's assets as of such date pursuant to the definitions of "Gross Asset Value" (paragraph (ii) therein) and "Net Income" (paragraph (iii) therein), divided by (b) the Fair Market Value of a REIT Share; and (ii) in the case of an exchange of Performance Units for the REIT Shares Amount, the same number of Performance Units as determined pursuant to subparagraph (i) above.

"Performance Investors" means shareholders of the General Partner and Limited Partners who are parties to one or more of the Escrow Agreements.

"Performance Partners" means Partners which had the number of their Partnership Units reduced pursuant to Section 4.3.F.

"Performance Shares" means a portion of the REIT Shares or Partnership Units issued to the Performance Investors which were escrowed pursuant to the Escrow Agreements for possible transfer to the General Partner or the Partnership (as applicable), the applicable number of which for each Performance Investor is described in the applicable Escrow Agreement.

"Performance Units" means those Partnership Units issued pursuant to Section 4.3.F.

"Permitted Reason" means a termination of employment by reason of death, disability, termination by the employer without "cause," or termination by a Person of their employment for "good reason." For purposes of this definition, "cause" shall mean (i) gross negligence or willful misconduct, (ii) breach by the Person of the covenant not to compete provided in their employment agreement during the one year period following the closing of the initial public offering of common stock of the General Partner, (iii) fraud or other conduct against the material best interests of the General Partner, the Partnership or their subsidiaries, or (iv) conviction of a felony if such conviction has a material adverse effect on the General Partner, the Partnership or their subsidiaries. For purposes of this definition, "good reason" means (a) a substantial adverse change in the nature or scope of a Person's responsibilities or authority under the Person's employment agreement, or (b) an uncured breach by the employer of any of its material obligations under such employment agreement.

"Person" means an individual or a corporation, partnership, limited liability company, trust, unincorporated organization, association or other entity.

"Plan Asset Regulation" means the regulations promulgated by the United States Department of Labor in Title 29, Code of Federal Regulations, Part 2510, Section 101-3, and any successor regulations thereto.

"Pledge" shall have the meaning set forth in Section 11.3.A.

"PLP" means at any time, any Person who then owns one or more Performance Units, including Performance Units which have not vested.

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"Preferred Distribution Shortfall" shall have the meaning

given to such term in Section 5.1 hereof.

"Preferred Limited Partner" means any Person holding a Preferred Unit, and named as a Preferred Limited Partner in Exhibit A attached hereto, as such Exhibit may be amended from time to time, or any Substitute Limited Partner or Additional Limited Partner, in such Person's capacity as a Preferred Limited Partner in the Partnership.

"Preferred Limited Partner" means a Limited Partner holding any series of Preferred Units.

"Preferred Share" means a share of the General Partner's preferred stock, par value \$.01 per share, with such rights, priorities and preferences as shall be designated by the Board of Directors in accordance with the Charter.

"Preferred Unit" means a Partnership Unit representing a Partnership Interest, with such rights, priorities and preferences as shall be designated by the General Partner pursuant to Section 4.3.C hereof.

"Properties" means such interests in real property and personal property including without limitation, fee interests, interests in ground leases, interests in joint ventures, interests in mortgages, and Debt instruments as the Partnership may hold from time to time.

"Qualified REIT Subsidiary" means any Subsidiary of the General Partner that is a "qualified REIT subsidiary" within the meaning of Section 856(i) of the Code.

"Qualified Transferee" means an "Accredited Investor" as defined in Rule 501 promulgated under the Securities Act.

"Redemption" shall have the meaning set forth in Section 8.6.A.

"Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Regulatory Allocations" shall have the meaning set forth in Section 6.3.A(viii).

"REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

"REIT Requirements" shall have the meaning set forth in Section 5.1.

"REIT Share" means a share of common stock, par value \$.01 per share, of the General Partner.

"REIT Shares Amount" means, as of any date, an aggregate number of REIT Shares equal to the number of Tendered Units, or in the case of Section 11.2.B, all Units, as adjusted pursuant to Section 7.5 (in the event the General Partner acquires material assets, other

than on behalf of the Partnership) and for stock dividends and distributions, stock splits and subdivisions, reverse stock splits and combinations, distributions of rights, warrants or options, and distributions of evidences of indebtedness or assets relating to assets not received by the General Partner pursuant to a pro rata distribution by the Partnership.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

"Series A Articles Supplementary" means the Articles Supplementary of the General Partner in connection with its Series A Preferred Shares, as filed with the Maryland Department of Revenue and Taxation on July 23, 1998.

"Series A Preferred Capital" means a Capital Account balance equal to the product of (i) the number of Series A Preferred Units then held by the General Partner multiplied by (ii) the sum of \$25 and any Preferred Distribution Shortfall per Series A Preferred Unit.

"Series A Preferred Share" means a share of 8 1/2% Series A Cumulative Redeemable Preferred Stock, par value \$.01 per share, liquidation preference \$25 per share, of the General Partner.

"Series A Preferred Units" means the Partnership's 8 1/2%

Series A Cumulative Redeemable Partnership Units.

"Series A Preferred Unit Distribution Payment Date" shall have the meaning set forth in Section 16.3.A hereof.

"Series A Priority Return" shall mean an amount equal to 8 1/2% per annum on an amount equal to \$25 per Series A Preferred Unit then outstanding (equivalent to \$2.125 per annum). Such amount shall be determined on a daily basis computed on the basis of a 360-day year of twelve 30-day months (or actual days for any month which is shorter than a full monthly period), cumulative from July 27, 1998 to the extent not distributed for any given distribution period pursuant to Sections 5.1 and 16.3 hereof. Notwithstanding the foregoing, distributions on the Series A Preferred Units will accrue whether or not the terms and provisions of any agreement of the Partnership at any time prohibit the current payment of distributions, whether or not the Partnership has earnings, whether or not there are funds legally available for the payment of such distributions and whether or not such distributions are authorized. Accrued but unpaid distributions on the Series A Preferred Units will accumulate as of the Preferred Unit Distribution Payment Date on which they first become payable.

"Series B Articles Supplementary" means the Articles Supplementary of the General Partner in connection with its Series B Preferred Shares, as filed with the Maryland Department of Revenue and Taxation on November 12, 1998.

"Series B Limited Partner" means any Person holding Series B Preferred Units and named as a Series B Limited Partner in Exhibit A attached hereto, as such Exhibit may be amended from time to time, or any Substitute Limited Partner, in such Person's capacity as a Limited Partner in the Partnership.

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"Series B Preferred Capital" means a Capital Account balance equal to the product of (i) the number of Series B Preferred Units then held by the General Partner multiplied by (ii) the sum of \$50 and any Preferred Distribution Shortfall per Series B Preferred Unit.

"Series B Preferred Share" means a share of 8 5/8% Series B Cumulative Redeemable Preferred Stock, par value \$.01 per share, liquidation preference \$50 per share, of the General Partner.

"Series B Preferred Units" means the Partnership's 8 5/8% Series B Cumulative Redeemable Partnership Units.

"Series B Preferred Unit Distribution Payment Date" shall have the meaning set forth in Section 17.3.A hereof.

"Series B Priority Return" shall mean an amount equal to 8 5/8% per annum on an amount equal to \$50 per Series B Preferred Unit then outstanding (equivalent to \$4.3125 per annum). Such amount shall be determined on a daily basis computed on the basis of a 360-day year of twelve 30-day months (or actual days for any month which is shorter than a full monthly period), cumulative from November 12, 1998 to the extent not distributed for any given distribution period pursuant to Sections 5.1 and 17.3 hereof. Notwithstanding the foregoing, distributions on the Series B Preferred Units will accrue whether or not the terms and provisions of any agreement of the Partnership at any time prohibit the current payment of distributions, whether or not the Partnership has earnings, whether or not there are funds legally available for the payment of such distributions and whether or not such distributions are authorized. Accrued but unpaid distributions on the Series B Preferred Units will accumulate as of the Preferred Unit Distribution Payment Date on which they first become payable.

"Specified Redemption Date" means the day of receipt by the General Partner of a Notice of Redemption.

"Stock Incentive Plan" means any stock incentive plan of the General Partner.

"Subsidiary" shall mean, with respect to any person, any corporation, partnership, limited liability company, joint venture or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests, is owned, directly or indirectly, by such person.

"Subsidiary Partnership" means any partnership or limited liability company that is a Subsidiary of the Partnership.

"Substituted Limited Partner" means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 11.4.

"Surviving Partnership" shall have the meaning set forth in Section 11.2.C.

"Tax Items" shall have the meaning set forth in Section 6.4.A.

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"Tenant" means any tenant from which the General Partner derives rent either directly or indirectly through partnerships, including the Partnership.

"Tendered Units" shall have the meaning set forth in Section 8.6.A.

"Tendering Partner" shall have the meaning set forth in Section 8.6.A.

"Terminating Capital Transaction" means any sale or other disposition of all or substantially all of the assets of the Partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Partnership.

"Termination Transaction" shall have the meaning set forth in Section 11.2.B.

#### Section 1.2. Rules of Construction

Unless otherwise indicated, all references herein to "REIT," "REIT Requirements," "REIT Shares" and "REIT Shares Amount" with respect to the General Partner shall apply only with reference to the Company.

### ARTICLE 2. ORGANIZATIONAL MATTERS

#### Section 2.1. Organization

The Partnership is a limited partnership formed pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

#### Section 2.2. Name

The name of the Partnership is AMB Property, L.P. The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

#### Section 2.3. Resident Agent; Principal Office

The name and address of the resident agent of the Partnership in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The address of the principal office of the Partnership in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801 at such address.

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The principal office of the Partnership is located at 505 Montgomery Street, San Francisco, California 94111, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems advisable.

#### Section 2.4. Power of Attorney

A. Each Limited Partner and each Assignee constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

- (i) execute, swear to, acknowledge, deliver, file and

record in the appropriate public offices: (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments or restatements thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the Limited Partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (b) all instruments that the General Partner or any Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents that the General Partner or any Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Articles 11, 12 and 13 or the Capital Contribution of any Partner; and (e) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of Partnership Interests; and

- (ii) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the General Partner or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Partners hereunder or is consistent with the terms of this Agreement or appropriate or necessary, in the sole discretion of the General Partner or any Liquidator, to effectuate the terms or intent of this Agreement.

Nothing contained herein shall be construed as authorizing the General Partner or any Liquidator to amend this Agreement except in accordance with Article 14 or as may be otherwise expressly provided for in this Agreement.

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B. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, in recognition of the fact that each of the Partners will be relying upon the power of the General Partner and any Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the transfer of all or any portion of such Limited Partner's or Assignee's Partnership Units and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or any Liquidator, acting in good faith pursuant to such power of attorney; and each such Limited Partner or Assignee hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the General Partner or any Liquidator, taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or any Liquidator, within fifteen (15) days after receipt of the General Partner's or Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator, as the case may be, deems necessary to effectuate this Agreement and the purposes of the Partnership.

#### Section 2.5. Term

The term of the Partnership commenced on October 15, 1997 and shall continue until December 31, 2096 unless it is dissolved sooner pursuant to the provisions of Article 13 or as otherwise provided by law.

#### Section 2.6. Number of Partners

Without the consent of the General Partner which may be given or withheld in its sole discretion, the Partnership shall not at any time have more than one hundred (100) partners (including as partners those persons indirectly owning an interest in the Partnership through a partnership, limited liability company, S corporation or grantor trust (such entity, a "flow through



entity"), but only if substantially all of the value of such person's interest in the flow through entity is attributable to the flow through entity's interest (direct or indirect) in the Partnership).

ARTICLE 3.  
PURPOSE

Section 3.1. Purpose and Business

The purpose and nature of the business to be conducted by the Partnership is (i) to conduct any business that may be lawfully conducted by a limited partnership organized pursuant to the Act; provided, however, that such business shall be limited to and conducted in such a manner as to permit the General Partner at all times to be classified as a REIT for Federal income tax purposes, unless the General Partner ceases to qualify as a REIT for reasons other than the conduct of the business of the Partnership, (ii) to enter into any partnership, joint venture or other similar arrangement to engage in any of the foregoing or to own interests in any entity engaged, directly or indirectly, in any of the foregoing and (iii) to do anything necessary or incidental to the foregoing. In connection with the foregoing, and without limiting the General Partner's right

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in its sole discretion to cease qualifying as a REIT, the Partners acknowledge that the General Partner's current status as a REIT inures to the benefit of all the Partners and not solely the General Partner.

Section 3.2. Powers

The Partnership is empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership, including, without limitation, full power and authority, directly or through its ownership interest in other entities, to enter into, perform and carry out contracts of any kind, borrow money and issue evidences of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien, acquire and develop real property, and manage, lease, sell, transfer and dispose of real property; provided, however, not withstanding anything to the contrary in this Agreement, the Partnership shall not take, or refrain from taking, any action which, in the judgment of the General Partner, in its sole and absolute discretion, (i) could adversely affect the ability of the General Partner to continue to qualify as a REIT, (ii) absent the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, and except with respect to the distribution of Available Cash to the Series B Limited Partners in accordance with Section 17.3, could subject the General Partner to any taxes under Section 857 or Section 4981 of the Code, or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over the General Partner or its securities, unless any such action (or inaction) under the foregoing clauses (i), (ii) or (iii) shall have been specifically consented to by the General Partner in writing.

Section 3.3. Partnership Only for Purposes Specified

The Partnership shall be a partnership only for the purposes specified in Section 3.1, and this Agreement shall not be deemed to create a partnership among the Partners with respect to any activities whatsoever other than the activities within the purposes of the Partnership as specified in Section 3.1. Except as otherwise provided in this Agreement, no Partner shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Partnership, its properties or any other Partner. No Partner, in its capacity as a Partner under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Partner, nor shall the Partnership be responsible or liable for any indebtedness or obligation of any Partner, incurred either before or after the execution and delivery of this Agreement by such Partner, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to and as limited by the terms of this Agreement and the Act.

Section 3.4. Representations and Warranties by the Parties

A. Each Partner that is an individual represents and warrants to each other Partner that (i) such Partner has in the case of any Person other than an individual, the power and authority, and in the case of an individual, the legal capacity, to enter into this Agreement and perform such Partner's obligations hereunder, (ii) the consummation of the transactions contemplated by this Agreement to be performed by such Partner will not result in a breach or

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violation of, or a default under, any agreement by which such Partner or any of such Partner's property is or are bound, or any statute, regulation, order or other law to which such Partner is subject, (iii) such Partner is neither a "foreign person" within the meaning of Section 1445(f) of the Code nor a "foreign partner" within the meaning of Section 1446(e) of the Code and (iv) this Agreement has been duly executed and delivered by such Partner and is binding upon, and enforceable against, such Partner in accordance with its terms.

B. Each Partner that is not an individual represents and warrants to each other Partner that (i) its execution and delivery of this Agreement and all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including without limitation, that of its general partner(s), committee(s), trustee(s), beneficiaries, directors and/or stockholder(s), as the case may be, as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its certificate of limited partnership, partnership agreement, trust agreement, limited liability company operating agreement, charter or by-laws, as the case may be, any agreement by which such Partner or any of such Partner's properties or any of its partners, beneficiaries, trustees or stockholders, as the case may be, is or are bound, or any statute, regulation, order or other law to which such Partner or any of its partners, trustees, beneficiaries or stockholders, as the case may be, is or are subject, (iii) such Partner is neither a "foreign person" within the meaning of Section 1445(f) of the Code nor a "foreign partner" within the meaning of Section 1446(e) of the Code and (iv) this Agreement has been duly executed and delivered by such Partner and is binding upon, and enforceable against, such Partner in accordance with its terms.

C. Each Partner represents, warrants and agrees that it has acquired and continues to hold its interest in the Partnership for its own account for investment only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof, nor with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances. Each Partner further represents and warrants that it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds it has invested in the Partnership in what it understands to be a highly speculative and illiquid investment.

D. Each Partner further represents, warrants and agrees as follows:

(i) Except as provided in Exhibit E, at any time such Partner actually or Constructively owns a 25% or greater capital interest or profits interest in the Partnership, it does not and will not, without the prior written consent of the General Partner, actually own or Constructively Own (a) with respect to any Tenant that is a corporation, any stock of such Tenant and (b) with respect to any Tenant that is not a corporation, any interests in either the assets or net profits of such Tenant.

(ii) Except as provided in Exhibit F, at any time such Partner actually or Constructively owns a 25% or greater capital interest or profits interest in the Partnership, it does not, and agrees that it will not without the prior written consent of the General Partner, actually own or Constructively Own, any stock in the General Partner,

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other than any REIT Shares or other shares of capital stock of the General Partner such Partner may acquire (a) as a result of an exchange of Tendered Units pursuant to Section 8.6 or (b) upon the exercise of options granted or delivery of REIT Shares pursuant to any Stock Incentive Plan, in each case subject to the ownership limitations set forth in the General Partner's Charter.

(iii) Upon request of the General Partner, it will disclose to the General Partner the amount of REIT Shares or other shares of capital stock of the General Partner that it actually owns or Constructively Owns.

(iv) It understands that if, for any reason, (a) the representations, warranties or agreements set forth in Section 3.4.D(i) or (ii) are violated or (b) the Partnership's actual or Constructive Ownership of the REIT Shares or other shares of capital stock of the General Partner violates the limitations set forth in the Charter, then (x) some or all of the Redemption rights or rights to exchange Partnership Interests for Series B Preferred Shares of the Limited Partners may become non-exercisable, and (y) some or all of such shares owned by the Partners and/or some or all of the Partnership Interests

owned by the Limited Partners may be automatically transferred to a trust for the benefit of a charitable beneficiary, as provided in the Charter and Exhibit J of this Agreement, respectively.

E. The representations and warranties contained in Sections 3.4.A, 3.4.B, 3.4.C and 3.4.D shall survive the execution and delivery of this Agreement by each Partner and the dissolution and winding up of the Partnership.

F. Each Partner hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Partnership or the General Partner have been made by any Partner or any employee or representative or Affiliate of any Partner, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, which may have been in any manner submitted to such Partner shall not constitute any representation or warranty of any kind or nature, express or implied.

#### Section 3.5. Certain ERISA Matters

Each Partner acknowledges that the Partnership is intended to qualify as a "real estate operating company" (as such term is defined in the Plan Asset Regulation). The General Partner will use its reasonable best efforts to structure the investments in, relationships with and conduct with respect to Properties and any other assets of the Partnership so that the Partnership will be a "real estate operating company" (as such term is defined in the Plan Asset Regulation).

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### ARTICLE 4. CAPITAL CONTRIBUTIONS

#### Section 4.1. Capital Contributions of the Partners

At the time of their respective execution of this Agreement, the Partners shall make or shall have made Capital Contributions as set forth in Exhibit A to this Agreement. The Partners shall own Partnership Units of the class and in the amounts set forth in Exhibit A and shall have a Percentage Interest in the Partnership as set forth in Exhibit A, which Percentage Interest shall be adjusted in Exhibit A from time to time by the General Partner to the extent necessary to accurately reflect exchanges, redemptions, Capital Contributions, the issuance of additional Partnership Units (including the issuance of Performance Units pursuant to Section 4.3.F) or similar events having an effect on a Partner's Percentage Interest. Except as required by law or as otherwise provided in Sections 4.3, 4.4 and 10.5, no Partner shall be required or permitted to make any additional Capital Contributions or loans to the Partnership. Unless otherwise specified by the General Partner at the time of the creation of any class of Partnership Interests, the corresponding class of capital stock for any Partnership Units issued shall be REIT Shares.

#### Section 4.2. Loans by Third Parties

Subject to Section 4.3, the Partnership may incur Debt, or enter into other similar credit, guarantee, financing or refinancing arrangements for any purpose (including, without limitation, in connection with any further acquisition of Properties) with any Person that is not the General Partner upon such terms as the General Partner determines appropriate; provided, that the Partnership shall not incur any Debt that is recourse to the General Partner, except to the extent otherwise agreed to by the General Partner in its sole discretion.

#### Section 4.3. Additional Funding and Capital Contributions

A. General. The General Partner may, at any time and from time to time, determine that the Partnership requires additional funds ("Additional Funds") for the acquisition of additional Properties or for such other Partnership purposes as the General Partner may determine. Additional Funds may be raised by the Partnership, at the election of the General Partner, in any manner provided in, and in accordance with, the terms of this Section 4.3. No Person shall have any preemptive, preferential or similar right or rights to subscribe for or acquire any Partnership Interest, except as set forth in this Section 4.3.

B. General Partner Loans. The General Partner may enter into a Funding Debt, including, without limitation, Funding Debt that is convertible into REIT Shares, and lend the Additional Funds to the Partnership (a "General Partner Loan"); provided, however, that the General Partner shall not be obligated to lend the net proceeds of any Funding Debt to the Partnership in a manner that would be inconsistent with the General Partner's ability to remain qualified as a REIT. If the General Partner enters into such a Funding Debt, the General Partner Loan will consist of the net proceeds from such Funding Debt and will be on comparable terms and conditions, including interest rate, repayment schedule and costs and expenses, as shall be applicable with respect to or

C. Issuance of Additional Partnership Interests. The General Partner may raise all or any portion of the Additional Funds by accepting additional Capital Contributions of cash. The General Partner may also accept additional Capital Contributions of real property or other non-cash assets. In connection with any such additional Capital Contributions (of cash or property), and subject to Section 17.6 hereof, the General Partner is hereby authorized to cause the Partnership from time to time to issue to Partners (including the General Partner) or other Persons (including, without limitation, in connection with the contribution of property to the Partnership) additional Partnership Units or other Partnership Interests in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, and duties, including rights, powers, and duties senior to then existing Limited Partnership Interests, all as shall be determined by the General Partner in its sole and absolute discretion subject to Delaware law, and as set forth by amendment to this Agreement, including without limitation: (i) the allocations of items of Partnership income, gain, loss, deduction, and credit to such class or series of Partnership Interests; (ii) the right of each such class or series of Partnership Interests to share in Partnership distributions; (iii) the rights of each such class or series of Partnership Interests upon dissolution and liquidation of the Partnership; and (iv) the right to vote, including, without limitation, the limited partner approval rights set forth in Section 11.2.A; provided, that no such additional Partnership Units or other Partnership Interests shall be issued to the General Partner unless either (a) the additional Partnership Interests are issued in connection with the grant, award, or issuance of shares of the General Partner pursuant to Section 4.3.D below, which shares have designations, preferences, and other rights (except voting rights) such that the economic interests attributable to such shares are substantially similar to the designations, preferences and other rights of the additional Partnership Interests issued to the General Partner in accordance with this Section 4.3.C or (b) the additional Partnership Interests are issued to all Partners holding Partnership Interests in the same class in proportion to their respective Percentage Interests in such class. In the event that the Partnership issues additional Partnership Interests pursuant to this Section 4.3.C, the General Partner shall make such revisions to this Agreement (including but not limited to the revisions described in Sections 5.4, 6.2.C, and 8.6) as it determines are necessary to reflect the issuance of such additional Partnership Interests.

