

MONY GROUP INC  
Form 10-K405  
March 27, 2002

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2001

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-14603

**THE MONY GROUP INC.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**13-3976138**  
(I.R.S. Employer  
Identification No.)

**1740 Broadway**  
**New York, New York 10019**  
**(212) 708-2000**  
(Address, including zip code, and telephone number, including area code,  
of Registrant's principal executive offices)

**Securities registered pursuant to Section 12(b) of the Act:**

**Common Stock, par value \$0.01 per share**  
(Title of Class)

**New York Stock Exchange**  
(Name of each exchange on  
which registered)

**Securities Registered pursuant to Section 12(g) of the Act:**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

As of March 15, 2002 there were outstanding 48,513,451 shares of Common Stock, \$0.01 par value per share, of the Registrant. The aggregate market value of the shares of Common Stock held by non-affiliates of the Registrant was approximately \$2.0 billion, based on the closing price of \$40.20 per share March 15, 2002.

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**Documents Incorporated by Reference:** Portions of the Registrant's Proxy Statement dated for Registrant's 2002 Annual Meeting of Shareholders are incorporated by reference into Part III of this Form 10-K.

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**Forward-Looking Statements**

The Company's management has made in this report, and from time to time may make in its public filings and press releases as well as in oral presentations and discussions, forward-looking statements concerning the Company's operations, economic performance, prospects and financial condition. Forward-looking statements include, among other things, discussions concerning the Company's potential exposure to market risks, as well as statements expressing management's expectations, beliefs, estimates, forecasts, projections and assumptions, as indicated by words such as believes, estimates, intends, anticipates, expects, projects, should, probably, risk, target, goals, objectives, or similar. Company claims the protection afforded by the safe harbor for forward-looking statements as set forth in the Private Securities Litigation Reform Act of 1995. Forward-looking statements are subject to many risks and uncertainties. Actual results could differ materially from those anticipated by forward-looking statements due to a number of important factors including those discussed elsewhere in this report and in the Company's other public filings, press releases, oral presentations and discussions and the following: venture capital gains or losses could differ significantly from the Company's assumptions because of further significant changes in equity values; fees from assets under management could be significantly higher or lower than the Company has assumed if there are further major movements in the equity markets; the value of the Company's overall investment portfolio could fluctuate significantly as a result of major changes in the equity and debt markets generally; actual death claims experience could differ significantly from the Company's mortality assumptions; the Company may not achieve anticipated levels of operational efficiency and cost-saving initiatives; the Company may have as-yet unascertained tax liabilities; sales of variable products, mutual funds and equity securities could differ materially from assumptions because of further unexpected developments in the equity markets and changes in demand for such products; major changes in interest rates could affect the Company's earnings; the Company could have liability from as-yet unknown or unquantified litigation and claims; pending or known litigation or claims could result in larger settlements or judgments than the Company anticipates; the Company may have higher operating expenses than anticipated; changes in law or regulation, including tax laws, could materially affect the demand for the Company's products and the Company's net income after tax; and the Company may not achieve the assumed economic benefits of consolidating acquired enterprises. The Company undertakes no obligation to update or revise any forward-looking statement, whether as a result of new information, future events, or otherwise.

## PART I

### ITEM 1. *Business*

#### Organization and Business

The MONY Group Inc. (the "MONY Group"), through its subsidiaries (MONY Group and its subsidiaries are collectively referred to herein as the "Company"), provides life insurance, annuities, corporate-owned and bank-owned life insurance ("COLI/BOLI"), mutual funds, securities brokerage, asset management, business and estate planning, trust and investment banking products and services. The Company distributes its products and services to individuals and institutional clients through: (i) a career agency sales force operated by its principal life insurance subsidiary and financial advisors and brokers of its securities broker-dealer and mutual fund subsidiaries ("Proprietary Distribution") and (ii) complementary distribution channels ("Complementary Distribution"), which principally consist of independent third-party insurance brokerage general agencies and securities broker-dealers, as well as its corporate marketing team. For the year ended December 31, 2001, Proprietary Distribution accounted for approximately 40.4%, and 43.9% of sales of protection and accumulation products, respectively, and 100% of retail brokerage and investment banking revenues. Complementary Distribution accounted for 59.6% and 56.1% of sales of protection and accumulation products, respectively, and 0% of retail brokerage and investment banking revenues for the year ended December 31, 2001. See *Information About Business Segments*. The Company principally sells its products in all 50 of the United States, the District of Columbia, the U.S. Virgin Islands, Guam and the Commonwealth of Puerto Rico, and currently insures or provides other financial services to more than one million people.

MONY Group's principal operating subsidiaries are MONY Life Insurance Company ("MONY Life"), formerly known as The Mutual Life Insurance Company of New York, and The Advest Group Inc. ("Advest"). See *Note 1 to the Consolidated Financial Statements*.

MONY Life's principal wholly owned direct and indirect operating subsidiaries include: (i) MONY Life Insurance Company of America ("MLOA"), an Arizona domiciled life insurance company, (ii) Enterprise Capital Management ("Enterprise" or "ECM"), a distributor of both proprietary and non-proprietary mutual funds, (iii) U.S. Financial Life Insurance Company ("USFL"), an Ohio domiciled insurer underwriting specialty risk life insurance business, (iv) MONY Securities Corporation ("MSC"), a registered securities broker-dealer and investment advisor whose products and services are distributed through MONY Life's career agency sales force, (v) Trusted Securities Advisors Corp. ("Trusted Advisors"), which distributes investment products and services through a network of independent certified public accountants, (vi) MONY Brokerage, Inc. ("MBI"), a licensed insurance broker, which principally provides MONY Life's career agency sales force with access to life, annuity, small group health, and specialty insurance products written by other insurance companies so they can meet the insurance and investment needs of their customers, and (vii) MONY Life Insurance Company of the Americas, Ltd. ("MLICA"), which provides life insurance, annuity and investment products to nationals of certain Latin American countries.

On January 31, 2001, the MONY Group acquired Advest. Advest, through its principal operating subsidiaries, Advest Inc., a securities broker-dealer, and Advest Bank and Trust Company, a federal savings bank, provides diversified financial services including securities brokerage, trading, investment banking, trust and asset management services. See *Information about Business Segments and Note 1 to the Consolidated Financial Statements*.

On November 30, 2001, the Company acquired Lebenthal & Co. ("Lebenthal"), a New York based full service investment firm specializing in municipal bonds. In addition to being widely known for its expertise in tax exempt municipal bond investing, Lebenthal also manages three open-end municipal bond mutual funds. See *Information about Business Segments and Note 1 to the Consolidated Financial Statements*.

Also, on January 1, 2001, MONY Group acquired Matrix Capital Markets Group, Inc. and Matrix Private Equities, Inc. (hereafter collectively referred to as "Matrix"). Matrix primarily provides investment banking services to middle market companies. See *Note 1 to the Consolidated Financial Statements*.