D. Issuance of REIT Shares or Other Securities by the General Partner. The General Partner shall not issue any additional REIT Shares (other than REIT Shares issued pursuant to Section 8.6 or pursuant to a dividend or distribution (including any stock split) of REIT Shares to all of its stockholders or all of its stockholders who hold a class of stock of the General Partner), other shares of capital stock of the General Partner (other than in connection with the acquisition of Partnership Interests in exchange for capital stock of the General Partner which corresponds in ranking to the Partnership's Partnership Interests being acquired) or New Securities unless the General Partner shall make a Capital Contribution of the net proceeds (including, without limitation, cash and Properties) from the issuance of such additional REIT Shares, other shares of capital stock or New Securities, as the case may be, and from the exercise of the rights contained in such additional New Securities, as the case may be. The General Partner's Capital Account shall be increased by the amount of cash or the value of Properties so contributed.

E. Percentage Interest Adjustments in the Case of Capital Contributions for Partnership Units. Upon the acceptance of additional Capital Contributions in exchange for any class or series of Partnership Units, the Percentage Interest related thereto shall be equal to a fraction, the numerator of which is equal to the amount of cash and the Agreed Value of the Properties contributed as of the Business Day immediately preceding the date on which the additional Capital Contributions are made (an "Adjustment Date") and the denominator of which is equal to the sum of (i) the Deemed Value of the Partnership Interests of such class or series (computed as of the Business Day immediately preceding the Adjustment Date) plus (ii) the aggregate amount of cash and the Agreed Value of the Property contributed to the Partnership on such Adjustment Date in respect of such class or series of Partnership Interests. The Percentage Interest of each other Partner holding Partnership Interests of such class or series not making a full pro rata Capital Contribution shall be adjusted to equal a fraction, the numerator of which is equal to the sum of (i) the Deemed Partnership Interest Value of such Limited Partner in respect of such class or series (computed as of the Business Day immediately preceding the Adjustment Date) plus (ii) the amount of cash and the Agreed Value of the Property contributed by such Partner to the Partnership in respect of such class or series as of such Adjustment Date, and the denominator of which is equal to

the sum of (a) the Deemed Value of the Partnership Interests of such class (computed as of the Business Day immediately preceding the Adjustment Date), plus (b) the aggregate amount of cash and the Agreed Value of the Property contributed to the Partnership on such Adjustment Date in respect of such class or series. Notwithstanding the foregoing, solely for purposes of calculating a Partner's Percentage Interest pursuant to this Section 4.3.E, (i) in the case of cash Capital Contributions by the General Partner, such Capital Contributions will be deemed to equal the cash contributed by the General Partner plus, in the case of cash contributions funded by an offering of REIT Shares or other shares of capital stock of the General Partner, the offering costs attributable to the cash contributed to the Partnership, and (ii) in the case of the contribution of Properties (or any portion thereof) by the General Partner which were acquired by the General Partner in exchange for REIT Shares immediately prior to such contribution, the General Partner shall be issued a number of Partnership Units equal to the number of REIT Shares issued by the General Partner in exchange for such Properties, the Partnership Units held by the other Partners shall not be adjusted, and the Partners' Percentage Interests shall be adjusted accordingly. The General Partner shall promptly give each Partner written notice of its Percentage Interest, as adjusted.

F. Issuance of Performance Units to the PLPs. Performance Investors may be required pursuant to the terms of the Escrow Agreements to transfer all or a portion of their Performance Shares to the General Partner or the Partnership (as applicable). To the extent Performance Shares (i.e., REIT Shares) are transferred by Performance Investors to the General Partner pursuant to the Escrow Agreements, the number of Partnership Units held by the General Partner shall be automatically reduced by such amount on such date. To the extent Performance Shares (i.e., Partnership Units) are transferred by Performance Investors to the Partnership pursuant to the Escrow Agreements, the number of Partnership Units held by each such Performance Investor shall be automatically reduced by such amount on such date. To the extent the Partnership Units held by the General Partner or Performance Investors are reduced as set forth in the preceding two sentences, the Partnership shall immediately issue an equal number of Performance Units to the Persons listed on Schedule G-1 and Schedule G-2 to Exhibit G in accordance with the allocations set forth on Exhibit G. The adjustments in the number of

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Partnership Units held by the Performance Partners and the PLPs set forth above shall have no effect on each such Partners' Capital Account in the Partnership (except with respect to subsequent allocations of items of Partnership income, gain, loss, deduction, and credit made to such Partners and possibly with respect to the reissuance of a Performance Unit subsequent to its forfeiture by a PLP) and no PLP shall have an obligation to make a contribution to the capital of the Partnership in connection with the issuance of Performance Units.

#### Section 4.4. Stock Incentive Plan

If at any time or from time to time the General Partner sells or issues REIT Shares pursuant to any Stock Incentive Plan, the General Partner shall contribute any proceeds therefrom to the Partnership as an additional Capital Contribution and shall receive an amount of additional Partnership Units equal to the number of REIT Shares so sold or issued. The General Partner's Capital Account shall be increased by the amount of cash so contributed.

#### Section 4.5. No Preemptive Rights

Except to the extent expressly granted by the Partnership pursuant to another agreement, no Person shall have any preemptive, preferential or other similar right with respect to (i) additional Capital Contributions or loans to the Partnership or (ii) issuance or sale of any Partnership Units or other Partnership Interests.

#### Section 4.6. Other Contribution Provisions

In the event that any Partner is admitted to the Partnership and is given (or is treated as having received) a Capital Account in exchange for services rendered to the Partnership, such transaction shall be treated by the Partnership and the affected Partner as if the Partnership had compensated such Partner in cash, and the Partner had contributed such cash to the capital of the Partnership. In addition, with the consent of the General Partner, in its sole discretion, one or more Limited Partners may enter into contribution agreements with the Partnership which have the effect of providing a guarantee of certain obligations of the Partnership.

### ARTICLE 5. DISTRIBUTIONS

#### Section 5.1. Requirement and Characterization of Distributions

The General Partner shall cause the Partnership to distribute all, or such portion as the General Partner may in its discretion determine,

Available Cash generated by the Partnership (i) first, to the extent that the amount of cash distributed with respect to any Partnership Interests that are entitled to any preference in distribution for any prior distribution period was less than the required distribution for such outstanding Partnership Interests for such prior distribution period, and to the extent such deficiency has not been subsequently distributed pursuant to this Section 5.1 (a "Preferred Distribution Shortfall"), in accordance with the rights of such class of Partnership Interests (and within such class, pro rata in proportion to the respective Percentage Interests on the applicable

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record date) and to the Partners who are Partners on the applicable record date with respect to such distribution, (ii) second, with respect to any Partnership Interests that are entitled to any preference in distribution, in accordance with the rights of such class of Partnership Interests (and within such class, pro rata in proportion to the respective Percentage Interests on the applicable record date) and (iii) third, with respect to Partnership Interests that are not entitled to any preference in distribution, pro rata to each such class on a quarterly basis and in accordance with the terms of such class to Partners who are Partners of such class on the Partnership Record Date with respect to such distribution (and within each such class, pro rata in proportion with the respective Percentage Interests on such Partnership Record Date). Except as expressly provided for in Article 16 with respect to the Series A Preferred Units, Article 17 with respect to the Series B Preferred Units and in an agreement, if any, entered into in connection with the creation of a new class of Partnership Interests in accordance with Article 4, no Partnership Interest shall be entitled to a distribution in preference to any other Partnership Interest. The General Partner shall take such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with its qualification as a REIT, to cause the Partnership to distribute sufficient amounts to enable the General Partner, for so long as the General Partner has determined to qualify as a REIT, to pay stockholder dividends that will (a) satisfy the requirements for qualifying as a REIT under the Code and Regulations ("REIT Requirements") and (b) except to the extent otherwise determined by the General Partner, avoid any Federal income or excise tax liability of the General Partner, except to the extent that a distribution pursuant to clause (b) would prevent the Partnership from making a distribution to the holders of Series B Preferred Units in accordance with Section 17.3.

#### Section 5.2. Distributions in Kind

Except as expressly provided herein, no right is given to any Partner to demand and receive property other than cash. The General Partner may determine, in its sole and absolute discretion, to make a distribution in kind to the Partners of Partnership assets, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles 5, 6 and 10; provided, however, that, in such case, the General Partners shall distribute only cash to the Series B Limited Partners.

#### Section 5.3. Distributions Upon Liquidation

Proceeds from a Terminating Transaction shall be distributed to the Partners in accordance with Section 13.2.

#### Section 5.4. Distributions to Reflect Issuance of Additional Partnership Interests

In the event that the Partnership issues additional Partnership Interests (other than Performance Units, which shall receive distributions as set forth in Section 5.1) to the General Partner or any Additional Limited Partner pursuant to Section 4.3.C or 4.4, the General Partner shall make such revisions to this Article 5 as it determines are necessary to reflect the issuance of such additional Partnership Interests. In the absence of any agreement to the contrary, an Additional Limited Partner shall be entitled to the distributions set forth in Section 5.1 (without regard to this Section 5.4) with respect to the quarter during which the closing of its contribution to the Partnership occurs, multiplied by a fraction the numerator of which is the number of days

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from and after the date of such closing through the end of the applicable quarter, and the denominator of which is the total number of days in such quarter.

#### Section 5.5 Character of PLP Distributions

Distributions to each PLP pursuant to this Agreement shall be advances or drawings of money or property against such Partner's distributive

share of Net Income (or items thereof) as described in Treasury Regulation Section 1.731-1(a)(1)(ii).

ARTICLE 6.  
ALLOCATIONS

Section 6.1. Timing and Amount of Allocations of Net Income and Net Loss

Net Income and Net Loss of the Partnership shall be determined and allocated with respect to each fiscal year of the Partnership as of the end of each such year. Subject to the other provisions of this Article 6, an allocation to a Partner of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2. General Allocations

A. In General. Except as otherwise provided in this Article 6, Net Income and Net Loss allocable with respect to a class of Partnership Interests, shall be allocated to each of the Partners holding such class of Partnership Interests in accordance with their respective Percentage Interest of such class.

B.1. Net Income. Except as provided in Section 6.2.B.3, Net Income for any Partnership Year shall be allocated in the following manner and order of priority:

- (a) First, 100% to the General Partner in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the General Partner pursuant to Section 6.2.B.2(d) for all prior Partnership Years minus the cumulative Net Income allocated to the General Partner pursuant to this Section 6.2.B.1(a) for all prior Partnership Years;
- (b) Second, 100% to each Limited Partner in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Limited Partner pursuant to Section 6.2.B.2(c) for all prior Partnership Years minus the cumulative Net Income allocated to such Limited Partner pursuant to this Section 6.2.B.1(b) for all prior Partnership Years;
- (c) Third, 100% to the General Partner and any other Preferred Partners in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to such Partners pursuant to Section 6.2.B.2(b) for all prior Partnership Years minus the cumulative Net Income allocated to such Partners pursuant to this Section 6.2.B.1(c) for all prior Partnership Years;
- (d) Fourth, 100% to the General Partner and the Limited Partners in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Partner pursuant to Section 6.2.B.2(a) for all prior Partnership Years minus the cumulative Net Income allocated to each Partner pursuant to this Section 6.2.B.1(d) for all prior Partnership Years;
- (e) Fifth, 100% to the General Partner and any other Preferred Partners in an amount equal to the excess of (i) the sum of (x) in respect of the Series A Preferred Units, an amount equal to the cumulative Series A Priority Return to the last day of the current Partnership Year or to the date of redemption, to the extent Series A Preferred Units are redeemed during such year, and (y) in respect of the Series B Preferred Units, an amount equal to the cumulative Series B Priority Return to the last day of the current Partnership Year or to the date of redemption, to the extent Series B Preferred Units are redeemed during such year, over (ii) the cumulative Net Income allocated to the General Partner or such Preferred Partner, as applicable, pursuant to this Section 6.2.B.1(e) for all prior Partnership Years; and
- (f) Sixth, 100% to the General Partner and the Limited

Partners in accordance with their respective  
Percentage Interests in the Common Units.

To the extent the allocations of Net Income set forth above in any paragraph of this Section 6.2.B.1 are not sufficient to entirely satisfy the allocation set forth in such paragraph, such allocation shall be made in proration to the total amount that would have been allocated pursuant to such paragraph without regard to such shortfall.

B.2. Net Losses. Except as provided in Section 6.2.B.3, Net Losses for any Partnership Year shall be allocated in the following manner and order of priority:

- (a) First, 100% to the General Partner and the Limited Partners in accordance with their respective Percentage Interests in the Common Units (to the extent consistent with this Section 6.2.B.2(a)) until the Adjusted Capital Account (ignoring for this purpose any amounts a Partner is obligated to contribute to the capital of the Partnership or is deemed obligated to contribute pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2) and ignoring the Partner's Series A Preferred Capital and Series B Preferred Capital) of each such Partner is zero;
- (b) Second, 100% to the General Partner and any other Preferred Partners, pro rata to each such Partner's Adjusted Capital Account (ignoring for this purpose any amounts a Partner is obligated to contribute to the capital of the Partnership or is deemed obligated to contribute pursuant to

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Regulations Section 1.704-1(b)(2)(ii)(c)(2)), until the Adjusted Capital Account (as so modified) of each such Partner is zero;

- (c) Third, 100% to the Limited Partners to the extent of, and in proportion to, the positive balance (if any) in their Adjusted Capital Accounts; and
- (d) Fourth, 100% to the General Partner.

B.3. Terminating Capital Transactions.

- (a) If no Performance Units are outstanding at the time of a Terminating Capital Transaction, any Net Income attributable to such Terminating Capital Transaction shall first be allocated to the General Partner in an amount equal to the Offering Costs, to the extent the General Partner's Capital Account has not previously been adjusted to account for such amounts.
- (b) If Performance Units are outstanding at the time of a Terminating Capital Transaction
  - (1) any Net Income attributable to such Terminating Capital Transaction shall be allocated as follows: such Net Income shall first be tentatively allocated solely as an interim step in calculating final allocations pursuant to this Section 6.2.B.3(b)(1), among the Partners in accordance with Section 6.2.B.3(a), Section 6.2.A and Section 6.2.B.1. Then the amount so tentatively allocated to each Performance Partner, to the extent of each such Performance Partner's Excess Performance Capital, shall instead be allocated to the PLPs, pro rata to the number of Performance Units held by each PLP.
  - (2) any Net Loss attributable to such Terminating Capital Transaction shall be allocated as follows: such Net Loss shall first be tentatively allocated, solely as an interim step in calculating final allocations pursuant to this Section 6.2.B.3(b)(2), among the Partners in accordance with Section 6.2.A and Section 6.2.B.2. Then the amount so tentatively



allocated to the PLPs shall instead be allocated to the Performance Partners to the extent of the aggregate Excess Performance Capital of the Performance Partners. Any amounts so allocated away from the PLPs shall be done on a basis which is proportionate to each PLP's Performance Units. Any amounts so allocated to the Performance Partners shall be done on a basis which is proportionate to each Performance Partner's Excess Performance Capital.

C. Allocations to Reflect Issuance of Additional Partnership Interests. In the event that the Partnership issues additional Partnership Interests to the General Partner or any

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Additional Limited Partner pursuant to Section 4.3 or 4.4, the General Partner shall make such revisions to this Section 6.2 or to Section 12.2.B as it determines are necessary to reflect the terms of the issuance of such additional Partnership Interests, including making preferential allocations to certain classes of Partnership Interests, subject to the terms of the Series A Preferred Units and the Series B Preferred Units. In addition, for any quarter in which Performance Units were issued, Net Income and Net Loss relating to such units shall be allocated among (i) the PLPs who received such units and (ii) the Performance Partners who returned the corresponding Partnership Units to the Partnership, in accordance with any method selected by the General Partner which is permitted under Section 706 of the Code.

#### Section 6.3. Additional Allocation Provisions

Notwithstanding the foregoing provisions of this Article 6:

##### A. Regulatory Allocations.

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2, or any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any fiscal year, each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.3.A(i) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulation Section 1.704-2(f) which shall be controlling in the event of a conflict between such Regulation and this Section 6.3.A(i).

(ii) Partner Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), and notwithstanding the provisions of Section 6.2, or any other provision of this Article 6 (except Section 6.3.A(i)), if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any fiscal year, each Partner who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each General Partner and Limited Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.3.A(ii) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulation Section

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1.704-2(i) which shall be controlling in the event of a conflict between such Regulation and this Section 6.3.A(ii).

(iii) Nonrecourse Deductions and Partner Nonrecourse

Deductions. Any Nonrecourse Deductions for any fiscal year shall be specially allocated to the Partners in accordance with their respective Percentage Interest in Common Units. Any Partner Nonrecourse Deductions for any fiscal year shall be specially allocated to the Partner(s) who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable, in accordance with Regulations Sections 1.704-2(b)(4) and 1.704-2(i).

(iv) Qualified Income Offset. If any Partner unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to the Partner in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible provided that an allocation pursuant to this Section 6.3.A(iv) shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.3.A(iv) were not in the Agreement. It is intended that this Section 6.3.A(iv) qualify and be construed as a "qualified income offset" within the meaning of Regulations 1.704-1(b)(2)(ii)(d), which shall be controlling in the event of a conflict between such Regulations and this Section 6.3.A(iv).

(v) Gross Income Allocation. In the event any Partner has a deficit Capital Account at the end of any fiscal year which is in excess of the sum of (a) the amount (if any) such Partner is obligated to restore to the Partnership and (b) the amount such Partner is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 6.3.A(v) shall be made if and only to the extent that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.3.A(v) and Section 6.3.A(iv) were not in the Agreement.

(vi) Limitation on Allocation of Net Loss. To the extent any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Partner, such allocation of Net Loss shall be reallocated among the other Partners in accordance with their respective Percentage Interests in Common Units, subject to the limitations of this Section 6.3.A(vi).

(vii) Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or

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Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Partner in complete liquidation of his interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in accordance with their interests in the Partnership in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Partners to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) Curative Allocation. The allocations set forth in Sections 6.3.A(i), (ii), (iii), (iv), (v), (vi), and (vii) (the "Regulatory Allocations") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Sections 6.1 and 6.2, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Regulatory Allocations had not occurred.

B. For purposes of determining a Partner's proportional share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), each Partner's interest in Partnership profits shall be such Partner's Percentage Interest in Common Units.

## Section 6.4. Tax Allocations

A. In General. Except as otherwise provided in this Section 6.4, for income tax purposes each item of income, gain, loss and deduction (collectively, "Tax Items") shall be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3.

### B. Allocations Respecting Section 704(c) Revaluations.

Notwithstanding Section 6.4.A, Tax Items with respect to Partnership property that is contributed to the Partnership by a Partner shall be shared among the Partners for income tax purposes pursuant to Regulations promulgated under Section 704(c) of the Code, so as to take into account the variation, if any, between the basis of the property to the Partnership and its initial Gross Asset Value. With respect to Partnership property that is initially contributed to the Partnership upon its formation pursuant to Section 4.1, such variation between basis and initial Gross Asset Value shall be taken into account under the "traditional method" as described in Regulations Section 1.704-3(b). With respect to properties subsequently contributed to the Partnership, the Partnership shall account for such variation under any method approved under Section 704(c) of the Code and the applicable regulations as chosen by the General Partner. In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value (provided in Article 1), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the applicable

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regulations consistent with the requirements of Regulations Section 1.704-1(b)(2)(iv)(g) using any method approved under 704(c) of the Code and the applicable regulations as chosen by the General Partner.

## ARTICLE 7. MANAGEMENT AND OPERATIONS OF BUSINESS

### Section 7.1. Management

A. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the business and affairs of the Partnership. The General Partner may not be removed by the Limited Partners with or without cause, except with the consent of the General Partner. In addition to the powers now or hereafter granted a general partner of a limited partnership under the Act and other applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to the other provisions hereof including Section 7.3, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 and to effectuate the purposes set forth in Section 3.1, including, without limitation:

- (i) the making of any expenditures, the lending or borrowing of money (including, without limitation, making prepayments on loans and borrowing money to permit the Partnership to make distributions to its Partners in such amounts as will permit the General Partner (for so long as the General Partner has determined to qualify as a REIT) to avoid the payment of any Federal income tax (including, for this purpose, any excise tax pursuant to Section 4981 of the Code) and to make distributions to its stockholders sufficient to permit the General Partner to maintain REIT status), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by mortgage, deed of trust or other lien or encumbrance on all or any of the Partnership's assets) and the incurring of any obligations it deems necessary for the conduct of the activities of the Partnership;
- (ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;
- (iii) subject to the provisions of Section 7.3.D, the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any assets of the Partnership or the merger or other combination

- (iv) the mortgage, pledge, encumbrance or hypothecation of all or any assets of the Partnership, and the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms it sees fit, including, without limitation, the financing of the conduct or the operations of the General Partner or the Partnership, the lending of funds to other Persons (including, without limitation, the General Partner (if necessary to permit the financing or capitalization of a subsidiary of the General Partner or the Partnership) and any Subsidiaries of the Partnership) and the repayment of obligations of the Partnership, any of its Subsidiaries and any other Person in which it has an equity investment;
- (v) the negotiation, execution, and performance of any contracts, leases, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement;
- (vi) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement;
- (vii) the selection and dismissal of employees of the Partnership (including, without limitation, employees having titles such as "president," "vice president," "secretary" and "treasurer"), and agents, outside attorneys, accountants, consultants and contractors of the Partnership, the determination of their compensation and other terms of employment or hiring, including waivers of conflicts of interest and the payment of their expenses and compensation out of the Partnership's assets;
- (viii) the maintenance of such insurance for the benefit of the Partnership and the Partners as it deems necessary or appropriate;
- (ix) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to any Subsidiary and any other Person in which it has an equity investment from time to time); provided that, as long as the General Partner has determined to continue to qualify as a REIT, the Partnership may not engage in any such formation, acquisition or contribution that would cause the General Partner to fail to qualify as a REIT;
- (x) the control of any matters affecting the rights and obligations of the Partnership, including the conduct of litigation and the incurring of legal expense and the settlement of claims and litigation, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

- (xi) the undertaking of any action in connection with the Partnership's direct or indirect investment in any Person (including, without limitation, contributing or loaning Partnership funds to, incurring indebtedness on behalf of, or guarantying the obligations of any such Persons);
- (xii) subject to the other provisions in this Agreement, the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as it may adopt; provided that, such methods are otherwise consistent

with requirements of this Agreement;

- (xiii) the management, operation, leasing, landscaping, repair, alteration, demolition or improvement of any real property or improvements owned by the Partnership or any Subsidiary of the Partnership or any Person in which the Partnership has made a direct or indirect equity investment;
- (xiv) holding, managing, investing and reinvesting cash and other assets of the Partnership;
- (xv) the collection and receipt of revenues and income of the Partnership;
- (xvi) the exercise, directly or indirectly through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;
- (xvii) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;
- (xviii) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest, pursuant to contractual or other arrangements with such Person; and
- (xix) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases or legal instruments or other agreements in writing necessary or appropriate in the judgment of the General Partner for the accomplishment of any of the powers of the General Partner enumerated in this Agreement.

B. Each of the Limited Partners agrees that the General Partner is authorized to execute, deliver and perform the above-mentioned agreements and transactions on behalf of the Partnership without any further act, approval or vote of the partners, notwithstanding any other provisions of this Agreement (except as provided in Section 7.3), the Act or any applicable law, rule or regulation. The execution, delivery or performance by the General Partner or the

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Partnership of any agreement authorized or permitted under this Agreement shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement or of any duty stated or implied by law or equity.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to obtain and maintain (i) casualty, liability and other insurance (including, without limitation, earthquake insurance) on the properties of the Partnership and (ii) liability insurance for the Indemnities hereunder.

D. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain working capital and other reserves in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

E. In exercising its authority under this Agreement, the General Partner may, but other than as set forth in the following sentence and as expressly set forth in the agreements listed on Exhibit I hereto, shall be under no obligation to, take into account the tax consequences to any Partner (including the General Partner) of any action taken by the General Partner. The General Partner, on behalf of the Partnership, shall use commercially reasonable efforts to cooperate with the Limited Partners to minimize any taxes payable in connection with any sale, exchange or any other disposition of assets of the Partnership. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of an income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner pursuant to its authority under this Agreement.

F. Except as otherwise provided herein, to the extent the duties of the General Partner require expenditures of funds to be paid to third parties, the General Partner shall not have any obligations hereunder except to the extent that Partnership funds are reasonably available to it for the performance of such duties, and nothing herein contained shall be deemed to authorize or require the General Partner, in its capacity as such, to expend its individual funds for payment to third parties or to undertake any individual liability or obligation on behalf of the Partnership.

#### Section 7.2. Certificate of Limited Partnership

To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate and do all the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware and to maintain the Partnership's qualification to do business as a foreign limited partnership in each other state, the District of Columbia or other jurisdiction, in which the Partnership may elect to do business or own property. Subject to the terms of Section 8.5.A(iv), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Limited Partner. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and

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operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware, and any other state, or the District of Columbia or other jurisdiction, in which the Partnership may elect to do business or own property.

#### Section 7.3. Restrictions on General Partner's Authority

A. The General Partner may not take any action in contravention of this Agreement, including, without limitation:

- (i) take any action that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;
- (ii) possess Partnership property, or assign any rights in specific Partnership property, for other than a Partnership purpose except as otherwise provided in this Agreement;
- (iii) admit a Person as a Partner, except as otherwise provided in this Agreement (including with respect to the PLPs, who shall become Partners upon their receipt of Performance Units);
- (iv) perform any act that would subject a Limited Partner to liability as a general partner in any jurisdiction or any other liability except as provided herein or under the Act; or
- (v) enter into any contract, mortgage, loan or other agreement that prohibits or restricts, or has the effect of prohibiting or restricting, the ability of a Limited Partner to exercise its rights to a Redemption in full, except with the written consent of such Limited Partner.

B. The General Partner shall not, without the prior Consent of the Partners (in addition to any Consent of the Limited Partners required by any other provision hereof), undertake, on behalf of the Partnership, any of the following actions or enter into any transaction which would have the effect of such transactions:

- (i) except as provided in Section 7.3.D below, amend, modify or terminate this Agreement other than to reflect the admission, substitution, termination or withdrawal of partners pursuant to Article 12;
- (ii) make a general assignment for the benefit of creditors or appoint or acquiesce in the appointment of a custodian, receiver or trustee for all or any part of the assets of the Partnership;
- (iii) institute any proceeding for bankruptcy on behalf of the Partnership;

- (iv) confess a judgment against the Partnership; or

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- (v) enter into a merger (including a triangular merger), consolidation or other combination of the Partnership with or into another entity.

C. Except in the case of a Liquidating Event pursuant to Section 13.1 (other than Section 13.1.F), the General Partner shall not, without the prior Consent of the Limited Partners, undertake, on behalf of the Partnership, any actions or enter into any transaction which would have the effect of a dissolution of the Partnership, including a sale, exchange, transfer or other disposition of all or substantially all of the Partnership's assets in a single transaction or a series of related transactions.

D. Notwithstanding Sections 7.3.B and 7.3.C, but subject to Section 7.3.E, the General Partner shall have the power, without the Consent of the Partners, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

- (i) to add to the obligations of the General Partner or surrender any right or power granted to the General Partner or any Affiliate of the General Partner for the benefit of the Limited Partners;
- (ii) to reflect the issuance of additional Partnership Interests pursuant to Sections 4.3.C, 4.3.F and 4.4, or the admission, substitution, termination, reduction in Partnership Units or withdrawal of Partners in accordance with this Agreement (which may be effected through the replacement of Exhibit A with an amended Exhibit A);
- (iii) to set forth or amend the designations, rights, powers, duties, and preferences of the holders of any additional Partnership Interests issued pursuant to Article 4;
- (iv) to reflect a change that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity in, correct or supplement any provision, or make other changes with respect to matters arising under, this Agreement that will not be inconsistent with law or with the provisions of this Agreement;
- (v) to satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a Federal, state or local agency or contained in Federal, state or local law.
- (vi) to reflect such changes as are reasonably necessary for the General Partner to maintain its status as a REIT, including changes which may be necessitated due to a change in applicable law (or an authoritative interpretation thereof) or a ruling of the IRS; and
- (vii) to modify, as set forth in the definition of "Capital Account," the manner in which Capital Accounts are computed.

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The General Partner will provide notice to the Limited Partners when any action under this Section 7.3.D is taken.

E. Notwithstanding Sections 7.3.B, 7.3.C and 7.3.D, this Agreement shall not be amended, and no action may be taken by the General Partner, including in either case through merger or sale of assets of the Partnership or otherwise, without the Consent of each Common Limited Partner or Preferred Limited Partner adversely affected if such amendment or action would (i) convert a Limited Partner's interest in the Partnership into a general partner's interest (except as the result of the General Partner acquiring such interest), (ii) modify the limited liability of a Limited Partner, (iii) alter rights of the Partner to receive distributions pursuant to Article 5, Section 13.2.A(4) or Article 16 or the allocations specified in Article 6 (except as permitted pursuant to Section 4.3 and Section 7.3.D), (iv) alter or modify the rights to a Redemption or the REIT Shares Amount as set forth in Section 8.6, and related definitions hereof, (v) alter the Redemption or exchange rights as

set forth in Sections 17.5 and 17.8 hereof, respectively, or (vi) amend this Section 7.3.E. Further, no amendment may alter the restrictions on the General Partner's authority set forth elsewhere in this Section 7.3 without the Consent specified in such section. In addition, (a) Section 11.2 of this Agreement shall not be amended, and no action in contravention of Section 11.2 shall be taken, including in either case through merger or sale of assets of the Partnership or otherwise, without the Consent of the Limited Partners and (b) this Agreement shall not be amended, and no action shall be taken, including in either case through merger or sale of assets of the Partnership or otherwise, which would adversely affect the rights of the Persons set forth in Exhibit G to receive Performance Units as described herein.

F. Other than incident to a transaction pursuant to Sections 11.2.B or 11.2.C, the General Partner shall not undertake to dispose of any Partnership Property specified in the agreements listed in Exhibit H in a taxable sale or taxable exchange prior to the dates specified in such agreements without the prior consent of each Limited Partner which contributed all or any portion of an interest in such Property to the Partnership, as set forth in such agreements.

#### Section 7.4. Reimbursement of the General Partner

A. Except as provided in this Section 7.4 and elsewhere in this Agreement (including the provisions of Articles 5 and 6 regarding distributions, payments and allocations to which it may be entitled), the General Partner shall not be compensated for its services as general partner of the Partnership.

B. Subject to Section 15.11, the General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine in its sole and absolute discretion, for all expenses it incurs relating to the ownership of interests in and operation of, or for the benefit of, the Partnership. The Limited Partners acknowledge that the General Partner's sole business is the ownership of interests in and operation of the Partnership and that such expenses are incurred for the benefit of the Partnership; provided that, the General Partner shall not be reimbursed for expenses it incurs relating to the organization of the Partnership and the General Partner, or the initial public offering or subsequent offerings of REIT Shares, other shares of capital stock or Funding Debt by the General Partner, but shall be reimbursed

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expenses it incurs with respect to any other issuance of additional Partnership Interests pursuant to the provisions hereof. Such reimbursements shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

C. If and to the extent any reimbursements to the General Partner pursuant to this Section 7.4 constitute gross income of the General Partner (as opposed to the repayment of advances made by the General Partner on behalf of the Partnership), such amounts shall constitute guaranteed payments within the meaning of Section 707(c) of the Code, shall be treated consistently therewith by the Partnership and all Partners, and shall not be treated as distributions for purposes of computing the Partners' Capital Accounts.

#### Section 7.5. Outside Activities of the General Partner

A. Except in connection with a transaction authorized in Section 11.2, without the Consent of the Limited Partners, the General Partner shall not, directly or indirectly, enter into or conduct any business, other than in connection with the ownership, acquisition and disposition of Partnership Interests as a General Partner and the management of the business of the Partnership, its operation as a public reporting company with a class (or classes) of securities registered under the Exchange Act, its operation as a REIT and such activities as are incidental to the same. Without the Consent of the Limited Partners, the General Partner shall not, directly or indirectly, participate in or otherwise acquire any interest in any real or personal property, except its General Partner Interest, its interest in any Subsidiary Partnership(s) (held directly or indirectly through a Qualified REIT Subsidiary) that the General Partner holds in order to maintain such Subsidiary Partnership's status as a partnership, and such bank accounts, similar instruments or other short-term investments as it deems necessary to carry out its responsibilities contemplated under this Agreement and the Charter. In the event the General Partner desires to contribute cash to any Subsidiary Partnership to acquire or maintain an interest of 1% or less in the capital of such partnership, the General Partner may acquire such cash from the Partnership in exchange for a reduction in the General Partner's Units, in an amount equal to the amount of such cash divided by the Fair Market Value of a REIT Share on the day such cash is received by the General Partner. Notwithstanding the foregoing, the General Partner may acquire Properties in exchange for REIT Shares, to the extent such Properties are immediately contributed by the General Partner to the Partnership, pursuant to the terms described in Section 4.3.E. Any Limited Partner Interests acquired by the General Partner, whether pursuant



to exercise by a Limited Partner of its right of Redemption, or otherwise, shall be automatically converted into a General Partner Interest comprised of an identical number of Partnership Units with the same rights, priorities and preferences as the class or series so acquired. If, at any time, the General Partner acquires material assets (other than on behalf of the Partnership) the definition of "REIT Shares Amount" shall be adjusted, as reasonably agreed to by the General Partner and the other Limited Partners, to reflect the relative Fair Market Value of a share of capital stock of the General Partner relative to the Deemed Partnership Interest Value of the related Partnership Unit. The General Partner's General Partner Interest in the Partnership, its minority interest in any Subsidiary Partnership(s) (held directly or indirectly through a Qualified REIT Subsidiary) that the General Partner holds in order to maintain such Subsidiary Partnership's status as a partnership, and interests in such short-term liquid investments, bank accounts or similar instruments as the General Partner deems necessary to carry out its responsibilities contemplated

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under this Agreement and the Charter are interests which the General Partner is permitted to acquire and hold for purposes of this Section 7.5.A.

B. In the event the General Partner exercises its rights under the Charter to purchase REIT Shares or Preferred Shares, then the General Partner shall cause the Partnership to redeem from it a number of Partnership Units of the appropriate class as determined based on, in the case of REIT Shares, the REIT Shares Amount equal to the number of REIT Shares so purchased, or in the case of Preferred Shares an equal number of Preferred Units which correspond in ranking to the Preferred Shares so purchased, in each case on the same terms that the General Partner purchased such REIT Shares or Preferred Shares (as applicable).

#### Section 7.6. Contracts with Affiliates

A. Except as expressly permitted by this Agreement, the Partnership shall not, directly or indirectly, sell, transfer or convey any property to, or purchase any property from, or borrow funds from, or lend funds to, any Partner or any Affiliate of the Partnership that is not also a Subsidiary of the Partnership, except pursuant to transactions that are on terms that are fair and reasonable and no less favorable to the Partnership than would be obtained from an unaffiliated third party.

B. The General Partner, in its sole and absolute discretion and without the approval of the Limited Partners, may propose and adopt on behalf of the Partnership employee benefit plans funded by the Partnership for the benefit of employees of the General Partner, the Partnership, Subsidiaries of the Partnership or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Partnership, the General Partner, or any of the Partnership's Subsidiaries. The General Partner also is expressly authorized to cause the Partnership to issue to it Partnership Units corresponding to REIT Shares issued by the General Partner pursuant to its Stock Incentive Plan or any similar or successor plan and to repurchase such Partnership Units from the General Partner to the extent necessary to permit the General Partner to repurchase such REIT Shares in accordance with such plan.

#### Section 7.7. Indemnification

A. The Partnership shall indemnify an Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership as set forth in this Agreement in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that: (i) the act or omission of the Indemnitee was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) the Indemnitee actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the Indemnitee had reasonable cause to believe that the act or omission was unlawful. Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken

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subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. The

termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7.A. The termination of any proceeding by conviction or upon a plea of nolo contendere or its equivalent, or any entry of an order of probation prior to judgment, creates a rebuttable presumption that the Indemnitee acted in a manner contrary to that specified in this Section 7.7.A. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, and any insurance proceeds from the liability policy covering the General Partner and any Indemnitee, and neither the General Partner nor any Limited Partner shall have any obligation to contribute to the capital of the Partnership or otherwise provide funds to enable the Partnership to fund its obligations under this Section 7.7.

B. Reasonable expenses incurred by an Indemnitee who is a party to a proceeding may be paid or reimbursed by the Partnership in advance of the final disposition of the proceeding upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in Section 7.7.A has been met and (ii) a written undertaking by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

C. The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity.

D. The Partnership may purchase and maintain insurance, on behalf of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.7; and actions taken or omitted by the Indemnitee with respect to an employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Partnership.

F. In no event may an Indemnitee subject the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

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G. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Partnership's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

I. If and to the extent any reimbursements to the General Partner pursuant to this Section 7.7 constitute gross income of the General Partner (as opposed to the repayment of advances made by the General Partner on behalf of the Partnership) such amounts shall constitute guaranteed payments within the meaning of Section 707(c) of the Code, shall be treated consistently therewith by the Partnership and all Partners, and shall not be treated as distributions for purposes of computing the Partners' Capital Accounts.

J. Any indemnification hereunder is subject to, and limited by, the provisions of Section 17-108 of the Act.

K. In the event the Partnership is made a party to any litigation or otherwise incurs any loss or expense as a result of or in

connection with any Partner's personal obligations or liabilities unrelated to Partnership business, such Partner shall indemnify and reimburse the Partnership for all such loss and expense incurred, including legal fees, and the Partnership Interest of such Partner may be charged therefor. The liability of a Partner under this Section 7.7.K shall not be limited to such Partner's Partnership Interest, but shall be enforceable against such Partner personally.

#### Section 7.8. Liability of the General Partner

A. Notwithstanding anything to the contrary set forth in this Agreement, none of the General Partner and any of its officers, directors, agents and employees shall be liable or accountable in damages or otherwise to the Partnership, any Partners or any Assignees, or their successors or assigns, for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or any act or omission if the General Partner acted in good faith.

B. The Limited Partners expressly acknowledge that the General Partner is acting for the benefit of the Partnership, the Limited Partners and the General Partner's stockholders collectively, that the General Partner is under no obligation to give priority to the separate interests of the Limited Partners or the General Partner's stockholders (including, without limitation, the tax consequences to Limited Partners or Assignees or to stockholders) in deciding whether to cause the Partnership to take (or decline to take) any actions and that the

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General Partner shall not be liable to the Partnership or to any Limited Partner for monetary damages for losses sustained, liabilities incurred, or benefits not derived by Limited Partners in connection with such decisions; provided, that the General Partner has acted in good faith.

C. Subject to its obligations and duties as General Partner set forth in Section 7.1.A, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents. The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by it in good faith. In no event shall the liability of the General Partner and its officers, directors, agents and employees, to the Partnership and the Limited Partners under this Section 7.8 be greater than the Partnership Interest of the General Partner.

D. Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the General Partner and any of its officers, directors, agents and employees to the Partnership and the Limited Partners under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

#### Section 7.9. Other Matters Concerning the General Partner

A. The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters which such General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers and a duly appointed attorney or attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform all and every act and duty which is permitted or required to be done by the General Partner hereunder.

D. Notwithstanding any other provisions of this Agreement or any non-mandatory provision of the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order to protect the ability of the General Partner, for so long as the General Partner has determined to qualify as a REIT, to (i) continue to qualify as a REIT or (ii)

except with respect to the distribution of Available Cash to the Series B Limited Partners in accordance with Section 17.3

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avoid the General Partner incurring any taxes under Section 857 or Section 4981 of the Code, is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

E. So long as the Company holds any interest in the Partnership (as either a General Partner or Limited Partner), the Company shall have "management rights" (as such term is defined in the Plan Asset Regulation) with respect to the Partnership and its Properties to the extent necessary to qualify the Company as a "venture capital operating company" (as such term is defined in the Plan Asset Regulation).

#### Section 7.10. Title to Partnership Assets

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partners, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be deemed held by the General Partner or such nominee or Affiliate for the use and benefit of the Partnership in accordance with the provisions of this Agreement; provided, however, that the General Partner shall use its best efforts to cause beneficial and record title to such assets to be vested in the Partnership as soon as reasonably practicable. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

#### Section 7.11. Reliance by Third Parties

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies which may be available against such Person to contest, negate or disaffirm any action of the General Partner in connection with any such dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

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### ARTICLE 8. RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

#### Section 8.1. Limitation of Liability

The Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement or under the Act.

#### Section 8.2. Management of Business

No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, employee, general partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any

such business by the General Partner, any of its Affiliates or any officer, director, employee, general partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

#### Section 8.3. Outside Activities of Limited Partners

Subject to any agreements entered into by a Limited Partner or its Affiliates with the General Partner, Partnership or a Subsidiary, any Limited Partner and any officer, director, employee, agent, trustee, Affiliate or stockholder of any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. Subject to such agreements, none of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the partnership relationship established hereby in any business ventures of any other Person, other than the Limited Partners benefiting from the business conducted by the General Partner, and such other Person shall have no obligation pursuant to this Agreement to offer any interest in any such business ventures to the Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character which, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such other Person.

#### Section 8.4. Return of Capital

Except pursuant to the rights of Redemption set forth in Section 8.6 and the Redemption and exchange rights set forth in Sections 17.5 and 17.8, no Limited Partner shall be entitled to the withdrawal or return of his or her Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except as expressly set forth herein with respect to the rights, priorities and preferences of the Preferred Limited Partners holding any series of Preferred Units, no Limited Partner or

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Assignee shall have priority over any other Limited Partner or Assignee either as to the return of Capital Contributions, or as otherwise expressly provided in this Agreement, as to profits, losses, distributions or credits.

#### Section 8.5. Rights of Limited Partners Relating to the Partnership

A. In addition to other rights provided by this Agreement or by the Act, and except as limited by Section 8.5.C, each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership, upon written demand with a statement of the purpose of such demand and at the Partnership's expense:

- (i) to obtain a copy of the most recent annual and quarterly reports filed with the Securities and Exchange Commission by the General Partner pursuant to the Exchange Act, and each communication sent to the stockholders of the General Partner;
- (ii) to obtain a copy of the Partnership's Federal, state and local income tax returns for each Partnership Year;
- (iii) to obtain a current list of the name and last known business, residence or mailing address of each Partner;
- (iv) to obtain a copy of this Agreement and the Certificate and all amendments thereto, together with executed copies of all powers of attorney pursuant to which this Agreement, the Certificate and all amendments thereto have been executed; and
- (v) to obtain true and full information regarding the amount of cash and a description and statement of any other property or services contributed by each Partner and which each Partner has agreed to contribute in the future, and the date on which each became a Partner.

B. The Partnership shall notify each Common Limited Partner in writing of any adjustment made in the calculation of the REIT Shares Amount within ten (10) Business Days of the date such change becomes effective.