For reporting purposes, the Company's business is organized in three principal operating segments: Protection Products, Accumulation Products, and Retail Brokerage and Investment Banking. Substantially all of the Company's other business activities are combined in the Other Products segment. See *Note 7 to the Consolidated Financial Statements* for a full description of the business segments.

#### Information About Business Segments

##### *Protection Products*

The Company offers a diverse portfolio of protection products consisting primarily of traditional life insurance, variable universal life insurance ("VUL") and universal life insurance ("UL").

The Company's traditional protection products consist of whole life and term insurance products. The whole life insurance products vary in their level of premiums and guaranteed cash values, providing flexibility to the Company's primary marketplace of individuals and small businesses with varying needs. The Company's term insurance products include annual renewable term insurance, term insurance providing coverage for a limited number of years and term insurance featuring a level premium for a variable number of years.



Through USFL, the Company offers term and universal life insurance products designed for the special risk market. These products focus on customers with treatable medical conditions which, based on USFL's underwriting guidelines, have been mis-underwritten by other insurance carriers. USFL primarily distributes its products through brokerage general agencies.

The Company's VUL is a UL type of product that provides the policyholder the ability to direct the investment of premiums in a wide variety of investment funds with different objectives, including a guaranteed interest account.

The Company's COLI/BOLI product, which is offered through MLOA, is a flexible premium variable universal life insurance product designed for corporate plan sponsors and banks. This product is specifically designed to have sub-accounts which purchase shares of externally managed mutual funds, as well as proprietary mutual funds available from MONY Life's MONY Series Fund and Enterprise Accumulation Trust (EAT), or a guaranteed interest account.

Several of the Company's protection products are designed to meet the needs of clients for estate planning. Survivorship life products insure two lives and provide for the payment of death benefits upon the death of the last surviving insured. A variety of policy riders are available for the Company's protection products. These riders are designed to provide additional benefits or flexibility at the option of the policyholder. They include riders that can waive premium payments upon the occurrence of a covered disability, pay higher benefits in the event of accidental death, allow the purchase of additional coverage without evidence of insurability and permit the addition of term insurance on either the insured or the insured spouse or dependent children.

The following tables present the Protection Products segment sales of life insurance and life insurance in force data for the periods indicated. Management uses this information to measure the Company's sales production from period to period by product. The amounts presented with respect to life insurance represent annualized statutory-basis premiums. See *Management's Discussion and Analysis of Financial Condition and Results of Operations - New Business Information*.

**Protection Products Segment Sales**

	<b>For the Year Ended December 31,</b>		
	<b>2001</b>	<b>2000</b>	<b>1999</b>
	(\$ in millions)		
<b>Sales:</b>			
Traditional life (1)	\$ 44.7	\$ 41.2	\$ 38.0
Universal life	31.6	22.2	20.3
Variable universal life	61.8	74.8	64.6
Group universal life	1.5	2.5	2.4
Corporate-owned life insurance	75.1	125.3	69.0
<b>Total</b>	<b>\$ 214.7</b>	<b>\$ 266.0</b>	<b>\$ 194.3</b>

(1) Consists of whole life and term life policies.

## Life Insurance in Force

	As of December 31,		
	2001	2000	1999
	(\$ millions)		
<b>Protection Products:</b>			
Traditional life: (1)			
Number of policies (in thousands)	857.3	879.5	915.6
Life reserves	\$ 7,374.8	\$ 7,283.7	\$ 7,205.6
Face amounts	\$ 73,678.2	\$ 67,015.7	\$ 62,473.0
Universal life:			
Number of policies (in thousands)	74.7	76.4	79.8
Life reserves	\$ 711.2	\$ 681.2	\$ 646.5
Face amounts	\$ 10,843.6	\$ 10,951.6	\$ 11,389.1
Variable universal life:			
Number of policies (in thousands)	62.0	52.0	40.9
Account values	\$ 402.4	\$ 359.1	\$ 283.8
Face amounts	\$ 15,031.0	\$ 12,372.0	\$ 9,243.8
Corporate-owned life insurance:			
Numbers of policies (in thousands)	4.0	3.0	1.5
Life reserves	\$ 369.0	\$ 298.2	\$ 154.1
Face amounts	\$ 3,199.5	\$ 2,426.7	\$ 1,415.9
Group universal life:			
Number of policies (in thousands)	43.9	47.3	48.7
Life reserves	\$ 66.7	\$ 64.1	\$ 63.1
Face amounts	\$ 1,571.4	\$ 1,683.0	\$ 1,763.9

(1) Excludes disability income insurance business, which is no longer offered. As of December 31, 1997 all existing in force disability income has been reinsured. The reserves for such business as of December 31, 2001, 2000, and 1999, were \$378.0 million, \$383.4 million, and \$391.4 million, respectively.

*Accumulation Products*

The Company's Accumulation products focus on the savings and retirement needs of the growing number of individuals who are preparing for retirement or have already retired. The Company offers a variety of accumulation products, such as flexible premium variable annuities ( FPVA ) and proprietary retail mutual funds. The Company's annuity and mutual fund products offer numerous investment alternatives to meet the customer's individual investment objectives.

By offering a variable annuity with a wide variety of investment options, the Company believes it has the ability to grow profitably in a variety of market environments. The guaranteed interest investment option offered under the Company's variable annuities is attractive to consumers during periods of rising interest rates, whereas equity investment options are attractive to consumers during periods of market expansion and for consumers with a higher risk tolerance.

The Company offers proprietary retail mutual funds through ECM. ECM is the registered investment advisor of The Enterprise Group of Funds, a mutual fund family that provides investors with a broad range of investment alternatives through 25 separate investment portfolios. In addition, EAT, for which ECM is also the registered investment advisor, is the principal funding vehicle for the Company's variable annuities and variable universal life insurance products. EAT provides investors with a broad range of investment alternatives through 15 separate investment portfolios. Enterprise is also the registered investment advisor of the Enterprise International Group of Funds ( EIGF ) and Enterprise Global Funds plc ( EGF plc ). EIGF and EGF plc represent ECM's overseas arm of investment management services. All together, the Enterprise fund companies have in excess of \$7 billion in assets under management. The Company earns investment management fees on the assets managed in connection with both its variable annuities and its proprietary retail mutual funds. In addition, the Company has entered into agreements with Fidelity, Janus and Dreyfus to provide additional investment choices for the Company's variable annuities and variable universal life products. In addition to these, the Company has agreements with Morgan Stanley Dean Witter, T. Rowe Price and Van Eck for its variable COLI product.

The following table sets forth the total account value of the principal products offered by the Company in its Accumulation Products segment.