C. Notwithstanding any other provision of this Section 8.5, the General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner determines in its sole and absolute discretion to be reasonable, any information that (i) the General Partner believes to be in the nature of trade secrets or other information the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or (ii) the Partnership or the General Partner is required by law or by agreements with unaffiliated third parties to keep confidential.

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#### Section 8.6. Common Limited Partner Redemption Rights

A. On or after the date one year after the Effective Date, or on or after such later date as expressly provided in an agreement entered into between the Partnership and any Common Limited Partner, each Common Limited Partner shall have the right (subject to the terms and conditions set forth herein and in any other such agreement, as applicable) to require the Partnership to redeem all or a portion of the Common Partnership Units held by such Common Limited Partner (such Partnership Units being hereafter referred to as "Tendered Units") in exchange for the Cash Amount (a "Redemption"); provided, that the terms of such Common Partnership Units do not provide that such Common Partnership Units are not entitled to a right of Redemption. Unless otherwise expressly provided in this Agreement or a separate agreement entered into between the Partnership and the holders of such Partnership Units, all Common Partnership Units shall be entitled to a right of Redemption hereunder. Notwithstanding the foregoing, a PLP shall not have the right to require the Partnership to redeem, and the Partnership may not redeem, (i) a number of Performance Units held by such PLP in excess of the Performance Amount; or (ii) any Performance Units prior to the second anniversary of their issuance. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the General Partner by the Common Limited Partner who is exercising the right (the "Tendering Partner"). The Cash Amount shall be delivered as a certified check payable to the Tendering Partner within ten (10) days of the Specified Redemption Date in accordance with the instructions set forth in the Notice of Redemption.

B. Notwithstanding Section 8.6.A above, if a Common Limited Partner has delivered to the General Partner a Notice of Redemption then the General Partner may, in its sole and absolute discretion, (subject to the limitations on ownership and transfer of REIT Shares set forth in Article IV.E of the Charter) elect to acquire some or all of the Tendered Units from the Tendering Partner in exchange for the REIT Shares Amount (as of the Specified Redemption Date) and, if the General Partner so elects, the Tendering Partner shall sell the Tendered Units to the General Partner in exchange for the REIT Shares Amount. In such event, the Tendering Partner shall have no right to cause the Partnership to redeem such Tendered Units. The General Partner shall promptly give such Tendering Partner written notice of its election, and the Tendering Partner may elect to withdraw its redemption request at any time prior to the acceptance of the Cash Amount or REIT Shares Amount by such Tendering Partner.

C. The REIT Shares Amount, if applicable, shall be delivered as duly authorized, validly issued, fully paid and nonassessable REIT Shares and, if applicable, free of any pledge, lien, encumbrance or restriction, other than those provided in the Charter, the Bylaws of the General Partner, the Securities Act, relevant state securities or blue sky laws and any applicable registration rights agreement with respect to such REIT Shares entered into by the Tendering Partner. The REIT Shares Amount shall be registered in the name and otherwise delivered as set forth in the Notice of Redemption. Notwithstanding any delay in such delivery (but subject to Section 8.6.E below), the Tendering Partner shall be deemed the owner of such REIT Shares for all purposes, including without limitation, rights to vote or consent, and receive dividends, as of the Specified Redemption Date.

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D. Each Common Limited Partner covenants and agrees with the General Partner that all Tendered Units shall be delivered to the General Partner free and clear of all liens, claims and encumbrances whatsoever and should any such liens, claims and/or encumbrances exist or arise with respect to such Tendered Units, the General Partner shall be under no obligation to acquire the same. Each Common Limited Partner further agrees that, in the event any state or local property transfer tax is payable as a result of the transfer of its Tendered Units to the General Partner (or its designee), such Common Limited Partner shall assume and pay such transfer tax.

E. Notwithstanding the provisions of Sections 8.6.A, 8.6.B, 8.6.C or any other provision of this Agreement, a Common Limited Partner (i)

shall not be entitled to effect a Redemption for cash or an exchange for REIT Shares to the extent the ownership or right to acquire REIT Shares pursuant to such exchange by such Partner on the Specified Redemption Date would cause such Partner or any other Person, or, in the opinion of counsel selected by the General Partner, may cause such Partner or any other Person, to violate the restrictions on ownership and transfer of REIT Shares set forth in Article IV.E of the Charter and (ii) shall have no rights under this Agreement to acquire REIT Shares which would otherwise be prohibited under the Charter. To the extent any attempted Redemption or exchange for REIT Shares would be in violation of this Section 8.6.E, it shall be null and void ab initio and such Common Limited Partner shall not acquire any rights or economic interest in the cash otherwise payable upon such redemption or the REIT Shares otherwise issuable upon such exchange.

F. Notwithstanding anything herein to the contrary (but subject to Section 8.6.E above), with respect to any Redemption or exchange for REIT Shares pursuant to this Section 8.6:

- (i) All Common Partnership Units acquired by the General Partner pursuant thereto shall automatically, and without further action required, be converted into and deemed to be General Partner Interests comprised of the same number and class of Common Partnership Units.
- (ii) Without the consent of the General Partner, each Common Limited Partner may not effect a Redemption for less than 10,000 Partnership Units or, if the Common Limited Partner holds less than 10,000 Partnership Units, all of the Common Partnership Units held by such Common Limited Partner.
- (iii) Without the consent of the General Partner, each Common Limited Partner may not effect a Redemption during the period after the Partnership Record Date with respect to a distribution and before the record date established by the General Partner for a distribution to its common stockholders of some or all of its portion of such distribution.
- (iv) The consummation of any Redemption or exchange for REIT Shares shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

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- (v) Each Tendering Partner shall continue to own all Common Partnership Units subject to any Redemption or exchange for REIT Shares, and be treated as a Common Limited Partner with respect to such Common Partnership Units for all purposes of this Agreement, until such Common Partnership Units are transferred to the General Partner and paid for or exchanged as of the Specified Redemption Date. Until a Specified Redemption Date, the Tendering Partner shall have no rights as a stockholder of the General Partner with respect to such Tendering Partner's Common Partnership Units.

G. In the event that the Partnership issues additional Partnership Interests to any Additional Limited Partner pursuant to Section 4.3.C, the General Partner shall make such revisions to this Section 8.6 as it determines are necessary to reflect the issuance of such additional Partnership Interests.

#### ARTICLE 9.

##### BOOKS, RECORDS, ACCOUNTING AND REPORTS

###### Section 9.1. Records and Accounting

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 9.3. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics or any other information storage device; provided, that the records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in

accordance with generally accepted accounting principles.

#### Section 9.2. Fiscal Year

The fiscal year of the Partnership shall be the calendar year.

#### Section 9.3. Reports

A. As soon as practicable, but in no event later than one hundred and five (105) days after the close of each Partnership Year, or such earlier date as they are filed with the Securities and Exchange Commission, the General Partner shall cause to be mailed to each Limited Partner as of the close of the Partnership Year, an annual report containing financial statements of the Partnership, or of the General Partner if such statements are prepared solely on a consolidated basis with the General Partner, for such Partnership Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the General Partner.

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B. As soon as practicable, but in no event later than forty-five (45) days after the close of each calendar quarter (except the last calendar quarter of each year), or such earlier date as they are filed with the Securities and Exchange Commission, the General Partner shall cause to be mailed to each Limited Partner as of the last day of the calendar quarter, a report containing unaudited financial statements of the Partnership, or of the General Partner, if such statements are prepared solely on a consolidated basis with the General Partner, presented in accordance with the applicable law or regulation, or as the General Partner determines to be appropriate.

#### Section 9.4. Nondisclosure of Certain Information

Notwithstanding the provisions of Sections 9.1 and 9.3, the General Partner may keep confidential from the Limited Partners any information that the General Partner believes to be in the nature of trade secrets or other information the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or which the Partnership is required by law or by agreements with unaffiliated third parties to keep confidential.

### ARTICLE 10. TAX MATTERS

#### Section 10.1. Preparation of Tax Returns

The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gains, deductions, losses and other items required of the Partnership for Federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by Limited Partners for Federal and state income tax reporting purposes. Each Limited Partner shall promptly provide the General Partner with such information relating to any Contributed Property contributed by such Limited Partner to the Partnership.

#### Section 10.2. Tax Elections

Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available election pursuant to the Code, including the election under Section 754 of the Code. The General Partner shall have the right to seek to revoke any such election (including without limitation, any election under Section 754 of the Code) upon the General Partner's determination in its sole and absolute discretion that such revocation is the best interests of the Partners.

#### Section 10.3. Tax Matters Partner

A. The General Partner shall be the "tax matters partner" of the Partnership for Federal income tax purposes. Pursuant to Section 6223(c) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Partnership, the tax matters partner shall furnish the IRS with the name, address and profit interest of each of the Limited Partners and Assignees; provided, however, that such information is provided to the Partnership by the Limited Partners and Assignees.

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B. The tax matters partner is authorized, but not required:

(i) to enter into any settlement with the IRS with



respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (a) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner or (b) who is a "notice partner" (as defined in Section 6231 of the Code) or a member of a "notice group" (as defined in Section 6223(b)(2) of the Code);

- (ii) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "final adjustment") is mailed to the tax matters partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court or the United States Claims Court, or the filing of a complaint for refund with the District Court of the United States for the district in which the Partnership's principal place of business is located;
- (iii) to intervene in any action brought by any other Partner for judicial review of a final adjustment;
- (iv) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;
- (v) to enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Partner for tax purposes, or an item affected by such item; and
- (vi) to take any other action on behalf of the Partners of the Partnership in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.7 shall be fully applicable to the tax matters partner in its capacity as such.

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C. The tax matters partner shall receive no compensation for its services. All third party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Partnership. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable.

#### Section 10.4. Organizational Expenses

The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a sixty (60) month period as provided in Section 709 of the Code.

#### Section 10.5. Withholding

Each Limited Partner hereby authorizes the Partnership to withhold from or pay on behalf of or with respect to such Limited Partner any amount of Federal, state, local, or foreign taxes that the General Partner determines that the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Sections 1441, 1442, 1445 or 1446 of the

Code. Any amount paid on behalf of or with respect to a Limited Partner shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within fifteen (15) days after notice from the General Partner that such payment must be made unless (i) the Partnership withholds such payment from a distribution which would otherwise be made to the Limited Partner or (ii) the General Partner determines, in its sole and absolute discretion, that such payment may be satisfied out of the available funds of the Partnership which would, but for such payment, be distributed to the Limited Partner. Any amounts withheld pursuant to the foregoing clauses (i) or (ii) shall be treated as having been distributed to such Limited Partner. Each Limited Partner hereby unconditionally and irrevocably grants to the Partnership a security interest in such Limited Partner's Partnership Interest to secure such Limited Partner's obligation to pay to the Partnership any amounts required to be paid pursuant to this Section 10.5. In the event that a Limited Partner fails to pay any amounts owed to the Partnership pursuant to this Section 10.5 when due, the General Partner may, in its sole and absolute discretion, elect to make the payment to the Partnership on behalf of such defaulting Limited Partner, and in such event shall be deemed to have loaned such amount to such defaulting Limited Partner and shall succeed to all rights and remedies of the Partnership as against such defaulting Limited Partner (including, without limitation, the right to receive distributions and the holding of a security interest in such Limited Partner's Partnership Interest). Any amounts payable by a Limited Partner hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal, plus two percentage points (but not higher than the maximum lawful rate) from the date such amount is due (i.e., 15 days after demand) until such amount is paid in full. Each Limited Partner shall take such actions as the Partnership or the General Partner shall request in order to perfect or enforce the security interest created hereunder.

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ARTICLE 11.  
TRANSFERS AND WITHDRAWALS

Section 11.1. Transfer

A. The term "transfer," when used in this Article 11 with respect to a Partnership Interest, shall be deemed to refer to a transaction by which the General Partner purports to assign its General Partner Interest to another Person or by which a Limited Partner purports to assign its Limited Partnership Interest to another Person, and includes a sale, assignment, gift (outright or in trust), pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise. Except to the extent otherwise specified, the term "transfer" when used in this Article 11 does not include any Redemption or exchange for REIT Shares pursuant to Section 8.6 or any exchange for Series B Preferred Shares pursuant to Section 17.8. No part of the interest of a Limited Partner shall be subject to the claims of any creditor, any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered, except as may be specifically provided for in this Agreement.

B. No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article 11 shall be null and void ab initio unless otherwise consented by the General Partner in its sole and absolute discretion.

Section 11.2. Transfer of General Partner's Partnership  
Interest

A. The General Partner shall not withdraw from the Partnership and shall not transfer all or any portion of its interest in the Partnership (whether by sale, statutory merger, consolidation, liquidation or otherwise) without the Consent of the Limited Partners which may be given or withheld by each such Limited Partner in its sole and absolute discretion, and only upon the admission of a successor General Partner pursuant to Section 12.1; provided, however, that, subject to Sections 11.2.B, 11.2.C, 11.2.D and 11.2.E, the General Partner may withdraw from the Partnership and transfer all of its interest upon the merger, consolidation or sale of substantially all of the assets of the General Partner without the consent of any Limited Partners. Upon any transfer of a Partnership Interest in accordance with the provisions of this Section 11.2, the transferee shall become a substitute General Partner for all purposes herein, and shall be vested with the powers and rights of the transferor General Partner, and shall be liable for all obligations and responsible for all duties of the General Partner, once such transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest so acquired. It is a condition to any transfer otherwise permitted hereunder that the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor General Partner under this Agreement with respect to such transferred Partnership Interest, and no such transfer (other than

pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor General Partner are assumed by a successor corporation by operation of law) shall relieve the transferor General Partner of its

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obligations under this Agreement without the Consent of the Partners, in their reasonable discretion. In the event the General Partner withdraws from the Partnership, or otherwise dissolves or terminates, or upon the Incapacity of the General Partner, all of the remaining Partners may elect to continue the Partnership business by selecting a substitute General Partner in accordance with the Act.

B. Neither the General Partner nor the Partnership may engage in any merger, consolidation or other combination with or into another person, or effect any reclassification, recapitalization or change of its outstanding equity interests, and the General Partner may not sell all or substantially all of its assets (each a "Termination Transaction") unless in connection with the Termination Transaction all holders of Partnership Units either will receive, or will have the right to elect to receive, for each Partnership Unit an amount of cash, securities or other property equal to the product of the REIT Share Amount and the greatest amount of cash, securities or other property paid to the holder of one REIT Share in consideration of one REIT Share pursuant to the Termination Transaction. If, in connection with the Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding REIT Shares, each holder of Partnership Units will receive, or will have the right to elect to receive, the greatest amount of cash, securities or other property which such holder would have received had it exercised its rights to Redemption (as set forth in Section 8.6) and received REIT Shares in exchange for its Partnership Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer. The PLPs shall have the benefit of the foregoing provisions with respect to all of their Performance Units, notwithstanding the limitation set forth in Section 8.6.A on a PLPs ability to exercise its rights to a Redemption.

C. A Termination Transaction may also occur if the following conditions are met: (i) substantially all of the assets directly or indirectly owned by the surviving entity are held directly or indirectly by the Partnership or another limited partnership or limited liability company which is the survivor of a merger, consolidation or combination of assets with the Partnership (in each case, the "Surviving Partnership"); (ii) the holders of Partnership Units, including the holders of Performance Units issued or to be issued, own a percentage interest of the Surviving Partnership based on the relative fair market value of the net assets of the Partnership and the other net assets of the Surviving Partnership immediately prior to the consummation of such transaction; (iii) the rights, preferences and privileges of such holders in the Surviving Partnership, including the holders of Performance Units issued or to be issued, are at least as favorable as those in effect immediately prior to the consummation of such transaction and as those applicable to any other limited partners or non-managing members of the Surviving Partnership (except, as to Performance Units, for such differences with Partnership Units regarding liquidation, Redemption and exchange as are set forth herein); and (iv) such rights of the Limited Partners, including the holders of Performance Units issued or to be issued, include at least one of the following: (a) the right to redeem their interests in the Surviving Partnership for the consideration available to such persons pursuant to Section 11.2.B; or (b) the right to redeem their Partnership Units for cash on terms equivalent to those in effect with respect to their Partnership Units immediately prior to the consummation of such transaction, or, if the ultimate controlling person of the Surviving Partnership has publicly traded common equity securities,

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such common equity securities, with an exchange ratio based on the determination of relative fair market value of such securities and the REIT Shares.

D. In connection with any transaction permitted by Section 11.2.B or 11.2.C the determination of relative fair market values and rights, preferences and privileges of the Limited Partners shall be reasonably determined by the General Partner's Board of Directors as of the time of the Termination Transaction and, to the extent applicable, the values shall be no less favorable to the holders of Partnership Units than the relative values reflected in the terms of the Termination Transaction.

E. In the event of a Termination Transaction, the arrangements with respect to Performance Units and Performance Shares will be equitably adjusted to reflect the terms of the transaction, including, to the extent that the REIT Shares are exchanged for consideration other than publicly traded common equity, the transfer or release of remaining Performance Shares pursuant

to the Escrow Agreements, and resulting issuance of any Performance Units as set forth in Section 4.3.F.

### Section 11.3. Limited Partners' Rights to Transfer

A. Any Limited Partner may, at any time without the consent of the General Partner, (i) transfer all or any portion of its Partnership Interest to the General Partner, (ii) transfer all or any portion of its Partnership Interest to an Affiliate controlled thereby or to an Immediate Family member, subject to the provisions of Section 11.6, (iii) transfer all or any portion of its Partnership Interest to a trust for the benefit of a charitable beneficiary or to a charitable foundation, subject to the provisions of Section 11.6 and (iv) subject to the provisions of Section 11.6, (a) pledge (a "Pledge") all or any portion of its Partnership Interest to a lending institution, which is not an Affiliate of such Limited Partner, as collateral or security for a bona fide loan or other extension of credit, or (b) transfer such pledged Partnership Interest to such lending institution in connection with the exercise of remedies under such loan or extension of credit. In addition, each Limited Partner or Assignee (resulting from a transfer made pursuant to clauses (i)-(iv) of the preceding sentence) shall have the right to transfer all or any portion of its Partnership Interest, subject to the provisions of Section 11.6 and the satisfaction of each of the following conditions:

- (a) General Partner Right of First Refusal. The transferring Partner shall give written notice of the proposed transfer to the General Partner, which notice shall state (x) the identity of the proposed transferee and (y) the amount and type of consideration proposed to be received for the transferred Partnership Units. The General Partner shall have ten (10) days upon which to give the transferring Partner notice of its election to acquire the Partnership Units on the proposed terms. If it so elects, it shall purchase the Partnership Units on such terms within ten (10) days after giving notice of such election. If it does not so elect, the transferring Partner may transfer such Partnership Units to a third party, on economic terms no more favorable to the transferee than the proposed terms, subject to the other conditions of this Section 11.3.

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- (b) Qualified Transferee. Any transfer of a Partnership Interest shall be made only to Qualified Transferees.

It is a condition to any transfer otherwise permitted hereunder that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Limited Partner under this Agreement with respect to such transferred Partnership Interest and no such transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Partner are assumed by a successor corporation by operation of law) shall relieve the transferor Partner of its obligations under this Agreement without the approval of the General Partner, in its reasonable discretion. Notwithstanding the foregoing, any transferee of any transferred Partnership Interest shall be subject to any and all ownership limitations contained in the Charter, which may limit or restrict such transferee's ability to exercise its Redemption rights or the exchange rights set forth in Section 17.8 and to the representations set forth in Section 3.4.D. Any transferee, whether or not admitted as a Substituted Limited Partner, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Limited Partner, no transferee, whether by a voluntary transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5.

B. If a Limited Partner is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator, or receiver of such Limited Partner's estate shall have all the rights of a Limited Partner, but not more rights than those enjoyed by other Limited Partners, for the purpose of settling or managing the estate, and such power as the Incapacitated Limited Partner possessed to transfer all or any part of his or its interest in the Partnership. The Incapacity of a Limited Partner, in and of itself, shall not dissolve or terminate the Partnership.

C. The General Partner may prohibit any transfer otherwise permitted under this Section 11.3 by a Limited Partner of his or her Partnership Units if, in the opinion of legal counsel to the Partnership, such transfer would require the filing of a registration statement under the Securities Act by the Partnership or would otherwise violate any Federal or state securities laws or regulations applicable to the Partnership or the Partnership Unit.

D. No transfer by a Limited Partner of his or her Partnership Units (including any Redemption or exchange for REIT Shares pursuant to Section

8.6, the Redemption or exchange rights set forth in Sections 17.5 and 17.8, or any other acquisition of Common Units or Series B Preferred Partnership Units by the General Partner or the Partnership) may be made to any person if (i) in the opinion of legal counsel for the Partnership, it could result in the Partnership being treated as an association taxable as a corporation or (ii) absent the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, such transfer could be treated as effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code.

E. No transfer of any Partnership Units may be made to a lender to the Partnership or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability,

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without the consent of the General Partner, in its sole and absolute discretion; provided, that as a condition to such consent, the lender will be required to enter into an arrangement with the Partnership and the General Partner to redeem or exchange for the REIT Shares Amount, or the specified amount of Series B Preferred Shares, as the case may be, any Partnership Units in which a security interest is held simultaneously with the time at which such lender would be deemed to be a partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code.

F. No Limited Partner may withdraw from the Partnership except as a result of transfer, Redemption or exchange of Partnership Units pursuant hereto.

G. No PLP (or any transferee described below) shall be entitled to transfer any Performance Units prior to the second anniversary of their issuance, without the consent of the General Partner, which may be given or withheld in its sole discretion; provided, however, no such consent shall be required under this Section 11.3.G (but subject to the other limitations of this Article 11) for a transfer of all or a portion of such Performance Units to an Affiliate, to Immediate Family Members, to a trust described in Section 11.3.A(iii), pursuant to a Pledge, or a transfer of such pledged units to such lending institution in connection with the exercise of remedies under such loan or extension of credit.

#### Section 11.4. Substituted Limited Partners

A. No Limited Partner shall have the right to substitute a transferee as a Limited Partner in his or her place (including any transferee permitted by Section 11.3 above). The General Partner shall, however, have the right to consent to the admission of a permitted transferee of the interest of a Limited Partner, as a Substituted Limited Partner, pursuant to this Section 11.4, which consent may be given or withheld by the General Partner in its sole and absolute discretion. The General Partner's failure or refusal to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or any Partner.

B. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement. The admission of any transferee as a Substituted Limited Partner shall be subject to the transferee executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement (including, without limitation, the provisions of Section 2.4 and such other documents or instruments as may be required to effect the admission, each in form and substance satisfactory to the General Partner) and the acknowledgment by such transferee that each of the representations and warranties set forth in Section 3.4 are true and correct with respect to such transferee as of the date of the transfer of the Partnership Interest to such transferee and will continue to be true to the extent required by such representations and warranties.

C. Upon the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A to reflect the name, address, number of Partnership Units, and Percentage Interest of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and interest of the predecessor of such Substituted Limited Partner.

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#### Section 11.5. Assignees

If the General Partner, in its sole and absolute discretion, does not consent to the admission of any permitted transferee under Section 11.3 as a Substituted Limited Partner, as described in Section 11.4, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee

shall be entitled to all the rights of an assignee of a limited partnership interest under the Act, including the right to receive distributions from the Partnership and the share of Net Income, Net Losses, gain and loss attributable to the Partnership Units assigned to such transferee, the rights to transfer the Partnership Units provided in this Article 11, the right of Redemption provided in Section 8.6, and the right of exchange for Series B Preferred Shares set forth in Section 17.8, but shall not be deemed to be a holder of Partnership Units for any other purpose under this Agreement, and shall not be entitled to effect a Consent with respect to such Partnership Units on any matter presented to the Limited Partners for approval (such Consent remaining with the transferor Limited Partner). In the event any such transferee desires to make a further assignment of any such Partnership Units, such transferee shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Limited Partner desiring to make an assignment of Partnership Units. Notwithstanding anything contained in this Agreement to the contrary, as a condition to becoming an Assignee, any prospective Assignee must first execute and deliver to the Partnership an acknowledgment that each of the representations and warranties set forth in Section 3.4 hereof are true and correct with respect to such prospective Assignee as of the date of the prospective assignment of the Partnership Interest to such prospective Assignee and will continue to be true to the extent required by such representations or warranties.

#### Section 11.6. General Provisions

A. No Limited Partner may withdraw from the Partnership other than as a result of (i) a permitted transfer of all of such Limited Partner's Partnership Units in accordance with this Article 11 and the transferee(s) of such Units being admitted to the Partnership as a Substituted Limited Partner(s) or (ii) pursuant to the exercise of its right of Redemption of all of such Limited Partner's Partnership Units under Section 8.6 or its right of Redemption or exchange of all of such Limited Partner's Series B Preferred Units under Section 17.8.

B. Any Limited Partner who shall transfer all of such Limited Partner's Partnership Units in a transfer permitted pursuant to this Article 11 where such transferee was admitted as a Substituted Limited Partner or pursuant to the exercise of its rights of Redemption of all of such Limited Partner's Partnership Units under Section 8.6 or its right of Redemption or exchange of all of such Limited Partner's Series B Preferred Units under Section 17.8, shall cease to be a Limited Partner.

C. Transfers pursuant to this Article 11 may only be made effective on the last day of the month set forth on the written instrument of transfer, unless the General Partner otherwise agrees.

D. If any Partnership Interest is transferred, assigned or redeemed during any quarterly segment of the Partnership's fiscal year in compliance with the provisions of this Article 11 or transferred or redeemed pursuant to Sections 8.6 or 17.5, on any day other than the

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first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items attributable to such Partnership Interest for such fiscal year shall be divided and allocated between the transferor Partner and the transferee Partner by taking into account their varying interests during the fiscal year in accordance with Section 706(d) of the Code, using the interim closing of the books method. Except as otherwise required by Section 706(d) of the Code or as otherwise specified in this Agreement or as otherwise determined by the General Partner (to the extent consistent with Section 706(d) of the Code), solely for purposes of making such allocations, each of such items for the calendar month in which the transfer, assignment or redemption occurs shall be allocated among all the Partners and Assignees in a manner determined by the General Partner in its sole discretion.

E. In addition to any other restrictions on transfer herein contained, including without limitation the provisions of this Article 11 and Section 2.6, in no event may any transfer or assignment of a Partnership Interest by any Partner (including by way of a Redemption or exchange for Series B Preferred Shares, or any other acquisition of Common Units or Series B Preferred Units by the Partnership or the General Partner) be made (i) to any person or entity who lacks the legal right, power or capacity to own a Partnership Interest; (ii) in violation of applicable law; (iii) except with the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, of any component portion of a Partnership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Partnership Interest; (iv) except with the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, if in the opinion of legal counsel to the Partnership such transfer would cause a termination of the Partnership for Federal or state income tax purposes (except as a result of the Redemption or exchange for REIT Shares, and a Redemption or exchange for Preferred Shares or cash pursuant to Sections 17.5

and 17.8, of all Partnership Units held by all Limited Partners or pursuant to a Termination Transaction expressly permitted under Section 11.2); (v) if in the opinion of counsel to the Partnership such transfer would cause the Partnership to cease to be classified as a partnership for Federal or state income tax purposes (except as a result of the Redemption or exchange for REIT Shares and a Redemption or exchange for Preferred Shares pursuant to Sections 17.5 and 17.8 of all Partnership Units held by all Limited Partners); (vi) if such transfer would cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(c) of the Code); (vii) if such transfer would, in the opinion of counsel to the Partnership, cause any portion of the assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.2-101; (viii) if such transfer requires the registration of such Partnership Interest or requires the registration of the exchange of such Partnership Interests for any capital stock pursuant to any applicable Federal or state securities laws; (ix) except with the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, if such transfer is effectuated through an "established securities market" or a "secondary market" (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code or such transfer causes the Partnership to become a "Publicly Traded Partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code; (x) if such transfer subjects the Partnership to be regulated under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or the Employee Retirement Income Security Act of 1974, each as amended; (xi) if the transferee or assignee of such Partnership Interest is

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unable to make the representations set forth in Section 3.4.D or such transfer could otherwise adversely affect the ability of the General Partner to remain qualified as a REIT; or (xii) if in the opinion of legal counsel for the Partnership such transfer would adversely affect the ability of the General Partner to continue to qualify as a REIT or, except with the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, subject the General Partner to any additional taxes under Section 857 or Section 4981 of the Code.

F. The General Partner shall monitor the transfers of interests in the Partnership (including any acquisition of Common Units or Series B Preferred Partnership Units by the Partnership or the General Partner) to determine (i) if such interests are being traded on an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code and (ii) whether such transfers of interests would result in the Partnership being unable to qualify for at least one of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other applicable guidance subsequently published by the IRS setting forth safe harbors under which interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code) (the "Safe Harbors"). The General Partner shall have authority (but shall not be required to) to take any steps it determines are necessary or appropriate in its sole and absolute discretion to prevent any trading of interests which could cause the Partnership to become a "publicly traded partnership," or any recognition by the Partnership of such transfers, or to insure that at least one of the Safe Harbors is met.

## ARTICLE 12. ADMISSION OF PARTNERS

### Section 12.1. Admission of Successor General Partner

A successor to all of the General Partner's General Partner Interest pursuant to Section 11.2 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective upon such transfer. Any such transferee shall carry on the business of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission. In the case of such admission on any day other than the first day of a Partnership Year, all items attributable to the General Partner Interest for such Partnership Year shall be allocated between the transferring General Partner and such successor as provided in Article 11.

### Section 12.2. Admission of Additional Limited Partners

A. A Person who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance in form satisfactory to the General Partner of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 and (ii) such other documents or instruments as may be required in the discretion of the General

Partner in order to effect such Person's admission as an Additional Limited Partner.

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B. Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's sole and absolute discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded on the books and records of the Partnership, following the receipt of the Capital Contribution in respect of such Limited Partner, the documents set forth in this Section 12.2.A and the consent of the General Partner to such admission. If any Additional Limited Partner is admitted to the Partnership on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items allocable among Partners and Assignees for such Partnership Year shall be allocated among such Limited Partner and all other Partners and Assignees by taking into account their varying interests during the Partnership Year in accordance with Section 706(d) of the Code, using the interim closing of the books method. Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of an Additional Limited Partner occurs shall be allocated among all the Partners and Assignees, including such Additional Limited Partner, in a manner determined by the General Partner in its sole discretion.

#### Section 12.3. Amendment of Agreement and Certificate of Limited Partnership

For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4.

### ARTICLE 13. DISSOLUTION AND LIQUIDATION

#### Section 13.1. Dissolution

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the withdrawal of the General Partner, any successor General Partner (selected as described in Section 13.1.B below) shall continue the business of the Partnership. The Partnership shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following ("Liquidating Events"):

A. the expiration of its term as provided in Section 2.5;

B. an event of withdrawal of the General Partner, as defined in the Act, unless, within ninety (90) days after the withdrawal, all of the remaining Partners agree in writing, in their sole and absolute discretion, to continue the business of the Partnership and to the appointment, effective as of the date of withdrawal, of a substitute General Partner;

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C. prior to December 31, 2096, an election to dissolve the Partnership made by the General Partner with the consent of Limited Partners who hold ninety percent (90%) of the outstanding Units held by Limited Partners;

D. subject to the provisions of Section 7.3.C, an election to dissolve the Partnership made by the General Partner in its sole and absolute discretion;

E. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;

F. the sale or disposition of all or substantially all of the assets and properties of the Partnership;

G. a final and non-appealable judgment is entered by a court of competent jurisdiction ruling that the General Partner is bankrupt or insolvent, or a final and non-appealable order for relief is entered by a court with appropriate jurisdiction against the General Partner, in each case under any Federal or state bankruptcy or insolvency laws as now or hereafter in effect, unless prior to or at the time of the entry of such order or judgment a Majority in Interest of the remaining Limited Partners Consent in writing to continue the business of the Partnership and to the appointment, effective as of



a date prior to the date of such order or judgment, of a substitute General Partner; or

H. the Redemption or exchange for REIT Shares or Series B Preferred Shares of all Partnership Units (other than those of the General Partner) pursuant to this Agreement.

#### Section 13.2. Winding Up

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Partners. No Partner shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner (or, in the event there is no remaining General Partner, any Person elected by a Majority in Interest of the Limited Partners (the "Liquidator")) shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and assets and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the General Partner, include shares of stock of the General Partner) shall be applied and distributed in the following order:

- (i) First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the Partners;
- (ii) Second, to the payment and discharge of all of the Partnership's debts and liabilities to the General Partner;
- (iii) Third, to the payment and discharge of all of the Partnership's debts and liabilities to the other Partners; and
- (iv) The balance, if any, to the Partners in accordance with their Capital Account balances determined after giving effect to all contributions and distributions for all periods, and after taking into account all Capital Account adjustments for the Partnership taxable year during which the liquidation occurs (other than those made as a result of the liquidating distribution set forth in this Section 13.2.A(iv)).

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The General Partner shall not receive any additional compensation for any services performed pursuant to this Article 13 other than reimbursement of its expenses as provided in Section 7.4.

B. Notwithstanding the provisions of Section 13.2.A which require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Partners as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2.A, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. The Partnership shall be terminated when any notes received in connection with any such sale or disposition referenced in Section 13.1.E above, or in connection with the liquidation of the Partnership have been paid and all of the cash or property available for application and distribution under this Agreement have been applied and distributed in accordance with this Agreement.

#### Section 13.3. Compliance with Timing Requirements of Regulations

In the event the Partnership is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 13 to the General Partner and Limited Partners who have

positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Partner has a deficit balance in his or her Capital Account (after giving effect to all contributions, distributions and allocations for the taxable years, including the year during which such liquidation occurs), such Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever, except to the extent otherwise agreed to by such Partner and the General Partner. In the discretion of the Liquidator or the General Partner, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this Article 13 may be:

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A. distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the Liquidator or the General Partner, in the same proportions and the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Agreement; or

B. withheld to establish any reserves deemed necessary or appropriate for any contingent or unforeseen liabilities or obligations of the Partnership; and to reflect the unrealized portion of any installment obligations owed to the Partnership; provided that, such withheld amounts shall be distributed to the General Partner and Limited Partners as soon as practicable.

#### Section 13.4. Deemed Distribution and Recontribution

Notwithstanding any other provision of this Article 13, in the event the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Partnership's property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged, and the Partnership's affairs shall not be wound up. Instead, the Partnership shall be deemed to have distributed the Partnership property in kind to the General Partner and Limited Partners, who shall be deemed to have assumed and taken such property subject to all Partnership liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the General Partner and Limited Partners shall be deemed to have recontributed the Partnership property in kind to the Partnership, which shall be deemed to have assumed and taken such property subject to all such liabilities.

#### Section 13.5. Rights of Limited Partners

Except as otherwise provided in this Agreement, each Limited Partner shall look solely to the assets of the Partnership for the return of his Capital Contribution and shall have no right or power to demand or receive property from the General Partner. Except as expressly set forth herein with respect to the rights, priorities and preferences of the Preferred Limited Partners holding any series of Preferred Units, no Limited Partner shall have priority over any other Limited Partner as to the return of his Capital Contributions, distributions or allocations.

#### Section 13.6. Notice of Dissolution

In the event a Liquidating Event occurs or an event occurs that would, but for provisions of Section 13.1, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners and to all other parties with whom the Partnership regularly conducts business (as determined in the discretion of the General Partner) and shall publish notice thereof in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the discretion of the General Partner).

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#### Section 13.7. Cancellation of Certificate of Limited Partnership

Upon the completion of the liquidation of the Partnership cash and property as provided in Section 13.2, the Partnership shall be terminated and the Certificate and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be

canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

#### Section 13.8. Reasonable Time for Winding-Up

A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

#### Section 13.9. Waiver of Partition

Each Partner hereby waives any right to partition of the Partnership property.

### ARTICLE 14.

#### AMENDMENT OF PARTNERSHIP AGREEMENT; CONSENTS

##### Section 14.1. Amendments

A. The actions requiring consent or approval of the Partners or of the Limited Partners pursuant to this Agreement, including Section 7.3, or otherwise pursuant to applicable law, are subject to the procedures in this Article 14.

B. Amendments to this Agreement requiring the consent or approval of Limited Partners may be proposed by the General Partner or by Limited Partners holding twenty-five percent (25%) or more of the Partnership Interests held by Limited Partners. Following such proposal, the General Partner shall submit any proposed amendment to the Partners or of the Limited Partners, as applicable. The General Partner shall seek the written consent or approval of the Partners or of the Limited Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. For purposes of obtaining a written consent, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a consent which is consistent with the General Partner's recommendation (if so recommended); provided that, an action shall become effective at such time as requisite consents are received even if prior to such specified time.

##### Section 14.2. Action by the Partners

A. Meetings of the Partners may be called by the General Partner and shall be called upon the receipt by the General Partner of a written request by Limited Partners holding twenty-five percent (25%) or more of the Partnership Interests held by the Limited Partners. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be

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given to all Partners not less than seven days nor more than thirty (30) days prior to the date of such meeting. Partners may vote in person or by proxy at such meeting. Whenever the vote of the Percentage Interests of the Partners, or the Consent of the Partners or Consent of the Limited Partners is permitted or required under this Agreement, such vote or Consent may be given at a meeting of Partners or may be given in accordance with the procedure prescribed in Section 14.1.

B. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action so taken is signed by the Percentage Interests as is expressly required by this Agreement for the action in question. Such consent may be in one instrument or in several instruments, and shall have the same force and effect as a vote of the Percentage Interests of the Partners (expressly required by this Agreement). Such consent shall be filed with the General Partner. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified.

C. Each Limited Partner may authorize any Person or Persons to act for him by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Limited Partner executing it.

D. Each meeting of Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deems appropriate.

E. On matters on which Limited Partners are entitled to vote,

each Limited Partner shall have a vote equal to the number of Partnership Units held.

ARTICLE 15.  
GENERAL PROVISIONS

Section 15.1. Addresses and Notice

Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by certified first class United States mail, nationally recognized overnight delivery service or facsimile transmission to the Partner or Assignee at the address set forth in Exhibit A or such other address as the Partners shall notify the General Partner in writing.

Section 15.2. Titles and Captions

All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" and "Sections" are to Articles and Sections of this Agreement.

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Section 15.3. Pronouns and Plurals

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.4. Further Action

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.5. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto including the Persons set forth in Exhibit G, and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.6. Creditors

Other than as expressly set forth herein with respect to Indemnitees, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

Section 15.7. Waiver

No failure or delay by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon any breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 15.8. Counterparts

This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.9. Applicable Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 15.10. Invalidity of Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

## Section 15.11. Limitation to Preserve REIT Status

To the extent that any amount paid or credited to the General Partner or its officers, directors, employees or agents pursuant to Section 7.4 or 7.7 would constitute gross income to the General Partner for purposes of Sections 856(c)(2) or 856(c)(3) of the Code (a "General Partner Payment") then, notwithstanding any other provision of this Agreement, the amount of such General Partner Payments for any fiscal year shall not exceed the lesser of:

(i) an amount equal to the excess, if any, of (a) 4.17% of the General Partner's total gross income (but not including the amount of any General Partner Payments) for the fiscal year which is described in subsections (A) through (H) of Section 856(c)(2) of the Code over (b) the amount of gross income (within the meaning of Section 856(c)(2) of the Code) derived by the General Partner from sources other than those described in subsections (A) through (H) of Section 856(c)(2) of the Code (but not including the amount of any General Partner Payments); or

(ii) an amount equal to the excess, if any, of (a) 25% of the General Partner's total gross income (but not including the amount of any General Partner Payments) for the fiscal year which is described in subsections (A) through (I) of Section 856(c)(3) of the Code over (b) the amount of gross income (within the meaning of Section 856(c)(3) of the Code) derived by the General Partner from sources other than those described in subsections (A) through (I) of Section 856(c)(3) of the Code (but not including the amount of any General Partner Payments);

provided, however, that General Partner Payments in excess of the amounts set forth in subparagraphs (i) and (ii) above may be made if the General Partner, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts would not adversely affect the General Partner's ability to qualify as a REIT. To the extent General Partner Payments may not be made in a year due to the foregoing limitations, such General Partner Payments shall carry over and be treated as arising in the following year; provided, however, that such amounts shall not carry over for more than five years, and if not paid within such five year period, shall expire; provided, further, that (a) as General Partner Payments are made, such payments shall be applied first to carry over amounts outstanding, if any and (b) with respect to carry over amounts for more than one Partnership Year, such payments shall be applied to the earliest Partnership Year first.

## Section 15.12. Entire Agreement

This Agreement (together with the agreements listed on Exhibit I hereto as to rights and obligations in respect of the Units held by the Limited Partners who are parties thereto, or their permitted transferees) contains the entire understanding and agreement among the Partners with respect to the subject matter hereof and supersedes any other prior written or oral understandings or agreements among them with respect thereto.

## Section 15.13. No Rights as Stockholders

Nothing contained in this Agreement shall be construed as conferring upon the holders of Partnership Units any rights whatsoever as stockholders of the General Partner, including without limitation any right to receive dividends or other distributions made to stockholders of the General Partner or to vote or to consent or to receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the General Partner or any other matter.

ARTICLE 16.  
SERIES A PREFERRED UNITS

## Section 16.1. Designation and Number

A series of Partnership Units in the Partnership designated as the 8 1/2% Series A Cumulative Redeemable Preferred Units (the "Series A Preferred Units") is hereby established. The number of Series A Preferred Units shall be 4,600,000.

## Section 16.2 Ranking

The Series A Preferred Units shall, with respect to distribution rights and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Partnership, rank (i) senior to the Common Units and to all Partnership Units the terms of which provide that such Partnership Units shall rank junior to the Series A Preferred Units; (ii) on a

parity with the Series B Preferred Units and all other Parity Preferred Units; and (iii) junior to all Partnership Units which rank senior to the Series A Preferred Units.

### Section 16.3. Distributions

A. Payment of Distributions. Subject to the rights of holders of Parity Preferred Units (including Series B Preferred Units) as to the payment of distributions, pursuant to Section 5.1 and Section 17.3.A hereof, the General Partner, as holder of the Series A Preferred Units, will be entitled to receive, when, as and if declared by the Partnership acting through the General Partner, out of Available Cash, cumulative preferential cash distributions in an amount equal to the Series A Priority Return. Such distributions will be payable (A) quarterly in arrears, on the 15th day of January, April, July and October of each year and (B) in the event of a redemption of Series A Preferred Units, on the redemption date (each a "Series A Preferred Unit Distribution Payment Date"), commencing on the first of such payment dates to occur following their original date of issuance. If any date on which distributions are to be made on the Series A Preferred Units is not a Business Day, then payment of the distribution to be made on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

B. No Distributions in Contravention of Agreements. No distribution on the Series A Preferred Units shall be authorized by the General Partner or made or set apart for payment by the Partnership at such time as the terms and provisions of any agreement of the Partnership or the General Partner, including any agreement relating to indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration,

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payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

C. Priority as to Distributions. (i) Except to the extent set forth in Section 16.3.C(ii), so long as any Series A Preferred Units are outstanding, no distribution of cash or other property shall be authorized, declared, paid or set apart for payment on or with respect to any class or series of Partnership Interest represented by Junior Units, nor shall any Junior Units or Parity Preferred Units (including the Series B Preferred Units) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Junior Units or Parity Preferred Units) by the Partnership (except by conversion into or exchange for other Junior Units or Parity Preferred Units) unless, in each case, full cumulative distributions have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment thereof set apart for such payment on the Series A Preferred Units for all past distribution periods and the current distribution period. The foregoing sentence will not prohibit (a) distributions payable solely in Junior Units, (b) the exchange of Junior Units or Parity Preferred Units (including the Series B Preferred Units) into Partnership Interests of the Partnership ranking junior to the Series A Preferred Units as to distributions, or (c) the redemption of Partnership Interests corresponding to Series A Preferred Shares, Parity Preferred Stock (including Series B Preferred Shares) with respect to distributions or Junior Stock to be purchased by the General Partner pursuant to the Charter to preserve the General Partner's status as a real estate investment trust, provided that such redemption shall be upon the same terms as the corresponding stock purchase pursuant to the Charter.