**Accumulation Products Segment    Assets Under Management**

	As of December 31,		
	2001	2000	1999
	(\$ in millions)		
<b>Assets Under Management</b>			
Individual variable annuities (1) (2)	\$ 3,867.6	\$ 4,368.5	\$ 4,888.4
Individual fixed annuities (1) (2)	728.2	758.2	891.2
Proprietary mutual funds	4,396.6	4,841.8	4,762.3
	<b>\$ 8,992.4</b>	<b>\$ 9,968.5</b>	<b>\$ 10,541.9</b>

(1) Individual variable annuity contracts in force were 102.9 thousand, 104.8 thousand and 110.0 thousand, respectively, and individual fixed annuity contracts in force were 9.1 thousand, 10.4 thousand and 13.0 thousand, respectively, for each of the years ended December 31, 2001, 2000 and 1999.

(2) Represents account values for annuities.

The Company's Accumulation Products segment offers a flexible premium variable annuity contract and a single payment immediate annuity contract. The flexible premium variable annuity is a tax-deferred annuity contract that provides the contractholder with flexibility to vary payments. In addition, after the annuity's accumulation period, contract holders have the option to receive a lump sum distribution or to elect various other pay-out options over the life of the annuitant. Funds may be placed in the fixed account or in one of a number of other investment funds offered through the Company's separate accounts. The single payment immediate annuity contract provides for a single premium payment that is immediately annuitized to provide the annuitant with a guaranteed level income for life or for a minimum number of years.

Variable annuity contract holders and variable universal life insurance policyholders have a range of investment options in which to place the assets held under their contracts. There are currently 2 proprietary fund families and 6 non-proprietary fund families comprised of 19 and 28 different investment options or mutual funds, respectively, with a wide array of investment objectives. As of December 31, 2001, proprietary and non-proprietary funds accounted for 82.5% and 17.5%, respectively, of variable annuity assets under management.

The Company emphasizes the sale of its separate account variable annuities over its general account annuities. The Company believes that it benefits from a shift towards separate account variable annuity products, as this reduces the Company's investment risks and capital requirements because the investment risk in such accounts is borne by the contractholder. The wide array of investment fund options offered through the Company's separate accounts also permits contract holders to choose more aggressive or conservative investment strategies without affecting the composition and quality of assets in the Company's general account. The Company believes there will be a continuation in the trend among U.S. employers away from defined benefit plans (under which the employer makes the investment decisions) toward employee-directed defined contribution retirement and savings plans (which allow employees to choose from a variety of investment options), which will benefit its accumulation business.

At December 31, 2001, approximately 92% of the Company's career agents were licensed through MSC to sell variable annuities (with 82% having National Association of Securities Dealers (NASD) Series 6 licenses and 33% having NASD Series 7 licenses).

The Company offers a variety of proprietary retail mutual funds to retail customers. ECM's wholly owned subsidiary, Enterprise Fund Distributors, Inc., acts as the broker-dealer in distributing shares in the Enterprise Group of Funds through MSC and third-party broker-dealer firms. In addition, ECM markets EAT as a funding vehicle for variable product offerings of third-party insurance companies, initially concentrating on small and mid-size insurance companies.

#### *Retail Brokerage and Investment Banking*

The Retail Brokerage and Investment Banking segment is comprised of the operations of Advest, Matrix and MSC.

Advest, through its principal operating subsidiaries, Advest Inc., a securities broker-dealer, Leberthal, a full service investment services firm, and Advest Bank and Trust Company, a federal savings bank, provides diversified financial services including: securities brokerage, trading, investment banking, tax exempt municipal bonds and related investment expertise, trust and asset management services. Advest has



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approximately 482 financial advisors operating out of approximately 90 branch offices located primarily in the northeast section of the United States and Lebenthal has approximately 36 account executives operating principally out of offices in New York.

Matrix is a middle market investment bank specializing in merger and acquisition services.

MSC is a registered securities broker-dealer and investment advisor and a member of the NASD. MSC performs brokerage and other investment services relating to a wide range of securities, including mutual funds, stocks, bonds, limited partnership interests (primarily in real estate, oil and gas and equipment leasing) and tax-exempt unit investment trusts. For the years ended December 31, 2001, 2000, and 1999, 37%, 43%, and 39%, respectively, of the investment products sold by MSC were shares in mutual funds in the Enterprise Group of Funds. MSC's products and services are distributed through registered representatives who belong to the Company's career agency sales force. MSC transacts business in all 50 of the United States, the District of Columbia and Puerto Rico. Sales of other non-proprietary investment products were \$290.0 million, \$381.0 million, and \$547.0 million, respectively, for the years ended December 31, 2001, 2000 and 1999.

#### *Other Products*

The Company's Other Products segment primarily consists of MBI and certain lines of insurance business no longer written by the Company (the Run-Off Businesses). Through MBI, the Company provides its career agency sales force with access to life, annuity, small group health and specialty insurance products written by other carriers to meet the insurance and investment needs of its customers. MBI is licensed as an insurance broker in Delaware and most other states. The Run-Off Businesses primarily consist of group life and health insurance and the group pension business that was not included in the Group Pension Transaction. *See Note 11 to the Consolidated Financial Statements.*

Financial information with respect to each of the Company's business segments is included in Management's Discussion and Analysis of Financial Condition and Results of Operations and in Note 7 to the Consolidated Financial Statements.

#### **Marketing and Distribution**

The Company's marketing strategy focuses on small business owners and higher income individuals, particularly family builders and pre-retirees. The Company believes this strategy capitalizes on the Company's key strengths, namely its wide range of protection, accumulation, securities brokerage, investment planning, and investment banking products and services, as well as its Proprietary and Complementary Distribution systems.

#### *Proprietary Distribution*

The Company actively manages its Proprietary Distribution to ensure that expertise is properly leveraged across the organization so that clients needs can be optimally managed. Following is a brief overview of the Company's career agency distribution system, as well as its distribution through its financial advisors and brokers.

#### *Career Agency System*

The Company believes that its career agency system is a competitive advantage in the marketplace. Distribution through career agents allows the Company to establish closer relationships with customers than is typical of insurers using third party brokers, thereby enhancing the ability of the Company to evaluate customer needs and underwriting risks.

The Company's career agency distribution system consisted of approximately 1,779 domestic career agents at December 31, 2001. The sales force is organized as a managerial agency system which is comprised of 54 agency managers as of December 31, 2001, who supervise the marketing and sales activities of agents in defined marketing territories in the United States. The agency managers are all employees of the Company, while the career agents are all independent contractors and not employees of the Company. The contract with each career agent requires the agent to submit to the Company applications for policies of insurance issued by the Company. The Company's compensation arrangements with career agents contain incentives for the career agents to solicit applications for products issued by MONY Life and MLOA and for products issued by insurance companies not affiliated with the Company, made available by the Company to the agents through MBI and MSC. Those incentives include counting first year commissions for the purposes of expense reimbursement programs, sales awards and certain other benefits. In addition, MBI and MSC make available products issued by other insurance companies that the Company does not offer.

The Company's compensation structure provides a salary plus incentive compensation system for all of its agency managers and sales managers, designed to more closely align the interests of the managers with those of the Company. The Company has several programs to recruit and train its career agents. As a result of its recruiting programs, the Company hired 625 new agents in 2001. These agents participate in the Company's redesigned training programs.