(ii) So long as distributions have not been paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series A Preferred Units and any other Parity Preferred Units (including the Series B Preferred Units), all distributions authorized and declared on the Series A Preferred Units and all classes or series of outstanding Parity Preferred Units (including the Series B Preferred Units) shall be authorized and declared pro rata so that the amount of distributions authorized and declared per Series A Preferred Unit and such other classes or series of Parity Preferred Units shall in all cases bear to each other the same ratio that accrued distributions per Series A Preferred Unit and such other classes or series of Parity Preferred Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such class or series of Parity Preferred Units do not have cumulative distribution rights) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any distributions or payments on Series A Preferred Units which may be in arrears.

D. No Further Rights. The General Partner, as holder of the Series A Preferred Units, shall not be entitled to any distributions, whether payable in cash, other property or otherwise, in excess of the full cumulative

distributions described herein. Any distribution payment made on the Series A Preferred Units shall first be credited against the earliest accrued but unpaid distribution due with respect to such Series A Preferred Units which remain payable.

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#### Section 16.4. Liquidation Proceeds

A. Upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, distributions on the Series A Preferred Units shall be made in accordance with Article 13 of this Agreement.

B. Notice. Written notice of any such voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by the General Partner pursuant to Section 13.6 hereof.

C. No Further Rights. After payment of the full amount of the liquidating distributions to which they are entitled, the General Partner, as holder of the Series A Preferred Units, will have no right or claim to any of the remaining assets of the Partnership.

D. Consolidation, Merger or Certain Other Transactions. None of a consolidation or merger of the Partnership with or into another entity, a merger of another entity with or into the Partnership, or a sale, lease, transfer or conveyance of all or substantially all of the Partnership's property or business shall be considered a liquidation, dissolution or winding up of the Partnership.

#### Section 16.5. Redemption

A. Redemption. The Series A Preferred Units may not be redeemed prior to July 27, 2003. If, on or after such date, the General Partner elects to redeem any of the Series A Preferred Shares, the Partnership shall, on the date set for redemption of such Series A Preferred Shares, redeem the number of Series A Preferred Units equal to the number of Series A Preferred Shares for which the General Partner has given notice of redemption pursuant to Section 5 of Article Third of the Series A Articles Supplementary, at a redemption price, payable in cash, equal to the product of (i) the number of Series A Preferred Units being redeemed, and (ii) the sum of \$25 and the Preferred Distribution Shortfall per Series A Preferred Unit, if any.

B. Limitation on Redemption. The Redemption Price of the Series A Preferred Units (other than the portion thereof consisting of accumulated but unpaid distributions) is payable solely out of the sale proceeds of capital stock of the General Partner, which will be contributed by the General Partner to the Partnership as an additional capital contribution, or out of the sale of limited partner interests in the Partnership and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock (as such terms are defined in the Charter)), depository shares, interests, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

C. Payment of Accumulated Distributions. Immediately prior to any redemption of Series A Preferred Units, the Partnership shall pay, in cash, any accumulated and unpaid distributions on the Series A Preferred Units to be redeemed through the redemption date. Except as provided above, the Partnership will make no payment or allowance for unpaid

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distributions, whether or not in arrears, on Series A Preferred Units for which a notice of redemption has been given.

D. Procedures for Redemption. The following provisions set forth the procedures for Redemption:

(i) Notice of redemption will be given by the General Partner to the Partnership concurrently with the notice of the General Partner sent to the holders of its Series A Preferred Shares in connection with such redemption. Such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of Series A Preferred Units to be redeemed; (D) the place or places where the Series A Preferred Units are to be surrendered for payment of the redemption price; and (E) that distributions on the Series A Preferred Units to be redeemed will cease to accumulate on such redemption date. If less than all of the Series A Preferred Units are to be redeemed, the notice shall also specify the number of Series A Preferred Units to be redeemed.

(ii) On or after the redemption date, the General Partner shall present and surrender the certificates, if any, representing the Series A Preferred Units to the Partnership at the place designated in the notice of redemption and thereupon the redemption price of such Units (including all accumulated and unpaid distributions up to the redemption date) shall be paid to the General Partner and each surrendered Unit certificate, if any, shall be canceled. If fewer than all the Units represented by any such certificate representing Series A Preferred Units are to be redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) From and after the redemption date (unless the Partnership defaults in payment of the redemption price), all distributions on the Series A Preferred Units designated for redemption in such notice shall cease to accumulate and all rights of the General Partner, except the right to receive the redemption price thereof (including all accumulated and unpaid distributions up to the redemption date), shall cease and terminate, and such Units shall not be deemed to be outstanding for any purpose whatsoever. At its election, the Partnership, prior to a redemption date, may irrevocably deposit the redemption price (including accumulated and unpaid distributions to the redemption date) of the Series A Preferred Units so called for redemption in trust for the General Partner with a bank or trust company, in which case the redemption notice to General Partner shall (A) state the date of such deposit, (B) specify the office of such bank or trust company as the place of payment of the redemption price and (C) require the General Partner to surrender the certificates, if any, representing such Series A Preferred Units at such place on or about the date fixed in such redemption notice (which may not be later than the redemption date) against payment of the redemption price (including all accumulated and unpaid distributions to the redemption date). Any monies so deposited which remain unclaimed by the General Partner at the end of two years after the redemption date shall be returned by such bank or trust company to the Partnership.

E. No Further Rights. Any Series A Preferred Units that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Units, without designation as to series until such shares are once more designated as part of a particular series by the General Partner.

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#### Section 16.6. Voting Rights

The General Partner shall not have any voting or consent rights in respect of its partnership interest represented by the Series A Preferred Units.

#### Section 16.7. Transfer Restrictions

The Series A Preferred Units shall not be transferable.

#### Section 16.8. No Conversion Rights

The Series A Preferred Units shall not be convertible into any other class or series of interest in the Partnership.

#### Section 16.9. No Sinking Fund

No sinking fund shall be established for the retirement or redemption of Series A Preferred Units.

### ARTICLE 17. SERIES B PREFERRED UNITS

#### Section 17.1. Designation and Number

A series of Partnership Units in the Partnership designated as the 8 5/8 Series B Cumulative Redeemable Preferred Units (the "Series B Preferred Units") is hereby established. The number of Series B Preferred Units shall be 1,300,000.

#### Section 17.2. Ranking

The Series B Preferred Units shall, with respect to distribution rights and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Partnership, rank (i) senior to the Common Units and to all Partnership Units the terms of which provide that such Partnership Units shall rank junior to the Series B Preferred Units; (ii) on a parity with the Series A Preferred Units and all other Parity Preferred Units; and (iii) junior to all Partnership Units which rank senior to the Series B Preferred Units.



### Section 17.3. Distributions

A. Payment of Distributions. Subject to the rights of holders of Parity Preferred Units (including the Series A Preferred Units) as to the payment of distributions, pursuant to Section 5.1 and Section 16.3.A hereof, holders of Series B Preferred Units will be entitled to receive, when, as and if declared by the Partnership acting through the General Partner, out of Available Cash, cumulative preferential cash distributions in an amount equal to the Series B Priority Return. Such distributions will be payable (A) quarterly in arrears, on the 15th day of January, April, July and October of each year and (B) in the event of (i) an exchange

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of Series B Preferred Units into Series B Preferred Shares, or (ii) a redemption of Series B Preferred Units, on the exchange date or redemption date, as applicable (each a "Series B Preferred Unit Distribution Payment Date"), commencing on the first of such payment dates to occur following their original date of issuance. If any date on which distributions are to be made on the Series B Preferred Units is not a Business Day, then payment of the distribution to be made on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. Distributions on the Series B Preferred Units will be made to the holders of record of the Series B Preferred Units on the relevant record dates, which will be fifteen (15) days prior to the relevant Preferred Unit Distribution Payment Date (the "Series B Preferred Unit Partnership Record Date").

B. Distributions Cumulative. Notwithstanding the foregoing, distributions on the Series B Preferred Units will accrue whether or not the terms and provisions of any agreement of the Partnership at any time prohibit the current payment of distributions, whether or not the Partnership has earnings, whether or not there are funds legally available for the payment of such of such distributions and whether or not such distributions are authorized. Accrued but unpaid distributions on the Series B Preferred Units will accumulate as of the Preferred Unit Distribution Payment Date on which they first become payable.

C. Priority as to Distributions. (i) So long as any Series B Preferred Units are outstanding, no distribution of cash or other property shall be authorized, declared, paid or set apart for payment on or with respect to any class or series of Partnership Interest represented by Junior Units, nor shall any Junior Units or Parity Preferred Units (including the Series A Preferred Units) be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Junior Units or Parity Preferred Units) by the Partnership (except by conversion into or exchange for other Junior Units or Parity Preferred Units) unless, in each case, full cumulative distributions have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment thereof set apart for such payment on the Series B Preferred Units and all classes and series of outstanding Parity Preferred Units for all distribution periods. The foregoing sentence will not prohibit (a) distributions payable solely in Junior Units, (b) the exchange of Junior Units or Parity Preferred Units (including the Series A Preferred Units) into Partnership Interests of the Partnership ranking junior to the Series B Preferred Units as to distributions, or (c) the redemption of Partnership Interests corresponding to Series B Preferred Shares, Parity Preferred Stock (including Series A Preferred Shares) with respect to distributions or Junior Stock to be purchased by the General Partner pursuant to the Charter to preserve the General Partner's status as a real estate investment trust, provided that such redemption shall be upon the same terms as the corresponding stock purchase pursuant to the Charter.

(ii) So long as distributions have not been paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Units and any other Parity Preferred Units (including the Series A Preferred Units), all distributions authorized and declared on the Series B Preferred Units and all classes or series of outstanding Parity Preferred Units (including the Series A Preferred Units) shall be authorized and declared pro rata so that the

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amount of distributions authorized and declared per Series B Preferred Unit and such other classes or series of Parity Preferred Units shall in all cases bear to each other the same ratio that accrued distributions per Series B Preferred Unit and such other classes or series of Parity Preferred Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such class or series of Parity Preferred Units do not

have cumulative distribution rights) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any distributions or payments on Series B Preferred Units which may be in arrears.

(iii) Notwithstanding anything to the contrary set forth herein, distributions on Partnership Interests held by either (a) the General Partner or (b) any other holder of Partnership Interest in the Partnership, in each case ranking junior to or on parity with the Series B Preferred Units may be made, without preserving the priority of distributions described in Sections 17.3.C(i) and (ii), but only to the extent such distributions are required to preserve the real estate investment trust status of the General Partner and in the case of any holder other than the General Partner only to the extent required by the Partnership Agreement.

D. No Further Rights. Holders of Series B Preferred Units shall not be entitled to any distributions, whether payable in cash, other property or otherwise, in excess of the full cumulative distributions described herein.

#### Section 17.4. Liquidation Proceeds

A. Distributions. Upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, distributions on the Series B Preferred Units shall be made in accordance with Article 13 of this Agreement.

B. Notice. Written notice of any such voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by the General Partner pursuant to Section 13.6 hereof.

C. No Further Rights. After payment of the full amount of the liquidating distributions to which they are entitled, Holders of Series B Preferred Units will have no right or claim to any of the remaining assets of the Partnership.

D. Consolidation, Merger or Certain Other Transactions. None of a consolidation or merger of the Partnership with or into another entity, a merger of another entity with or into the Partnership, or a sale, lease, transfer or conveyance of all or substantially all of the Partnership's property or business shall be considered a liquidation, dissolution or winding up of the Partnership.

#### Section 17.5. Redemption

A. Redemption. The Series B Preferred Units may not be redeemed prior to November 12, 2003. On or after such date, the Partnership shall have the right to redeem the Series B Preferred Units, in whole or in part, at any time or from time to time, upon not less than

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30 nor more than 60 days' written notice, at a redemption price, payable in cash, equal to the Capital Account balance of the holder of Series B Preferred Units (the "Redemption Price"); provided, however, that no redemption pursuant to this Section 17.5 will be permitted if the Redemption Price does not equal or exceed the original Capital Contribution of such holder plus the cumulative Priority Return to the redemption date to the extent not previously distributed. If fewer than all of the outstanding Series B Preferred Units are to be redeemed, the Series B Preferred Units to be redeemed shall be selected pro rata (as nearly as practicable without creating fractional units).

B. Limitation on Redemption. (i) The Redemption Price of the Series B Preferred Units (other than the portion thereof consisting of accumulated but unpaid distributions) is payable solely out of the sale proceeds of capital stock of the General Partner, which will be contributed by the General Partner to the Partnership as an additional capital contribution, or out of the sale of limited partner interests in the Partnership and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock (as such terms are defined in the Charter)), depository shares, interests, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(ii) The Partnership may not redeem fewer than all of the outstanding Series B Preferred Units unless all accumulated and unpaid distributions have been paid on all Series B Preferred Units for all quarterly distribution periods terminating on or prior to the date of redemption.

C. Procedures for Redemption. (i) Notice of redemption will be (i) faxed, and (ii) mailed by the Partnership, by certified mail, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date,

addressed to the respective holders of record of the Series B Preferred Units at their respective addresses as they appear on the records of the Partnership. No failure to give or defect in such notice shall affect the validity of the proceedings for the redemption of any Series B Preferred Units except as to the holder to whom such notice was defective or not given. In addition to any information required by law, each such notice shall state: (a) the redemption date, (b) the Redemption Price, (c) the aggregate number of Series B Preferred Units to be redeemed and if fewer than all of the outstanding Series B Preferred Units are to be redeemed, the number of Series B Preferred Units to be redeemed held by such holder, which number shall equal such holder's pro rata share (based on the percentage of the aggregate number of outstanding Series B Preferred Units that the total number of Series B Preferred Units held by such holder represents) of the aggregate number of Series B Preferred Units to be redeemed, (d) the place or places where such Series B Preferred Units are to be surrendered for payment of the Redemption Price, (e) that distributions on the Series B Preferred Units to be redeemed will cease to accumulate on such redemption date and (f) that payment of the Redemption Price will be made upon presentation and surrender of such Series B Preferred Units.

(ii) If the Partnership gives a notice of redemption in respect of Series B Preferred Units (which notice will be irrevocable) then, by 12:00 noon, New York City time, on

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the redemption date, the Partnership will deposit irrevocably in trust for the benefit of the Series B Preferred Units being redeemed funds sufficient to pay the applicable Redemption Price and will give irrevocable instructions and authority to pay such Redemption Price to the holders of the Series B Preferred Units upon surrender of the Series B Preferred Units by such holders at the place designated in the notice of redemption. On and after the date of redemption, distributions will cease to accumulate on the Series B Preferred Units or portions thereof called for redemption, unless the Partnership defaults in the payment thereof. If any date fixed for redemption of Series B Preferred Units is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price is improperly withheld or refused and not paid by the Partnership, distributions on such Series B Preferred Units will continue to accumulate from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the applicable Redemption Price.

#### Section 17.6. Voting Rights

A. General. Holders of the Series B Preferred Units will not have any voting rights or right to consent to any matter requiring the consent or approval of the Limited Partners, except as set forth below and in Section 7.3.E.

B. Certain Voting Rights. So long as any Series B Preferred Units remains outstanding, the Partnership shall not, without the affirmative vote of the holders of at least two-thirds of the Series B Preferred Units outstanding at the time (i) authorize or create, or increase the authorized or issued amount of, any class or series of Partnership Interests ranking prior to the Series B Preferred Units with respect to payment of distributions or rights upon liquidation, dissolution or winding-up or reclassify any Partnership Interests of the Partnership into any such Partnership Interest, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such Partnership Interests, (ii) authorize or create, or increase the authorized or issued amount of any Parity Preferred Units or reclassify any Partnership Interest of the Partnership into any such Partnership Interest or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such Partnership Interests but only to the extent such Parity Preferred Units are issued to an affiliate of the Partnership, other than the General Partner to the extent the issuance of such interests was to allow the General Partner to issue corresponding preferred stock to persons who are not affiliates of the Partnership or (iii) either consolidate, merge into or with, or convey, transfer or lease its assets substantially as an entirety to, any corporation or other entity or amend, alter or repeal the provisions of the Partnership Agreement (including, without limitation, this Article 17), whether by merger, consolidation or otherwise, in each case in a manner that would materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series B Preferred Units or the holders thereof; provided, however, that with respect to the occurrence of any event set forth in (iii) above, so long as (a) the Partnership is the surviving entity and the Series B Preferred Units remain outstanding with the terms thereof unchanged, or (b) the

resulting, surviving or transferee entity is a partnership, limited liability company or other pass-through entity organized under the laws of any state and substitutes the Series B Preferred Units for other interests in such entity having substantially the same terms and rights as the Series B Preferred Units, including with respect to distributions, voting rights and rights upon liquidation, dissolution or winding-up, then the occurrence of any such event shall not be deemed to materially and adversely affect such rights, privileges or voting powers of the holders of the Series B Preferred Units; and provided further, that any increase in the amount of Partnership Interests or the creation or issuance of any other class or series of Partnership Interests represented by Junior Units or Parity Preferred Units are not issued to an affiliate of the Partnership, other than the General Partner to the extent the issuance of such interests was to allow the General Partner to issue corresponding preferred stock to persons who are not affiliates of the Partnership, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

#### Section 17.7. Transfer Restrictions

The Series B Preferred Units shall be subject to the provisions of Article 11 hereof; provided, however, that the Series B Preferred Units shall not be subject to the right of first refusal of the General Partner as described in Section 11.3 hereof. No transfer of Series B Preferred Units, or other action by the holder or holders of such Units, is permitted, without the consent of the General Partner which consent may be given or withheld in its sole and absolute discretion, if such transfer or other action would result in more than four partners holding all outstanding Series B Preferred Units within the meaning of Treasury Regulation Section 1.7704-1(h)(3)(i); provided, however, that the General Partner's consent may not be unreasonably withheld if (a) such transfer or other action would not result in more than ten partners holding all outstanding Series B Preferred Units within the meaning of Treasury Regulation Section 1.7704-1(h)(3)(i) and (b) the General Partner is relying on a provision other than Treasury Regulation Section 1.7704-1(h) to avoid classification of Operating Partnership as a "publicly traded partnership" within the meaning of Code Section 7704 (a "PTP"). In addition, no transfer may be made to any person if such transfer would cause the exchange of the Series B Preferred Units for Series B Preferred Shares, as provided herein, to be required to be registered under the Securities Act of 1933, as amended, or any state securities laws. If (i) Contributor concludes based on results or projected results that there exists (in the reasonable judgment of Contributor) an imminent and substantial risk that the Contributor's interest in the Partnership represents or will represent more than 19.5% of the total profits or capital interests in the Partnership for a taxable year, (ii) Contributor delivers to the General Partner an opinion of independent counsel to the effect that there is a substantial risk that Contributor's interest in the Partnership represents or will represent more than 19.5% (the "19.5% Limit") of the total profits or capital interests in the Partnership (determined in accordance with Regulations Section 1.731-2(e)(4)), and (iii) the General Partner agrees with the conclusions referred to in clauses (i) and (ii) of this sentence, such agreement not to be unreasonably withheld, then Contributor shall, subject to the above limitations, be permitted to transfer so much of its Series B Preferred Units as may be appropriate to alleviate the risk of not satisfying the 19.5% Limit to the trust described in Exhibit J, with the Contributor having the rights set forth in such Exhibit.

#### Section 17.8. Exchange Rights

A. Right to Exchange. (i) Series B Preferred Units will be exchangeable in whole but not in part unless expressly otherwise provided herein at anytime on or after November 12, 2008, at the option of 51% of the holders of all outstanding Series B Preferred Units, for authorized but previously unissued Series B Preferred Shares at an exchange rate of one REIT Series B Preferred Share from the General Partner for one Series B Preferred Unit, subject to adjustment as described below (the "Exchange Price"), provided that the Series B Preferred Units will become exchangeable at any time, in whole but not in part unless expressly otherwise provided herein, at the option of 51% of the holders of all outstanding Series B Preferred Units for Series B Preferred Shares if (y) at any time full distributions shall not have been timely made on any Series B Preferred Unit with respect to six (6) prior quarterly distribution periods, whether or not consecutive, provided, however, that a distribution in respect of Series B Preferred Units shall be considered timely made if made within two (2) Business Days after the applicable Preferred Unit Distribution Payment Date if at the time of such late payment there shall not be any prior quarterly distribution periods in respect of which full distributions were not timely made or (z) upon receipt by a holder or holders of Series B Preferred Units of (A) notice from the General Partner that the General Partner or a Subsidiary of the General Partner has taken the position that the Partnership is, or upon the consummation of an unidentified event in the immediate future will be, a PTP and (B) an opinion rendered by independent counsel familiar with such matters

addressed to a holder or holders of Series B Preferred Units, that the Partnership is or likely is, or upon the occurrence of a defined event in the immediate future will be or likely will be, a PTP. In addition, the Series B Preferred Units may be exchanged for Series B Preferred Shares, in whole but not in part unless expressly otherwise provided herein, at the option of 51% of the holders of all outstanding Series B Preferred Units after November 12, 2001 and prior to November 12, 2008 if such holders of a Series B Preferred Units shall deliver to the General Partner either (i) a private ruling letter addressed to such holder of Series B Preferred Units or (ii) an opinion of independent counsel reasonably acceptable to the General Partner based on the enactment of temporary or final Treasury Regulations or the publication of a Revenue Ruling, in either case to the effect that an exchange of the Series B Preferred Units at such earlier time would not cause the Series B Preferred Units to be considered "stock and securities" within the meaning of section 351(e) of the Code for purposes of determining whether the holder of such Series B Preferred Units is an "investment company" under section 721(b) of the Code if an exchange is permitted at such earlier date. Furthermore, the Series B Preferred Units, if Contributor so determines, may be exchanged in whole but not in part (regardless of whether held by Contributor) for Series B Preferred Shares (but only if the exchange in whole may be accomplished consistently with the ownership limitations set forth under the Series B Articles Supplementary (as defined herein), taking into account exceptions thereto) if (1) Contributor concludes based on results or projected results that there exists (in the reasonable judgment of Contributor) an imminent and substantial risk that the Contributor's interest in the Partnership represents or will represent more than 19.5% of the total profits or capital interests in the Partnership for a taxable year, (2) Contributor delivers to the General Partner an opinion of independent counsel to the effect that there is a substantial risk that its interest in the Partnership does not or will not satisfy the 19.5% Limit and (3) the General Partner agrees with the conclusions referred to in clauses (1) and (2) of this sentence, such agreement not to be unreasonably withheld; provided, however, that if, as a result

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of such conclusion, Contributor's interest in the Partnership is reduced pursuant to the last sentence of Section 17.7 hereof (which procedure shall be available to Contributor to the exclusion of the procedure under this sentence for so long as, on a cumulative basis, sales of 10% or fewer of the Series B Preferred Units originally acquired by Contributor would in the opinion of the above-referenced counsel reduce the risk that Contributor's interest in the Partnership would not satisfy the 19.5% Limit to less than a substantial risk, and thereafter shall be a permitted alternative to the procedure pursuant to this sentence) or the risk of Contributor not satisfying the 19.5% Limit otherwise is reduced below a substantial risk, then an exchange in whole under this sentence shall not be permitted unless and until a change in facts occurs and a further determination by Contributor is made under this sentence.

(ii) Notwithstanding anything to the contrary set forth in Section 17.8.A(i), if an Exchange Notice (as defined herein) has been delivered to the General Partner, then the General Partner may, at its option, within ten (10) Business Days after receipt of the Exchange Notice, elect to cause the Partnership to redeem all or a portion of the outstanding Series B Preferred Units for cash in an amount equal to the original Capital Contribution per Series B Preferred Unit and all accrued and unpaid distributions thereon to the date of redemption. If the General Partner elects to redeem fewer than all of the outstanding Series B Preferred Units, the number of Series B Preferred Units held by each holder to be redeemed shall equal such holder's pro rata share (based on the percentage of the aggregate number of outstanding Series B Preferred Units that the total number of Series B Preferred Units held by such holder represents) of the aggregate number of Series B Preferred Units being redeemed.

(iii) In the event an exchange of all Series B Preferred Units pursuant to Section 17.8.A would violate the provisions on ownership limitation of the General Partner set forth in Section 7 of the Articles Supplementary to the Charter with respect to Series B Preferred Shares (the "Series B Articles Supplementary"), each holder of Series B Preferred Units shall be entitled to exchange, pursuant to the provisions of Section 17.8.B, a number of Series B Preferred Units which would comply with the provisions on the ownership limitation of the General Partner set forth in such Section 7 of the Series B Articles Supplementary, with respect to such holder, and any Series B Preferred Units not so exchanged (the "Excess Units") shall be redeemed by the Partnership for cash in an amount equal to the original Capital Contribution per Excess Unit, plus any accrued and unpaid distributions thereon to the date of redemption subject to any restriction thereon contained in any debt instrument or agreement of the Partnership. In the event an exchange would result in Excess Units, as a condition to such exchange, each holder of such units agrees to provide representations and covenants reasonably requested by the General Partner relating to (i) the widely held nature of the interests in such holder, sufficient to assure the General Partner that the holder's ownership of stock of the General Partner (without regard to the limits described above) will not cause any individual to own in excess of 9.0% of the stock of the General

Partner; and (ii) to the extent such holder can so represent and covenant without obtaining information from its owners, the holder's ownership of tenants of the Partnership and its affiliates. For purposes of determining the number of Excess Units under this Section 17.8.A(iii), the "Beneficial Ownership Limit" and "Constructive Ownership Limit" set forth in the Series B Articles Supplementary shall be deemed to be 9.0%. To the extent the General Partner would not be able to pay the cash set forth above in exchange for the Excess Units, and to the extent consistent with the Charter, the General Partner agrees that it will grant

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to the holders of the Series B Preferred Units exceptions to the Beneficial Ownership Limit and Constructive Ownership Limit set forth in the Series B Articles Supplementary sufficient to allow such holders to exchange all of their Series B Preferred Units for REIT Series B Preferred Stock, provided such holders furnish to the General Partner representations acceptable to the General Partner in its sole and absolute discretion which assure the General Partner that such exceptions will not jeopardize the General Partner's tax status as a REIT for purposes of federal and applicable state law. Notwithstanding any provision of this Agreement to the contrary, no Series B Limited Partner shall be entitled to effect an exchange of Series B Preferred Units for Series B Preferred Shares to the extent that ownership or right to acquire such shares would cause the Partner or any other Person or, in the opinion of counsel selected by the General Partner, may cause the Partner or any other Person, to violate the restrictions on ownership and transfer of Series B Preferred Shares set forth in the Charter. To the extent any such attempted exchange for Series B Preferred Shares would be in violation of the previous sentence, it shall be void ab initio and such Series B Limited Partner shall not acquire any rights or economic interest in the Series B Preferred Shares otherwise issuable upon such exchange.

(iv) The redemption of Series B Preferred Units described in Section 17.8.A(ii) and (iii) shall be subject to the provisions of Section 17.5.B(i) and Section 17.5.C(ii); provided, however, that the term "Redemption Price" in such Sections 17.5.B(i) and 17.5.C(ii) shall be read to mean the original Capital Contribution per Series B Preferred Unit being redeemed as set forth on Exhibit A plus all accrued and unpaid distributions to the redemption date.

B. Procedure for Exchange and/or Redemption of Series B Preferred Units.

(i) Any exchange shall be exercised pursuant to a notice of exchange (the "Exchange Notice") delivered to the General Partner by the Partners representing at least 51% of the outstanding Series B Preferred Units (or by Contributor in the case of an exchange pursuant to the last sentence of Section 17.8.A.(i) hereof) by (a) fax and (b) by certified mail postage prepaid. The General Partner may effect any exchange of Series B Preferred Units, or exercise its option to cause the Partnership to redeem any portion of the Series B Preferred Units for cash pursuant to Section 17.8.A(ii) or redeem Excess Units pursuant to Section 17.8.A(iii), by delivering to each holder of record of Series B Preferred Units, within ten (10) Business Days following receipt of the Exchange Notice, (a) if the General Partner elects to cause the Partnership to acquire any of the Series B Preferred Units then outstanding, (1) certificates representing the Series B Preferred Shares being issued in exchange for the Series B Preferred Units of such holder being exchanged and (2) a written notice (a "Redemption Notice") stating (A) the redemption date, which may be the date of such Redemption Notice or any other date which is not later than sixty (60) days following the receipt of the Exchange Notice, (B) the redemption price, (C) the place or places where the Series B Preferred Units are to be surrendered and (D) that distributions on the Series B Preferred Units will cease to accrue on such redemption date, or (b) if the General Partner elects to cause the Partnership to redeem all of the Series B Preferred Units then outstanding in exchange for cash, a Redemption Notice. Series B Preferred Units shall be deemed canceled (and any corresponding Partnership Interest represented thereby deemed terminated) simultaneously with the delivery of shares of Series B Preferred Shares (with respect to Series B Preferred Units exchanged) or simultaneously with the redemption date (with respect to Series B Preferred Units redeemed). Holders of Series B

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Preferred Units shall deliver any canceled certificates representing Series B Preferred Units which have been exchanged or redeemed to the office of General Partner (which currently is located at 505 Montgomery Street, San Francisco, California 94111) within ten (10) Business Days of the exchange or redemption with respect thereto. Notwithstanding anything to the contrary contained herein, any and all Series B Preferred Units to be exchanged for REIT Series B Preferred Stock pursuant to this Section 17.8 shall be so exchanged in a single transaction at one time. As a condition to exchange, the General Partner may

require the holders of Series B Preferred Units to make such representations as may be reasonably necessary for the General Partner to establish that the issuance of Series B Preferred Shares pursuant to the exchange shall not be required to be registered under the Securities Act or any state securities laws. Any Series B Preferred Shares issued pursuant to this Section 17.8 shall be delivered as shares which are duly authorized, validly issued, fully paid and nonassessable, free of any pledge, lien, encumbrance or restriction other than those provided in the Charter, the Bylaws of the General Partner, the Securities Act and relevant state securities or blue sky laws.

The certificates representing the Series B Preferred Shares issued upon exchange of the Series B Preferred Units shall contain the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND STATE SECURITIES LAWS OR (B) IF THE CORPORATION HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER OF THE SHARES REPRESENTED HEREBY, OR OTHER EVIDENCE SATISFACTORY TO THE CORPORATION, THAT SUCH TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS EXEMPT FROM THE PROVISIONS OF SECTION 5 OF THE ACT AND STATE SECURITIES LAWS AND THE RULES AND REGULATIONS THEREUNDER.

(ii) In the event of an exchange of Series B Preferred Units for Series B Preferred Shares, an amount equal to the accrued and unpaid distributions to the date of exchange on any Series B Preferred Units tendered for exchange shall (i) accrue on the Series B Preferred Shares into which such Series B Preferred Units are exchanged, and (ii) continue to accrue on such Series B Preferred Units, which shall remain outstanding following such exchange, with the General Partner as the holder of such REIT Series B Preferred Units. Notwithstanding anything to the contrary set forth herein, in no event shall a holder of a Series B Preferred Unit that was validly exchanged for Series B Preferred Shares pursuant to this section (other than the General Partner holding such Series B Preferred Unit following any such exchange), receive a distribution out of Available Cash of the Partnership, if such holder, after exchange, is entitled to receive a distribution out of Available Cash with respect to the Series B Preferred Shares for which such Series B Preferred Unit was exchanged or redeemed. Further for purposes of the

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foregoing, in the event of an exchange of Series B Preferred Units for Series B Preferred Shares, if the accrued and unpaid distributions per Series B Preferred Unit is not the same for each Series B Preferred Unit, the accrued and unpaid distributions per Series B Preferred Unit for each such Series B Preferred Unit shall be equal to the greatest amount of such accrued and unpaid distributions per Series B Preferred Unit on any such unit.

(iii) Fractional Series B Preferred Shares are not to be issued upon exchange but, in lieu thereof, the General Partner will pay a cash adjustment based upon the fair market value of the Series B Preferred Shares on the day prior to the exchange date as determined in good faith by the Board of Directors of the General Partner.

C. Adjustment of Exchange Price. In case the General Partner shall be a party to any transaction (including, without limitation, a merger, consolidation, statutory share exchange, tender offer for all or substantially all of the General Partner's capital stock or sale of all or substantially all of the General Partner's assets), in each case as a result of which the Series B Preferred Shares will be converted into the right to receive shares of capital stock, other securities or other property (including cash or any combination thereof), each Series B Preferred Unit will thereafter be exchangeable into the kind and amount of shares of capital stock and other securities and property receivable (including cash or any combination thereof) upon the consummation of such transaction by a holder of that number of Series B Preferred Shares or fraction thereof into which one Series B Preferred Unit was exchangeable immediately prior to such transaction. The General Partner may not become a party to any such transaction unless the terms thereof are consistent with the foregoing.

#### Section 17.9. No Conversion Rights

The Series B Preferred Units shall not be convertible into any other class or series of interest in the Partnership.

#### Section 17.10. No Sinking Fund

No sinking fund shall be established for the retirement or redemption of Series B Preferred Units.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GENERAL PARTNER:

AMB PROPERTY CORPORATION,  
a Maryland corporation

By: /s/ JOHN T. ROBERTS

-----  
John T. Roberts  
Vice President and Director of  
Capital Markets

LIMITED PARTNERS:

AMB PROPERTY CORPORATION,  
as attorney-in-fact for each of the  
Limited Partners

By: /s/ JOHN T. ROBERTS

-----  
John T. Roberts  
Vice President and Director of  
Capital Markets

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EXHIBIT A

PARTNERS, CONTRIBUTIONS, AND PARTNERSHIP INTERESTS

I. COMMON UNITS

<TABLE>  
<CAPTION>

Percentage Name of Partner Interest	Contribution Date	Cash Contributions	Agreed Value of Contributed Property	Total Contributions	Partnership Units
-----	-----	-----	-----	-----	-----
<S> <C>	<C>	<C>	<C>	<C>	<C>
GENERAL PARTNER: AMB Property Corporation (a) 95.06305%	11/26/97	\$73,798,710	\$1,693,339,826	\$1,767,138,536	85,645,102
LIMITED PARTNERS:					
David Brown 0.06080%	11/26/97	\$0	\$1,150,359	\$1,150,359	54,779
Daniel Sarhad 0.00033%	11/26/97	\$0	\$6,174	\$6,174	294
Craig Duncan 0.01144%	11/26/97	\$0	\$216,447	\$216,447	10,307
GP Met Phase One 95, Ltd. 0.09377%	11/26/97	\$0	\$1,774,164	\$1,774,164	84,484
GP Met 4/12, Ltd. 0.07855%	11/26/97	\$0	\$1,486,212	\$1,486,212	70,772
Holbrook W. Goodale 54 Trust 0.05913%	11/26/97	\$0	\$1,118,754	\$1,118,754	53,274
Charles R. Wichman 54 Trust 0.05913%	11/26/97	\$0	\$1,118,754	\$1,118,754	53,274
Frederick B. Wichman 54 Trust 0.05913%	11/26/97	\$0	\$1,118,754	\$1,118,754	53,274
Holbrook W. Goodale 57 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654



Charles R. Wichman 57 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654
Frederick B. Wichman 57 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654
Holbrook W. Goodale 58 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654
Charles R. Wichman 58 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654
Frederick B. Wichman 58 Trust 0.20718%	11/26/97	\$0	\$3,919,734	\$3,919,734	186,654
Allmerica Financial Life 0.62117%	11/26/97	\$0	\$11,752,188	\$11,752,188	559,628
Insurance and Annuity Company The Gamble Family Investment 0.53517%	11/26/97	\$0	\$10,125,213	\$10,125,213	482,153
Limited Partnership Campanelli Investment Properties 0.57446%	03/30/98	\$0	\$12,435,871	\$12,435,871	517,547
(b) Campanelli Enterprises (c) 0.48629%	03/30/98	\$0	\$10,334,678	\$10,334,678	438,110
Steve Liefschultz 0.09010%	03/31/98	\$0	\$1,990,798	\$1,990,798	81,174
Stephen M. Vincent 0.02873%	03/31/98	\$0	\$634,825	\$634,825	25,884
Alan Wilensky 0.01204%	03/31/98	\$0	\$266,073	\$266,073	10,849
Craig Gagnon 0.03650%	03/31/98	\$0	\$806,404	\$806,404	32,880
Seefried Properties, Inc. 0.00287%	06/04/98	\$0	\$61,250	\$61,250	2,590
Monique Brouillet Seefried 0.03099%	06/04/98	\$0	\$660,275	\$660,275	27,916
Robert S. Rakusin 0.01500%	06/04/98	\$0	\$319,725	\$319,725	13,518
Gerald L. Daws 0.00690%	06/04/98	\$0	\$147,000	\$147,000	6,215
Thomas Ellis 0.00172%	06/04/98	\$0	\$36,750	\$36,750	1,554
James E. Hayes as trustee of the James E. Hayes Living Trust under Agreement dated 0.02642%	06/30/98	\$0	\$580,747	\$580,747	23,801
August 22, 1995 Lawrence J. Hayes 0.02642%	06/30/98	\$0	\$580,747	\$580,747	23,801
Lincoln Property Company No. 238, 0.39239%	09/24/98	\$0	\$8,320,955	\$8,320,955	353,520
LP Lincoln Property Company No. 287, 0.13020%	09/24/98	\$0	\$2,760,957	\$2,760,957	117,300
LP Lincoln Property Company No. 355, 0.03488%	09/24/98	\$0	\$739,600	\$739,600	31,422
LP Lincoln Property Company No. 440, 0.03620%	09/24/98	\$0	\$767,640	\$767,640	32,614
LP Lincoln Property Company No.1179, 0.18312%	09/24/98	\$0	\$3,883,230	\$3,883,230	164,981
LP					
-----					
TOTAL COMMON UNITS 100.00000%		\$73,798,710	\$1,792,052,774	\$1,865,851,484	90,092,941
=====		=====	=====	=====	=====

</TABLE>

(a) Excludes 229,411 of Sub OP and Long Gate LLC shares/units and preferred partnership units.

(b) Includes 3,402 units reserved.

(c) Includes 10,836 units reserved.

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EXHIBIT A

PARTNERS, CONTRIBUTIONS, AND PARTNERSHIP INTERESTS

II. SERIES A PREFERRED UNITS

<TABLE>  
<CAPTION>

Percentage Name of Partner Interest	Contribution Date	Cash Contributions	Agreed Value of Contributed Property	Total Contributions	Partnership Units
<S> <C>	<C>	<C>	<C>	<C>	<C>
GENERAL PARTNER:					
AMB Property Corporation 4,000,000 100.00000%	7/27/98	\$ 96,100,000	\$0	\$ 96,100,000	
=====					
TOTAL SERIES A PREFERRED 4,000,000 100.00000% UNITS		\$ 96,100,000	\$0	\$ 96,100,000	
=====					

</TABLE>

II. SERIES B PREFERRED UNITS

<TABLE>  
<CAPTION>

Partnership Name of Partner Interest	Percentage	Contribution Date	Cash Contributions	Agreed Value of Contributed Property	Total Contributions	Units
<S> <C>		<C>	<C>	<C>	<C>	<C>
LIMITED PARTNER:						
Greene Street 1998 Exchange Fund, L.P. 1,300,000 100.00000%		11/12/98	\$65,000,000	\$0	\$65,000,000	
=====						
TOTAL SERIES B PREFERRED 1,300,000 100.00000% UNITS			\$65,000,000	\$0	\$65,000,000	
=====						

</TABLE>

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EXHIBIT B

NOTICE OF REDEMPTION

The undersigned hereby [irrevocably] (i) exchanges \_\_\_\_\_ Limited Partnership Units in AMB Property, L.P. in accordance with the terms of the Limited Partnership Agreement of AMB Property, L.P. dated as of \_\_\_\_\_, as amended, and the rights of Redemption referred to therein, (ii) surrenders such Limited Partnership Units and all right, title and interest therein and (iii) directs that the cash (or, if applicable, REIT Shares) deliverable upon Redemption or exchange be delivered to the address specified below, and if applicable, that such REIT Shares be registered or placed in the name(s) and at the address(es) specified below.

Dated: \_\_\_\_\_  
Name of Limited Partner:

\_\_\_\_\_  
(Signature of Limited Partner)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

Signature Guaranteed by:

---

Issue REIT Shares in the name of:

Please insert social security or identifying number:

Address (if different than above):

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EXHIBIT C

CONSTRUCTIVE OWNERSHIP DEFINITION

The term "Constructively Owns" means ownership determined through the application of the constructive ownership rules of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. Generally, these rules provide the following:

a. an individual is considered as owning the Ownership Interest that is owned, actually or constructively, by or for his spouse, his children, his grandchildren, and his parents;

b. an Ownership Interest that is owned, actually or constructively, by or for a partnership, limited liability company or estate is considered as owned proportionately by its partners, members or beneficiaries;

c. an Ownership Interest that is owned, actually or constructively, by or for a trust is considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries (provided, however, that in the case of a "grantor trust" the Ownership Interest will be considered as owned by the grantors);

d. if ten percent (10%) or more in value of the stock in a corporation is owned, actually or constructively, by or for any person, such person shall be considered as owning the Ownership Interest that is owned, actually or constructively, by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation;

e. an Ownership Interest that is owned, actually or constructively, by or for a partner or member which actually or constructively owns a 25% or greater capital interest or profits interest in a partnership or limited liability company, or by or for a beneficiary of an estate or trust, shall be considered as owned by the partnership, limited liability company, estate, or trust (or, in the case of a grantor trust, the grantors);

f. if ten percent (10%) or more in value of the stock in a corporation is owned, actually or constructively, by or for any person, such corporation shall be considered as owning the Ownership Interest that is owned, actually or constructively, by or for such person;

g. if any person has an option to acquire an Ownership Interest (including an option to acquire an option or any one of a series of such options), such Ownership Interest shall be considered as owned by such person;

h. an Ownership Interest that is constructively owned by a person by reason of the application of the rules described in paragraphs (a) through (g) above shall, for purposes of applying paragraphs (a) through (g), be considered as actually owned by such person provided, however, that (i) an Ownership Interest constructively owned by an individual by reason of paragraph (a) shall not be considered as owned by him for purposes of again applying paragraph (a) in order to make another the constructive owner of such Ownership Interest, (ii) an Ownership Interest constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraphs (e) or (f) shall not be considered as owned by it for purposes of applying paragraphs (b), (c), or (d) in order to make another the constructive owner of such Ownership Interest, (iii) if an Ownership Interest may be considered as owned by an individual under paragraphs (a) or (g), it shall be considered as owned by him under paragraph (g) and (iv) for purposes of the above described rules, an S corporation shall be treated as a partnership and any stockholder of the S corporation shall be treated as a partner of such partnership except that this rule shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

i. For purposes of the above summary of the constructive ownership rules, the term "Ownership Interest" means the ownership of stock with respect

to a corporation and, with respect to any other type of entity, the ownership of an interest in either its assets or net profits.

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EXHIBIT D-1

FORM OF PARTNERSHIP UNIT CERTIFICATE  
CERTIFICATE FOR PARTNERSHIP UNITS OF  
AMB PROPERTY, L.P.

No. \_\_\_\_\_ UNITS

AMB Property Corporation as the General Partner of AMB Property, L.P., a Delaware limited partnership (the "Operating Partnership"), hereby certifies that is a Limited Partner of the Operating Partnership whose Partnership Interests therein, as set forth in the Agreement of Limited Partnership of AMB Property, L.P., dated as of \_\_\_\_\_, 199\_ (as it may be amended, modified or supplemented from time to time in accordance with its terms, (the "Partnership Agreement"), under which the Operating Partnership is existing and as filed in the office of the Delaware [State Department of Assessments and Taxation] (copies of which are on file at the Operating Partnership's principal office at \_\_\_\_\_, represent units of limited partnership interest in the Operating Partnership (the "Partnership Units").