The Company segregates its career agency sales force into four groups according to experience and productivity levels and assigns agency managers to tiers based on their skill sets and the particular needs and goals of such tiers. There is a tier for new agents with little or no experience in the industry, a tier for experienced agents who are producing at superior levels, and two tiers in between. The Company believes that this tiering system is unique in the life insurance industry and gives the Company a competitive advantage in the marketplace. For example, by having certain managers responsible solely for recruiting and providing necessary support systems for new recruits, the Company is able to increase the quality of new agents recruited each year. The Company believes that the tiering system allows the Company to attract and retain

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already established and successful agents by providing an environment in which such agents can compete favorably with other producer groups, such as third-party brokers or general agents and to attract and retain other agents by providing marketing and training support that is responsive to such agent s career development needs.

## Financial Advisors and Brokers

The Company, through Advest, distributes investment products and services through approximately 482 financial advisors operating out of approximately 90 branch offices located primarily in the northeast section of the United States. In addition, the Company, through Advest's wholly owned subsidiary, Lebenthal, distributes investment products and services through approximately 36 account executives principally located in New York.

## MONY Partners

During 2001 MONY Partners was formed as a division of MONY Life. MONY Partners wholesales the Company's individual life and annuity products through MONY Life's career agency sales force, Trusted Advisors representatives, Advest financial advisors, independent brokerage agents and independent securities broker-dealers. In the independent brokerage marketplace, the Company believes that MONY Partners has a competitive advantage in being able to offer brokers competitive products as well as access to the multiple services, channels and experience within the Company's organization. For example, this provides the broker general agent or securities broker-dealer with an opportunity to grow revenue by utilizing: (i) Matrix's merger and acquisition advisory services; (ii) MONY Life's estate planning and seminar marketing resources; and (iii) cross-selling arrangements with Trusted Advisors representatives.

## Complementary Distribution

In addition to its Proprietary Distribution, the Company also distributes its products through a variety of complementary distribution channels including third-party securities broker-dealers, insurance brokerage general agencies, Trusted Advisors and through its corporate marketing group.

The Company utilizes third-party broker-dealers to sell its mutual fund products through wholesalers and continually attempts to expand the number of these specialized sales agents distributing its products. The Company, through USFL, distributes certain protection products through approximately 231 insurance brokerage general agencies located in 45 states, which operate under the same agency contract. The Company, through its corporate marketing group, distributes COLI/BOLI products and, through Trusted Advisors, the Company sells a variety of financial products and services to customers through certified public accountants and other tax professionals who are licensed agents and registered representatives of the Company.

## Pricing and Underwriting

Insurance underwriting involves a determination of the type and amount of risk, which an insurer is willing to accept. The Company's underwriters evaluate each policy application on the basis of information provided by the applicant and others. The Company follows detailed and uniform underwriting practices and procedures designed to properly assess and quantify risks before issuing coverage to qualified applicants. The long-term profitability of the Company's products is affected by the degree to which future experience deviates from these assumptions.

## Reinsurance

The Company uses a variety of indemnity reinsurance agreements with reinsurers to control its loss exposure. Under the terms of the reinsurance agreements, the reinsurer will be liable to reimburse MONY Life for the portion of paid claims ceded to it in accordance with the reinsurance agreement. However, MONY Life remains contingently liable for all benefits payable even if the reinsurer fails to meet its obligations to MONY Life.

Life insurance business is primarily ceded on a yearly renewable term basis under various reinsurance contracts, except for the level term product, which utilizes a coinsurance agreement. The Company's general practice is to retain no more than \$4.0 million of risk on any one person for individual products and \$6.0 million for last survivor products. The total amount of reinsured life insurance in force on this basis was \$20.7 billion, \$16.7 billion, and \$11.9 billion at December 31, 2001, 2000, and 1999, respectively. As of December 31, 1997, 100% of the Company's individual disability income insurance business was reinsured on an indemnity basis.

The following table presents the Company's principal reinsurers and the percentage of total reinsurance recoverable reported in the Company's consolidated financial statements at December 31, 2001, that was due from each reinsurer, including reinsurance recoverable reported in the consolidated financial Statements under the caption "Amounts Due From Reinsurers" (which amounted to \$595.8 million) and indemnity reinsurance in connection with the Group Pension Transaction (which amounted to \$71.2 million).

### Reinsurers:

Centre Life Reinsurance, Ltd.	54.8%
AUSA Life Insurance Company Inc.	10.7
Life Reassurance Corp of America	10.3

All Other (1)	24.2
	<hr/>
	100.0%
	<hr/>

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(1) No one reinsurer included herein exceeds 10% of the Company's reinsurance recoverable.

**International Business**

MONY Life, through its indirect wholly owned subsidiary, MLICA, markets life insurance, annuities, mutual funds and trust services to higher income individuals. MLICA targets the sale of its products primarily to nationals of certain Latin American countries.

**Ratings**

Ratings with respect to claims-paying ability and financial strength have become an increasingly important factor in establishing the competitive position of insurance companies. Ratings are important to maintaining public confidence in the Company's life insurance subsidiaries and their ability to market their products. Rating organizations continually review the financial performance and condition of insurers, including the Company's life insurance subsidiaries. Any lowering of the Company's life insurance subsidiaries ratings could have a material adverse effect on the Company's life insurance subsidiaries ability to market its products and retain its current policyholders.

A.M. Best's ratings for insurance companies currently range from A++ to F, and some companies are not rated. A.M. Best publications indicate that A ratings are assigned to those companies that in A.M. Best's opinion have achieved excellent overall performance when compared to the standards established by A.M. Best. A companies are considered to have a strong ability to meet their obligations to policyholders over a long period of time.

Moody's Investors Services (Moody's) ratings for insurance companies currently range from Aaa to C; Standard & Poor's (S&P) ratings for insurance companies range from AAA to CCC-; and Fitch IBCA (Fitch) ratings for insurance companies range from AAA to CCC-. In evaluating a company's financial and operating performance, Moody's, S&P and Fitch review its profitability, leverage and liquidity as well as its book of business, the adequacy and soundness of its reinsurance, the quality and estimated market value of its assets, the adequacy of its policy reserves and the experience and competence of its management.

The following table presents the claims-paying ability and financial strength ratings of the Company's domestic life insurance subsidiaries as of December 31, 2001:

	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch IBCA</u>	<u>A.M. Best</u>
MONY Life	AA-(Very Strong)	A2 (Good)	AA-(Very Strong)	A (Excellent)
MLOA	AA-(Very Strong)	A2 (Good)	AA-(Very Strong)	A (Excellent)
USFL				A (Excellent)

In addition to claims-paying ability and financial strength ratings of its insurance company subsidiaries, the aforementioned rating agencies also rate the financial strength of the Company to meet its obligations to investors with respect to debt that it has issued.