THE PARTNERSHIP UNITS REPRESENTED BY THIS CERTIFICATE OR INSTRUMENT MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS SUCH TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION COMPLIES WITH THE PROVISIONS OF THE PARTNERSHIP AGREEMENT (A COPY OF WHICH IS ON FILE WITH THE OPERATING PARTNERSHIP). EXCEPT AS OTHERWISE PROVIDED IN THE PARTNERSHIP AGREEMENT, NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE PARTNERSHIP UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR (B) IF THE OPERATING PARTNERSHIP HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER OF THE PARTNERSHIP UNITS REPRESENTED BY THIS CERTIFICATE THAT SUCH TRANSFER, SALE ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS EXEMPT FROM THE PROVISIONS OF SECTION 5 OF THE ACT AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER.

DATED: \_\_\_\_\_, 199\_.

AMB PROPERTY CORPORATION  
General Partner of AMB  
Property, L.P.

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

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EXHIBIT D-2

FORM OF PARTNERSHIP UNIT CERTIFICATE  
CERTIFICATE FOR PERFORMANCE UNITS OF  
AMB PROPERTY, L.P.

No. \_\_\_\_\_ UNITS

AMB Property Corporation as the General Partner of AMB Property, L.P., a Delaware limited partnership (the "Operating Partnership"), hereby certifies that is a Limited Partner of the Operating Partnership whose Partnership Interests therein, as set forth in the Agreement of Limited Partnership of AMB Property, L.P., dated as of \_\_\_\_\_, 199\_ (as it may be amended, modified or supplemented from time to time in accordance with its terms, (the "Partnership Agreement"), under which the Operating Partnership is existing and as filed in the office of the Delaware [State Department of Assessments and Taxation] (copies of which are on file at the Operating Partnership's principal office at \_\_\_\_\_, represent performance units (as defined in the Partnership Agreement) of limited partnership interest in the Operating Partnership (the "Performance Units").

THE PERFORMANCE UNITS REPRESENTED BY THIS CERTIFICATE OR INSTRUMENT MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS SUCH TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION COMPLIES WITH THE PROVISIONS OF THE PARTNERSHIP AGREEMENT (A COPY OF

WHICH IS ON FILE WITH THE OPERATING PARTNERSHIP). EXCEPT AS OTHERWISE PROVIDED IN THE PARTNERSHIP AGREEMENT, NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE PERFORMANCE UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR (B) IF THE OPERATING PARTNERSHIP HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER OF THE PERFORMANCE UNITS REPRESENTED BY THIS CERTIFICATE THAT SUCH TRANSFER, SALE ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS EXEMPT FROM THE PROVISIONS OF SECTION 5 OF THE ACT AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER.

DATED: \_\_\_\_\_, 199\_.

AMB PROPERTY CORPORATION

General Partner of AMB  
Property, L.P.

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

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EXHIBIT E

SCHEDULE OF PARTNERS' OWNERSHIP

WITH RESPECT TO TENANTS

E-1

EXHIBIT F

SCHEDULE OF REIT SHARES

ACTUALLY OR CONSTRUCTIVELY OWNED BY 25% LIMITED PARTNERS

OTHER THAN THOSE ACQUIRED PURSUANT TO AN EXCHANGE

F-1

EXHIBIT G

PERFORMANCE UNITS

Any Performance Units to be issued by the Partnership pursuant to Section 4.3.F. shall be issued to the following Persons in the following amounts:

1. The first 3,000,000 Performance Units to be issued shall be issued 90% to the "Old PLPs" (as defined below) and 10% to the "New PLPs" (as defined below).

2. Any Performance Units to be issued in excess of those set forth in paragraph 1. above shall be issued 80% to the Old PLPs and 20% to the New PLPs.

3. The Performance Units allocable to each group of PLPs pursuant to paragraphs 1. and 2. above shall be allocated among the PLPs within such group in accordance with each PLP's percentage interest as set forth in the definitions below.

4. The receipt of Performance Units by a PLP is subject to the following vesting requirements:

A. Any Person who is listed in the definition of Old PLP or New PLP and who does not remain employed, by one or more of the Partnership, the IMS or their affiliates, for at least one (1) year from the closing of the initial public offering of the common stock of the General Partner, other than Persons who cease to be so employed as a result of a Permitted Reason, shall have their name removed from such definition and such Person's percentage as set forth in such definition shall be transferred to the other Persons listed in such definition in proportion to their immediately preceding percentages.

B. Performance Units issued to a New PLP shall be subject to a vesting requirement pursuant to which a New PLP will have their ownership of Performance Units vest in 25% increments on each anniversary of such issuance, beginning on the first such anniversary and ending on the fourth such anniversary. In order for such portion of the

Performance Units to vest on an anniversary, the New PLP must continue to be employed by one or more of the Partnership, the IMS or their affiliates on such anniversary (the "Employment Requirement"). In the event a New PLP ceases to meet the Employment Requirement, he or she shall immediately forfeit any Performance Units which have not previously vested. Notwithstanding the foregoing, (i) all Performance Units held by New PLPs meeting the Employment Requirement at the effective time of a Termination Transaction shall vest at such time; and (ii) the General Partner may, in its sole and absolute discretion, cause the immediate vesting of some or all of the Performance Units issued to one or more of the New PLPs.

C. Any Performance Units forfeited pursuant to paragraph B. above shall be reissued by the Partnership to each of the Old PLPs and New PLPs in proportion to the number of Performance Units originally issued to each such PLP (including Performance Units then held by a New PLP which have not yet vested). Any Performance Units which are reissued to a New PLP pursuant to this paragraph 4.C. with respect to such New PLP's Performance Units which have not yet vested (based on the percentage of such New PLP's Performance Units that

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have not yet vested), shall be unvested Performance Units and shall vest or be forfeited in accordance with or at the same time as the Performance Units with respect to which such reissued Performance Units were acquired. Any other Performance Units which are reissued to a PLP pursuant to this paragraph 4.C. shall be fully vested upon such reissuance.

D. Units which have not vested may not be exchanged or redeemed (including pursuant to Section 8.6), sold or otherwise disposed of by a PLP.

E. If by January 31, 1999, 100% of the percentage interests allocable to the New PLPs have not been allocated (i.e., a portion of such percentage interests continues to be allocable to "TBD"), any such unallocated percentage interests shall be reallocated on such date to the other Persons listed in such definition in proportion to their immediately preceding percentages.

Definitions

"Old PLPs" means the Persons set forth on Schedule G-1 attached hereto, with the percentage interest so indicated, as adjusted pursuant to paragraph 4.A. above.

"New PLPs" means the Persons set forth on Schedule G-2 attached hereto, with the percentage interest so indicated, as adjusted pursuant to paragraph 4.A. above.

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SCHEDULE G-1

OLD PLPS

Name of Old PLP	Percentage
Douglas D. Abbey	23.6537%
Luis A. Belmonte	2.8055%
T. Robert Burke	17.8504%
S. Davis Carniglia	4.7271%
John H. Diserens	5.9870%
Bruce H. Freedman	1.9607%
Jean Collier Hurley	2.4411%
Barbara J. Linn	4.2467%
Hamid R. Moghadam	29.4184%
Craig A. Severance	6.9094%

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SCHEDULE G-2

NEW PLPS

<TABLE>	<CAPTION>
Name of New PLP	Percentage
-----	-----
<S>	<C>
Lindsey Adams	2%
Mohammad Barzegar	4%
Steven Callaway	3%
Steven Campbell	2%
Michael Coke	4%
Martin Coyne	2%
Dave Doyno	2%
David Fries	8%
Kent Greenawalt	3%
Jane Harris	4%
Carlie Headapohl	2%
Tyler Higgins	4%
Steven Kimball	2%
John Meyer	3%
John R. Roberts	4%
John T. Roberts	4%
John Rossi	2%
Cynthia Sarver	2%
Michael Scandalios	2%
Christine Schadlich	3%
Gary Scheier	2%
Andrew Singer	3%
Gayle Starr	3%
William Steinberg	4%
K.C. Swartzel	4%
Celia Tanaka	2%
Janice Thacher	1.2%
TBD	18.8%

</TABLE>

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EXHIBIT H

SCHEDULE OF CERTAIN AGREEMENTS RELATING TO  
 PROPERTIES WITH RESTRICTIONS ON DISPOSITION  
 PURSUANT TO SECTION 7.3.F

1. Joint Venture Interest/Contribution Agreement, dated November 26, 1997, by and among AMB Property, L.P., David Brown, Daniel Sarhad and Craig Duncan.
2. Joint Venture Interest Exchange/Contribution Agreement, dated November 26, 1997, by and among AMB Property, L.P., GP Met Phase One 95, Ltd. and GP Met 4/12, Ltd.
3. Agreement for Transfer of Realty and Assets, dated November 26, 1997, by and among AMB Property, L.P. and Holbrook W. Goodale, Charles R. Wichman and Frederick B. Wichman as Trustees for the Wichman Family Trusts.
4. Contribution Agreement, dated November 26, 1997, between AMB Property, L.P. and Linder Skokie Real Estate Corporation. (Allmerica Portfolio)
5. Agreement for Transfer of Realty and Assets, dated November 26, 1997, by and among AMB Property, L.P., Launce E. Gamble and George F. Gamble.
6. Contribution Agreements, dated March 30, 1998, by and among AMB Property, L.P. and the other parties named therein. (Campanelli Portfolio)
7. Contribution Agreement, dated March 31, 1998, by and among AMB Property, L.P., Steve Liefschultz, Stephen M. Vincent, Alan Wilensky and Craig Gagnon.
8. Contribution Agreement, dated June 4, 1998 by and among AMB Property, L.P. and the other parties named therein. (Southfield Portfolio)
9. Amended and Restated Contribution Agreement, dated as of August 6, 1998, by and among AMB Property, L.P., AMB Property Corporation and the other parties named therein. (Willow Park Portfolio)

EXHIBIT I

SCHEDULE OF CERTAIN AGREEMENTS CONTAINING  
LIMITATIONS ON GENERAL PARTNERS GENERAL AUTHORITY

1. Contribution Agreements, dated March 30, 1998, by and among AMB Property, L.P. and the other parties named therein. (Campanelli Portfolio)
2. AMB Property, L.P., First Amendment to Amended and Restated Agreement of Limited Partnership, dated as of March 30, 1998.
3. Contribution Agreement, dated March 31, 1998, by and among AMB Property, L.P. and Steve Liefschultz, Stephen M. Vincent, Alan Wilensky and Craig Gagnon.
4. AMB Property, L.P., Second Amendment to Amended and Restated Agreement of Limited Partnership, dated as of March 31, 1998.
5. Contribution Agreement, dated June 4, 1998 by and among AMB Property, L.P. and the other parties named therein. (Southfield Portfolio)
6. AMB Property, L.P. Third Amendment to Amended and Restated Agreement of Limited Partnership, dated as of June 4, 1998.
7. Contribution Agreement, dated May 21, 1998, by and among AMB Property, L.P. and the other parties named therein. (Alsip Industrial Portfolio)
8. AMB Property, L.P. Fourth Amendment to Amended and Restated Agreement of Limited Partnership, dated as of June 30, 1998.
9. Amended and Restated Contribution Agreement dated as of August 6, 1998, by and among AMB Property, L.P., AMB Property Corporation and the other parties named therein. (Willow Park Portfolio)
10. AMB Property, L.P. First Amendment to Second Amended and Restated Agreement of Limited Partnership, dated as of September 24, 1998.

EXHIBIT J

RESTRICTIONS ON OWNERSHIP AND TRANSFER TO PRESERVE TAX BENEFIT

(a) Definitions. for the purposes of this Exhibit J, the following terms shall have the following meanings:

"Charitable Beneficiary" shall mean one or more beneficiaries of a Trust, as determined pursuant to subsection (c) (vi), each of which shall be an organization described in Sections 170(b) (1) (A), 170(c) (2) and 501(c) (3) of the Code.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Constructive Ownership" shall mean ownership of Partnership Units by a Person who is or would be treated as an owner of such Partnership Units either actually or constructively through the application of Section 318 of the Code, as modified by Section 856(d) (5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"Exempted Person" shall mean any Person exempted from time to time by the General Partner in its sole and absolute discretion.

"Market Price" shall mean the market price of the Partnership Units on the relevant date as determined in good faith by the General Partner; provided, however, if the General Partner has outstanding shares of capital stock which correspond to such Partnership Units, the Market Price of each such Partnership Unit shall be equal to the Value of a share of such capital stock, subject to adjustment if the right to exchange such Partnership Units for such stock is other than one-to-one.



"Ownership Limit" shall mean 24.9% of the capital or profits interests of the Partnership.

"Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in subsection (b) (ii), the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned Partnership Units for another Person who is the beneficial transferee or owner of such Partnership Units, in which case the Purported Beneficial Transferee shall be such Person.

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"Purported Record Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in subsection (b) (ii), the holder of the Partnership Units as set forth or to be set forth in Exhibit A to the Partnership Agreement, and any Assignee of such Partnership Units, if such Transfer or ownership had been valid under subsection (b) (i).

"Restriction Termination Date" shall mean the first day after the date hereof on which the General Partner determines, in its sole and absolute discretion, that compliance with subsection (b) (i) is no longer necessary or advisable.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Partnership Units, (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Partnership Units or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for Partnership Units), whether voluntary or involuntary, whether such transfer has occurred of record or beneficially or Constructively (including but not limited to transfers of interests in other entities which results in changes in Constructive Ownership of Partnership Units), and whether such transfer has occurred by operation of law or otherwise.

"Trust" shall mean each of the trusts provided for in subsection (c).

"Trustee" shall mean any Person unaffiliated with the Partnership, or a Purported Beneficial Transferee, or a Purported Record Transferee, that is appointed by the Partnership to serve as trustee of a Trust.

Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Third Amended and Restated Agreement of Limited Partnership of AMB Property, L.P. (the "Partnership Agreement"), as such agreement may be amended from time to time. All references to "Section" refer to the Partnership Agreement.

(b) Restriction on Ownership and Transfers.

(i) Prior to the Restriction Termination Date, no Person, other than an Exempted Person, shall at any time Constructively Own Partnership Units in excess of the Ownership Limit if the representations contained in Section 3.4.D are not at such time true and correct.

(ii) If, prior to the Restriction Termination Date, any Transfer or other event occurs that, if effective, would result in any Person Constructively Owning Partnership Units in violation of subsection (b) (i), (1) then that number of Partnership Units that otherwise would cause such Person to violate subsection (b) (i) (rounded up to the nearest whole Partnership Unit) shall be automatically transferred (provided such Transfer is not in violation of the restrictions on transfer set forth in the Partnership Agreement, except to the extent the General Partner waives such restrictions) to a Trust for the benefit of a Charitable Beneficiary, as described in subsection (c),

effective as of the close of business on the business day prior to the date of such Transfer or other event, and such Purported Beneficial Transferee shall thereafter have no rights in such Partnership Units or (2) if, for any reason, the transfer to the Trust described in clause (1) of this sentence is not automatically effective as provided therein to prevent any Person from Constructively Owning Partnership Units in violation of subsection (b) (i), then the Transfer of that number of Partnership Units that otherwise would cause any Person to violate subsection (b) (i) shall be void ab initio, and the Purported Beneficial Transferee shall have no rights in such Partnership Units.

(c) Transfers of Partnership Units in Trust.

(i) Upon any purported Transfer or other event described in subsection (b) (ii), such Partnership Units shall be deemed to have been transferred to the Trustee in his capacity as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the business day prior to the purported Transfer or other event that results in a transfer to the Trust pursuant to subsection (b) (ii). The Trustee shall be appointed by the Partnership and shall be a Person unaffiliated with the Partnership, any Purported Beneficial Transferee, or any Purported Record Transferee. Each Charitable Beneficiary shall be designated by the Partnership as provided in subsection (c) (vi).

(ii) Partnership Units held by the Trustee shall be issued and outstanding Partnership Units of the Partnership. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the Partnership Units held by the Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any Partnership Units held in trust by the Trustee, shall have no rights to distributions or allocations with respect to Partnership Units held in the Trust and shall not possess any rights to vote or other rights attributable to the Partnership Units held in the Trust.

(iii) The Trustee shall have all voting rights and rights to distributions and allocations with respect to Partnership Units held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any distribution paid prior to the discovery by the Partnership that Partnership Units have been transferred to the Trustee shall be paid to the Trustee upon demand, and any distribution with respect to such Partnership Units shall be paid when due to the Trustee. Any distributions so paid over to the Trustee shall be held in trust for the Charitable Beneficiary.

The Purported Record Transferee and Purported Beneficial Transferee shall have no voting rights with respect to the Partnership Units held in the Trust and, subject to Delaware law, effective as of the date the Partnership Units has been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such Partnership Units prior to the discovery by the Partnership that the Partnership Units has been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Partnership has already taken irreversible action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding any other provision of this Exhibit J to the contrary, until the Partnership has received notification that the Partnership Units have been transferred into a Trust, the Partnership shall be entitled to rely on its Partnership

Unit transfer and other unitholder records for purposes of preparing Exhibit A to the Partnership Agreement, lists of unitholders entitled to vote at meetings, and otherwise conducting votes of Partners.

(iv) Within 20 days of receiving notice from the Partnership that Partnership Units have been transferred to the Trust, the Trustee of the Trust shall, in accordance with the terms of (and subject to the limitations contained in) the Partnership Agreement, sell the Partnership Units held in the Trust to a Person, designated by the Trustee, whose ownership of the Partnership Units will not violate the ownership limitations set forth in subsection (b) (i). Upon such sale, the interest of the Charitable Beneficiary in the Partnership Units sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this subsection (c) (iv). The Purported Record Transferee shall receive the lesser of (1) the price paid by the Purported Record Transferee for the Partnership Units in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such Partnership Units at Market Price, the Market Price of such Partnership Units on the day of the event which resulted in the transfer

of such Partnership Units to the Trust) and (2) the price per Partnership Unit received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the Partnership Units held in the Trust. Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any distributions thereon. If, prior to the discovery by the Partnership that Partnership Units have been transferred to the Trustee, such Partnership Units are sold by a Purported Record Transferee then (i) such Partnership Units shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Purported Record Transferee received an amount for such Partnership Units that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this subsection (c)(iv), such excess shall be paid to the Trustee upon demand. The expenses described in item (2) above shall include any expenses of administering the Trust, any transfer of Partnership Units thereto or disposition of Partnership Units thereby, which shall be allocated equitably among the Partnership Units which are transferred to the Trust.

(v) Partnership Units transferred to the Trustee shall be deemed to have been offered for sale to the Partnership, or its designee, at a price per Partnership Unit equal to the lesser of (i) the price paid by the Purported Record Transferee for the Partnership Units in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such Partnership Units at Market Price, the Market Price of such Partnership Units on the day of the event which resulted in the transfer of such Partnership Units to the Trust) and (ii) the Market Price on the date the Partnership, or its designee, accepts such offer. The Partnership shall have the right to accept such offer until the Trustee has sold the Partnership Units held in the Trust pursuant to subsection (c)(iv). Upon such a sale to the Partnership, the interest of the Charitable Beneficiary in the Partnership Units sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any distributions held by the Trustee with respect to such Partnership Units shall thereupon be paid to the Charitable Beneficiary.

(vi) By written notice to the Trustee, the Partnership shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that the

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Partnership Units held in the Trust would not violate the restrictions set forth in subsection (b)(i) in the hands of such Charitable Beneficiary.

(d) Remedies For Breach. If the General Partner shall at any time determine in good faith that a Transfer or other event has taken place in violation of subsection (b) or that a Person intends to acquire, has attempted to acquire or may acquire beneficial ownership (determined without reference to any rules of attribution) or Constructive Ownership of any Partnership Units of the Partnership in violation of subsection (b), the General Partner shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, causing the Partnership to redeem Partnership Units, refusing to give effect to such Transfer on the books of the Partnership or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers (or, in the case of events other than a Transfer, ownership or Constructive Ownership) in violation of subsection (b)(i), shall automatically result in the transfer to a Trust as described in subsection (b)(ii).

(e) Notice of Restricted Transfer. Any Person who acquires or attempts to acquire or own Partnership Units in violation of subsection (b), or any Person who is a Purported Beneficial Transferee such that an automatic transfer to a Trust results under subsection (b)(ii), shall immediately give written notice to the Partnership of such event and shall provide to the Partnership such other information as the Partnership may request in order to determine the effect, if any, of such Transfer or attempted Transfer on such Person's compliance with subsection (b)(i).

(f) Owners Required To Provide Information. Prior to the Restriction Termination Date each Person who is a beneficial owner or Constructive Owner of Partnership Units and each Person who is holding Partnership Units for a beneficial owner or Constructive Owner shall provide to the Partnership such information that the Partnership may request, in good faith, in order to determine the Partnership's status as a partnership (as opposed to a corporation) or the General Partner's status as a REIT for federal income tax purposes.

(g) Remedies Not Limited. Nothing contained in this Exhibit J shall limit the authority of the General Partner to take such other action as it deems necessary or advisable to protect the Partnership and the interests of its Partners by preservation of the Partnership's status as a partnership (as opposed to a corporation) or the General Partner's status as a REIT for federal income tax purposes.

(h) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Exhibit J, including any definition contained in subsection (a), the General Partner shall have the power to determine the application of the provisions of this Exhibit J with respect to any situation based on the facts known to it. In the event that a provision of this Exhibit J requires an action by the General Partner and Exhibit J fails to provide specific guidance with respect to such action, the General Partner shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Exhibit J. Absent a decision to the contrary by the General Partner (which the General Partner may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in subsection (b)) acquired Constructive Ownership of Partnership Units in violation of subsection (b)(i), such remedies (as applicable) shall apply first to the Partnership Units which, but for such remedies, would have been actually owned

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by such Person, and second to Partnership Units which, but for such remedies, would have been Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Partnership Units based upon the relative number of the Partnership Units held by each such Person.

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