The following table presents the rating assigned by the aforementioned rating agencies to each of the Company's outstanding debt obligations:

	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch IBCA</u>	<u>A.M. Best</u>
The MONY Group Inc.				
8.35% Senior Notes	A-(Strong)	Baa1(Investment Grade)	A-(High Credit Quality)	a-(Strong)
7.45% Senior Notes	A-(Strong)	Baa1(Investment Grade)	A-(High Credit Quality)	a-(Strong)
Commercial paper	A-2(Good)	P-2(Strong)	F-2(Moderately Strong)	AMB-2(Acceptable)
MONY Life				
Surplus Notes	A-(Strong)	Baa1 (Medium Grade)	A(Average)	a-(Strong)

The foregoing ratings reflect each rating agency's current opinion of the Company's claims-paying ability, financial strength, operating performance and ability to meet its obligations and are not evaluations directed toward the protection of investors in the common stock of the MONY Group. Such factors are of concern to policyholders, insurance agents and intermediaries, as well as holders of its debt obligations.

**Competition**

The Company believes that competition in its lines of business is based on service, product features, price, compensation structure, perceived financial strength, claims-paying ratings and name recognition. The Company competes with a large number of other insurers as well as non-insurance financial services companies, such as banks, broker-dealers and asset managers, many of which have greater financial resources, offer alternative products or more competitive pricing and, with respect to other insurers, have higher claims paying ability ratings than the Company. Competition exists for individual consumers and agents and other distributors of insurance and investment products.

The Gramm-Leach-Bliley Act of 1999 permits business combinations of commercial banks, insurers and securities firms under one holding company. The ability of banks to affiliate with insurance companies and to offer annuity products of life insurance companies may materially adversely affect all of the Company's product lines by substantially increasing the number, size and financial strength of potential competitors.

The Company must attract and retain productive agents to sell its insurance and annuity products. Strong competition exists among insurance companies for agents with demonstrated ability. Management believes that key bases of competition among insurance companies for agents with demonstrated ability include a company's financial position and the services provided to, and relationships developed with, these agents in addition to compensation and product structure.

## Regulation

### *General Regulation at the State Level*

MONY Life is licensed to transact its insurance business in, and is subject to regulation and supervision by, all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands. MLOA is licensed and regulated in all states other than New York, and USFL is licensed and regulated in all states other than Idaho, Nevada, New York, Vermont, Virginia, and the District of Columbia.

The laws of the various states establish state insurance departments with broad administrative powers to approve policy forms and for certain lines of insurance, approve rates, grant and revoke licenses to transact business, regulate trade practices, license agents, require statutory financial statements and prescribe the type and amount of investments permitted. In addition, the New York Insurance Department imposes additional regulations including restrictions on certain selling expenses. The aforementioned regulation by the state insurance departments is for the benefit of policyholders, not stockholders.

The MONY Group is not regulated as an insurance company but will, as the direct or indirect owner of the capital stock of MONY Life, MLOA and USFL be subject to the insurance holding company acts of the states in which MONY Life, MLOA and USFL are domiciled (or deemed to be commercially domiciled). Most states have enacted legislation that requires each insurance holding company and each insurance company in an insurance holding company system to register with the insurance regulatory authority of the insurance company's state of domicile and, annually, to furnish financial and other information concerning the operations of companies within the holding company system that may materially affect the operations, management or financial condition of the insurers within such system. The Company is subject to the insurance holding company laws in New York, Arizona and Ohio. Under such laws, all transactions within an insurance holding company system affecting insurers must be fair and equitable and each insurer's policyholder surplus following any such transaction must be both reasonable in relation to its outstanding liabilities and adequate for its needs. The New York, Arizona and Ohio insurance holding company laws also require prior notice or regulatory approval of the change of control of an insurer or its holding company and of material inter-corporate transfers of assets or other material transactions within the holding company structure. Generally, under such laws, a state insurance authority must approve in advance the direct or indirect acquisition of 10% or more of the voting securities of an insurance company domiciled in its state. Under the New York Insurance Law, for a period of five years following the effective date of the plan of reorganization, no person may acquire beneficial ownership of 5% or more of the outstanding shares of common stock without the prior approval of the New York State Superintendent of Insurance (the New York Superintendent). Certain affiliates of Goldman Sachs & Co., one of the underwriters of the MONY Group's initial public offering, have received a conditional waiver of this rule from the New York Superintendent in connection with the potential exercise of warrants they hold prior to the end of such five-year period. See *Determination of Non-Control*.

In recent years, a number of life and annuity insurers have been the subject of regulatory proceedings and litigation relating to alleged improper life insurance pricing and sales practices. Some of these insurers have incurred or paid substantial amounts in connection with the resolution of such matters. See *Note 16 to the Consolidated Financial Statements*. In addition, state insurance regulatory authorities regularly make inquiries, hold investigations and administer market conduct examinations with respect to insurers' compliance with applicable insurance laws and regulations.

MONY Life, MLOA and USFL continuously monitor sales, marketing and advertising practices and related activities of their agents and personnel and provide continuing education and training in an effort to ensure compliance with applicable insurance laws and regulations. There can be no assurance that we may pay dividends in either cash, property or in common shares. Payment and declaration of dividends on our common shares and purchases of shares thereof by us will be subject to certain restrictions if we fail to pay dividends on our preferred shares.

*Distributions and Liquidation Rights.* Upon any liquidation, dissolution or winding up of us, holders of our common shares will be entitled to share equally and ratably in any assets available for distribution to them after payment or provision for payment of our debts and other liabilities and the preferential amounts owing with respect to any outstanding preferred shares.

*No Preemptive Rights.* No holders of our common shares have preemptive or other rights to purchase or subscribe for any common shares.

*REIT Restrictions on Ownership and Transfer.* Our common shares are subject to certain restrictions upon ownership and transfer which were adopted for the purpose of enabling us to preserve our status as a REIT. For a description of such restrictions, see *Restrictions on Ownership*.

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*Voting Rights.* Each outstanding common share owned by a shareholder entitles that holder to one vote on all matters submitted to a vote of shareholders, including the election of trust managers. The right to vote is subject to the provisions of our declaration of trust regarding the restriction on the transfer of shares of beneficial interest, which we describe under *Restrictions on Ownership*, below. There is no cumulative voting in the election of trust managers.

Subject to the terms of our declaration of trust regarding the restrictions on transfer of shares of beneficial interest, each common share has the same dividend, distribution, liquidation and other rights as each other common share.

According to the terms of our declaration of trust and bylaws and Texas law, all matters submitted to the shareholders for approval, except for those matters listed below, are approved if a majority of all the votes cast at a meeting of shareholders duly called and at which a quorum is present are voted in favor of approval. The following matters require approval other than by a majority of all votes cast:

the election of trust managers (which provides that trust managers remain on the board unless and until a nominee for that board seat receives the affirmative vote of the holders of 66<sup>2</sup>/<sub>3</sub>% of our common shares);

the amendment of our declaration of trust by shareholders (which requires the affirmative vote of 66<sup>2</sup>/<sub>3</sub>% of all votes entitled to be cast on the matter);

our termination, winding up of affairs and liquidation (which requires the affirmative vote of 66<sup>2</sup>/<sub>3</sub>% of all the votes entitled to be cast on the matter); and



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our merger or consolidation with another entity or sale of all or substantially all of our property (which requires the approval of the board of trust managers and an affirmative vote of two-thirds of all the votes entitled to be cast on the matter).  
*Stock Exchange Listing.* Our common shares are traded on the New York Stock Exchange under the trading symbol WRI.

**Preferred Shares**

Our declaration of trust authorizes our board of trust managers to issue up to 10,000,000 preferred shares from time to time, in one or more series, to establish the number of shares in each series and to fix the designations, powers, preferences and rights of each series and the qualifications, limitations or restrictions thereof.

*Future Series of Preferred Shares.* The applicable prospectus supplement shall set forth with respect to each series that may be issued and sold pursuant hereto:

the designation of such shares and the number of shares that constitute such series;

the dividend rate (or the method of calculation thereof), if any, on the shares of such series and the priority as to the payment of dividends with respect to other classes or series of our capital shares;

the dividend periods (or the method of calculation thereof);

the voting rights, if any, of the shares;

the terms and amount of a sinking fund, if any;

the liquidation preference and the priority as to payment of such liquidation preference with respect to other classes or series of our capital shares and any other rights of the shares of such series upon our liquidation or winding-up;

whether or not and on what terms the shares of such series will be subject to redemption or repurchase at our option;

whether and on what terms the shares of such series will be convertible into or exchangeable for our other debt or equity securities;

whether the shares of such series of preferred shares will be listed on a securities exchange;

any limitations on direct or beneficial ownership and restrictions on transfer in addition to those described in  
Restrictions on Ownership, in each case as may be appropriate to preserve our status as a real estate investment trust;

any special United States federal income tax considerations applicable to such series; and

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the other rights and privileges and any qualifications, limitations or restrictions of such rights or privileges of such series not inconsistent with our declaration of trust, our bylaws and the Texas Real Estate Investment Trust Act.

The terms of any preferred shares we issue will be set forth in resolutions adopted by our board of trust managers. We will file such resolutions as an exhibit to the registration statement that includes this prospectus, or as an exhibit to a filing with the SEC that is incorporated by reference into this prospectus. The description of preferred shares in any prospectus supplement will not describe all of the terms of the preferred shares in detail. You should read the applicable resolutions for a complete description of all of the terms.

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**Table of Contents****DESCRIPTION OF DEPOSITARY SHARES**

*General.* We may issue receipts for depositary shares, each of which will represent a fractional interest of a particular series of a class of preferred shares, as specified in the applicable prospectus supplement. The preferred shares of each series represented by depositary shares will be deposited under a separate deposit agreement among us, the depositary named in the deposit agreement and the holders of the depositary receipts. Immediately following our issuance and delivery of the preferred shares to the depositary, we will cause the depositary to issue, on our behalf, the depositary receipts. Subject to the terms of the applicable depositary agreement, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of a particular series of a preferred share represented by the depositary shares evidenced by the depositary receipts, to all the rights and preferences of the preferred shares represented by the depositary shares (including dividend, voting, conversion, redemption and liquidation rights ) as designated by our board of trust managers. The summary of our depositary shares set forth below is not complete. You should refer to the applicable prospectus supplement, provisions of the deposit agreement and the depositary receipts that will be filed with the SEC as part of the offering of any depositary shares. To obtain copies of these documents, see *Where You Can Find More Information* on page 36.

As of the date of this prospectus, the following depositary shares are outstanding:

**6.75% Series D Cumulative Redeemable Preferred Shares and Depositary Shares**

On April 30, 2003, we issued 100,000 shares of 6.75% Series D Cumulative Redeemable Preferred Shares and 3,000,000 depositary shares for \$75.0 million. Each depositary share represents a 1/30 fractional interest in a share of Series D Preferred. The Series D Preferred has a liquidation preference of \$750.00 per share (equivalent to \$25.00 per depositary share) and the holders are entitled to cumulative dividends from the date of original issuance of \$50.625 per share (equivalent to \$1.6875 per depositary share). The Series D Preferred ranks on parity with the Series E Preferred described below with respect to the payment of dividends and payments upon liquidation. We may not redeem the Series D Preferred Shares before April 30, 2008. The redemption price per share of Series D Preferred is \$750.00 (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends through the date of such redemption. The Series D Preferred and the depositary shares have no maturity date and will remain outstanding indefinitely unless redeemed. The Series D Preferred and the depositary shares are not convertible into or exchangeable for any of our other securities. The Series D Preferred shareholders and holders of the depositary shares generally have no voting rights, except if we fail to pay dividends for six quarters. In that event, the holders of the Series D Preferred and Series E Preferred, voting together as a single class, have the right to elect two trust managers who shall serve until all dividend arrearages have been paid. In such case, the entire board of trust managers will be increased by two trust managers.

The Series D Preferred is not be listed for trading on any exchange. The depositary shares are listed for trading on the New York Stock Exchange.

**6.95% Series E Cumulative Redeemable Preferred Shares and Depositary Shares**

On July 8, 2004, we issued 29,000 shares of 6.95% Series E Cumulative Redeemable Preferred Shares and 2,900,000 depositary shares for \$72.5 million. Each depositary share represents a 1/100 fractional interest in a share of Series E Preferred. The Series E Preferred has a liquidation preference of \$2,500 per share (equivalent to \$25 per depositary share). The Series E Preferred ranks on a parity with the Series D Preferred with respect to the payment of dividends and payments upon liquidation. We may not redeem the Series E Preferred Shares before July 8, 2009. The redemption price per share of Series E Preferred is \$2,500 (equivalent to \$25.00 per depositary share), plus accrued and unpaid dividends through the date of such redemption. The Series E Preferred and the depositary shares have no maturity date and will remain outstanding indefinitely unless redeemed. The Series E Preferred and the depositary shares are not convertible into or exchangeable for any of our other securities. The Series E Preferred shareholders and the holders of the depositary shares generally have no voting

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rights, except if we fail to pay dividends for six quarters. In that event, the holders of the Series E Preferred and Series D Preferred, voting together as a single class, have the right to elect two trust managers who shall serve until all dividend arrearages have been paid. In such case, the entire board of trust managers will be increased by two trust managers.

The Series E Preferred is not listed for trading on any exchange. The depositary shares are listed for trading on the New York Stock Exchange.

See Description of Preferred Shares.

*Dividends and Other Distributions.* The depositary will distribute all cash dividends or other cash distributions received on behalf of the preferred shares proportionately to the record holders of the related depositary receipts owned by such holder. Such distributions are subject to certain obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the depositary.

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

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

*Redemption.* Whenever we redeem preferred shares held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the preferred shares so redeemed, provided we have paid in full to the depositary the redemption price of the preferred shares to be redeemed plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption. With respect to noncumulative preferred shares, dividends will be paid for the current dividend period only. The redemption price per depositary share will be equal to the redemption price and any other amounts per share payable with respect to the preferred shares. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by the depositary by lot.

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

*Voting Rights.* Upon receipt of notice of any meeting at which the holders of the preferred shares are entitled to vote, the depositary will mail the information contained in such notice to the record holders of the depositary receipts related to such preferred shares. Each record holder of depositary receipts on the record date

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will be entitled to instruct the depositary as to the exercise of the voting rights of the preferred shares related to such holder's depositary receipts. The record date for depositary receipts will be the same date as the record date for preferred shares. The depositary will vote the preferred shares related to such depositary receipts in accordance with such instructions, and we will agree to take all reasonable action that the depositary deems necessary to enable it to vote the preferred shares. The depositary will abstain from voting preferred shares represented by such depositary shares to the extent it does not receive specific instructions from the holders of depositary receipts.

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

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

*Amendment and Termination of the Deposit Agreement.* The form of depositary receipt evidencing the depositary shares which represent the preferred shares and any provision of the deposit agreement may at any time be amended by agreement between the depositary and us. However, any amendment that materially and adversely alters the rights of the holders of depositary receipts will not be effective unless it has been approved by the existing holders of at least a majority of the depositary shares evidenced by outstanding depositary receipts.

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

all outstanding depositary shares have been redeemed;

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

each related preferred share shall have been converted into capital shares that are not represented by depositary shares.

*Fees of Depositary.* We will pay all transfer and other taxes and governmental charges arising solely from the existence of the deposit agreement. In addition, we will pay the fees and expenses of the depositary in connection with the performance of its duties under the deposit agreement.

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

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

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

## **RESTRICTIONS ON OWNERSHIP**

### **Maintaining REIT Status**

In order for us to qualify as a REIT under the Internal Revenue Code, not more than 50% in value of our outstanding capital shares may be owned, directly or indirectly, by five or fewer individuals during the last half of a taxable year. In addition, our capital shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. For purposes of restrictions on ownership, capital shares means our common shares and any securities convertible into common shares.

Because the board believes it is essential for us to continue to qualify as a REIT, our declaration of trust generally provides that no holder may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 9.8% of our total outstanding capital shares. Any transfer of shares will not be valid if it would:

create a direct or indirect ownership of shares in excess of 9.8% of our total outstanding capital shares;

result in shares being owned by fewer than 100 persons;

result in our being closely held within the meaning of Section 856(h) of the Internal Revenue Code; or

result in our disqualification as a REIT.

Shares held by a person in excess of 9.8% of our total outstanding capital shares will automatically be deemed to be transferred to us as trustee of a trust for the exclusive benefit of the transferees to whom those shares may ultimately be transferred without violating the 9.8% ownership limit. Such excess shares shall be treated as treasury shares. While in trust, these shares will not be entitled to vote (except as required by law), and

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will not be entitled to participate in dividends or other distributions. All certificates representing capital shares will bear a legend referring to the restrictions described above.

These restrictions on ownership may have the effect of precluding the acquisition of control unless our board of trust managers and shareholders determine that maintenance of REIT status is no longer in our best interests.

## **Business Combinations**

Our declaration of trust requires that except in certain circumstances, a business combination between us and a related person must be approved by the affirmative vote of the holders of not less than 80% of our outstanding common shares, including the affirmative vote of the holders of not less than 50% of the outstanding common shares not owned by the related person. However, the 50% voting requirement is not applicable if the business combination is approved by the affirmative vote of the holders of not less than 90% of our outstanding common shares. Our declaration of trust provides that a business combination is:

- (1) any merger or consolidation, if and to the extent permitted by law, of us or our subsidiary, with or into a related person;
- (2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition of more than 35% of the book value of the total assets of us and our subsidiaries (taken as a whole) as of the end of the fiscal year ending prior to the time the determination is being made, to or with a related person;
- (3) the issuance or transfer by us or our subsidiary (other than by way of a pro rata distribution to all shareholders) of any securities by us or our subsidiary to a related person;
- (4) any reclassification of securities (including any reverse share split) or recapitalization by us, the effect of which would be to increase the voting power of the related person;
- (5) the adoption of any plan or proposal for the liquidation or dissolution of us proposed by or on behalf of a related person which involves any transfer of assets, or any other transaction, in which the related person has any direct or indirect interest (except proportionally as a shareholder);
- (6) any series or combination of transactions having, directly or indirectly, the same or substantially the same effect as any of the foregoing; and
- (7) any agreement, contract or other arrangement providing, directly or indirectly, for any of the foregoing.

A related person generally is defined in the declaration of trust to include any individual, corporation, partnership or other person and the affiliates and associates of any such individual, corporation, partnership or other person which individually or together is the beneficial owner in the aggregate of more than 50% of our outstanding common shares.

The 80% and 50% voting requirements outlined above will not apply, however, if:

- (1) the trust managers by a vote of not less than 80% of the trust managers then holding office (a) have expressly approved in advance the acquisition of our common shares that caused the related person to become a related person or (b) have expressly approved the business combination prior to the date on which the related person involved in the business combination shall have become a related person; or

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(2) the business combination is solely between us and another corporation, 100% of the voting stock of which is owned directly or indirectly by us; or

(3) the business combination is proposed to be consummated within one year of the consummation of a fair tender offer (as defined in the declaration of trust) by the related person in which the business combination, the cash or fair market value of the property, securities or other consideration to be received per share by all remaining holders of our common shares in the business combination is not less than the price offered in the fair tender offer;

(4) all of the following conditions shall have been met:

(a) the business combination is a merger or consolidation, the consummation of which is proposed to take place within one year of the date of the transaction pursuant to which such person became a related person and the cash or fair market value of the property, securities or other consideration to be received per share by all remaining holders of common shares in the business combination is not less than the highest per-share price, with appropriate adjustments for recapitalizations and for share splits and share dividends, paid by the related person in acquiring any of its holdings of our common shares, which shall constitute a fair price;

(b) the consideration to be received by such holders is either cash or, if the related person shall have acquired the majority of its holdings of our common shares for a form of consideration other than cash, in the same form of consideration with which the related person acquired such majority;

(c) after such person has become a related person and prior to consummation of such business combination:

there shall have been no reduction in the annual rate of dividends, if any, paid per share on our common shares (adjusted as appropriate for recapitalizations and for share splits, reverse share splits and share dividends), except any reduction in such rate that is made proportionately with any decline in our net income for the period for which such dividends are declared and except as approved by a majority of the trust managers continuing in office; and

such related person shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by us prior to the consummation of such business combination (other than in connection with financing a fair tender offer); and

(d) proxy statement that conforms in all respects with the provisions of the Exchange Act and the rules and regulations thereunder shall be mailed to holders of our common shares at least 30 days prior to the consummation of the business combination for the purpose of soliciting shareholder approval of the business combination; or

(5) the rights (as defined below) shall have become exercisable.

If a person has become a related person and within one year after the date of the transaction pursuant to which the related person became a related person, which shall be considered as the acquisition date,

(1) a business combination meeting all of the requirements of paragraphs (4)(a)(b)(c) and (d) above regarding the applicability of the 80% voting requirement shall not have been consummated;



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(2) a fair tender offer shall not have been consummated; and

(3) we have not been dissolved and liquidated,

then, in such event the beneficial owner of each common share (not including shares beneficially owned by the related person) shall have the right (each a right and collectively the rights ) which may be exercised subject to certain conditions, commencing at the opening of business on the one-year anniversary date of the acquisition date and continuing for a period of 90 days thereafter, subject to certain extensions, to sell to us on the terms set forth herein one share upon exercise of such right. At 5:00 P.M., Houston, Texas time, on the last day of the exercise period, each right not exercised shall become void, all rights in respect thereof shall cease as of such time and the certificates shall no longer represent rights.

*Stock Exchange Listing.* Our Series D Cumulative Redeemable Preferred Shares and our Series E Cumulative Redeemable Preferred Shares are listed for trading on the New York Stock Exchange.

**DESCRIPTION OF DEBT SECURITIES**

We will prepare and distribute a prospectus supplement that describes the specific terms of the debt securities. In this section of the prospectus, we describe the general terms we expect all debt securities will have. We also identify some of the specific terms that will be described in a prospectus supplement. Although we expect that any debt securities we offer with this prospectus will have the general terms we describe in this section, our debt securities may have terms that are different from or inconsistent with the general terms we describe here. Therefore, you should read the prospectus supplement carefully.

Any senior debt securities will be issued under a senior indenture dated as of May 1, 1995 between us and JPMorgan Chase Bank, as trustee, and any subordinated debt securities will be issued under a subordinated indenture dated as of May 1, 1995 between us and JPMorgan Chase Bank, as trustee. The term trustee as used in this prospectus refers to any bank that we may appoint as trustee under the terms of the applicable indenture, in its capacity as trustee for the senior securities or the subordinated securities.

We have summarized specific terms and provisions of the indentures. The summary is not complete. The indentures have been incorporated by reference as exhibits to the registration statement of which this prospectus is a part. We urge you to read the indentures because they, and not this description, fully define the rights of holders of debt securities. The indentures are subject to the Trust Indenture Act of 1939, as amended. To obtain copies of the indentures, see *Where You Can Find More Information* on page 36.

**General**

Unless otherwise provided in the prospectus supplement, the debt securities (whether senior or subordinated) will be our direct, unsecured general obligations. The senior debt securities will rank equally with all of our other unsecured and unsubordinated indebtedness. The subordinated debt securities will be subordinated and junior in right of payment to the prior payment in full of our present and future senior debt securities. See *Subordinated Debt Securities* on page 14.

The indentures do not limit the amount of debt securities that we can offer. Each indenture allows us to issue debt securities up to the principal amount that may be authorized by us. We may issue additional debt securities without your consent. We may issue debt securities in one or more series. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuances of additional debt securities of such series.

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Without your consent, we may engage in a highly leveraged transaction, a restructuring, a transaction involving a change in control, or a merger or similar transaction that may adversely affect holders of debt securities. We will not list the debt securities on any securities exchange.

**Additional Terms of Debt Securities**

A prospectus supplement and any supplemental indentures relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following:

the type and title of debt securities offered;

any limit upon the total principal amount of the series of debt securities;

the total principal amount and priority of the debt securities;

the percentage of the principal amount at which the debt securities will be issued and any payments due if the maturity of the debt securities is accelerated;

the dates on which the principal of and premium, if any, on the debt securities will be payable or the method of determining such date;

the interest rates (which may be fixed or variable) that the debt securities will bear, or the method for determining such rates;

the dates from which the interest on the debt securities will accrue and be payable, or the method of determining those dates;

the date or dates on which interest will be payable and the record date or dates to determine the persons who will receive payment;

the place where principal of, premium, if any, and interest, on the debt securities will be payable or at which the debt securities may be surrendered for registration of transfer or exchange;

the period or periods within which, the price or prices at which, the currency (if other than U.S. dollars) in which, and the other terms and conditions upon which, the debt securities may be redeemed, in whole or in part, at our option, if we have that option;

the obligation, if any, we have to redeem or repurchase the debt securities pursuant to any sinking fund or similar provisions or upon the happening of a specified event or at the option of a holder; and the period or periods within which, the price at which, and the other terms and conditions upon which, such debt securities shall be redeemed or purchased, in whole or in part;

the denominations in which the debt securities are authorized to be issued;

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if the amount of principal of, or premium, if any, or interest on, the debt securities may be determined with reference to an index or pursuant to a formula or other method, the method in which such amounts will be determined;

the amount or percentage payable if we accelerate the maturity of the debt securities, if other than the principal amount;

any changes to or additional events of default or covenants set forth in the indentures;

the terms of subordination, if any;

any special tax implications of the debt securities, including provisions for original issue discount securities;

provisions, if any, granting special rights to the holders of the debt securities if certain specified events occur; the circumstances, if any, under which we will pay additional amounts on the debt securities held by non-U.S. persons for taxes, assessments or similar charges;

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whether the debt securities will be issued in registered or bearer form or both;

the date as of which any debt securities in bearer form and any temporary global security representing outstanding securities are dated, if other than the original issuance date of the debt securities;

the forms of the securities and interest coupons, if any, of the series;

if other than the trustee under the applicable indenture, the identity of the registrar and any paying agent for the debt securities;

any means of defeasance or covenant defeasance that may be specified in the debt securities;

whether the debt securities are to be issued in whole or in part in the form of one or more temporary or permanent global securities and, if so, the identity of the depository or its nominee, if any, for the global security or securities and the circumstances under which beneficial owners of interest in the global security may exchange those interests for certificated debt securities to be registered in the name of, or to be held by, the beneficial owners or their nominees;

if the debt securities may be issued or delivered, or any installment of principal or interest may be paid, only upon receipt of certain certificates or other documents or satisfaction of other conditions in addition to those specified in the applicable indenture, the form of those certificates, documents or conditions;

any definitions for the debt securities for that series that are different from or in addition to the definitions included in the applicable indentures;

in the case of the subordinated indenture, the relative degree to which the debt securities shall be senior to or junior to other securities, whether currently outstanding or to be offered in the future, and to other debt, in right of payment;

whether the debt securities are to be guaranteed and, if so, by identity of the guarantors and the terms of the guarantees;

the terms, if any, upon which the debt securities may be converted or exchanged into or for our common shares, preferred shares or other securities or property;

any restrictions on the registration, transfer or exchange of the debt securities; and

any other terms consistent with the indenture.

**Denominations, Interest, Registration and Transfer**

Unless the prospectus supplement states differently, the debt securities of any series issued in registered form will be issuable in denominations of \$1,000 and integral multiples of \$1,000. Unless the prospectus supplement states otherwise, the debt securities of any series issued in bearer form will be issuable in denominations of \$5,000.

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Unless otherwise provided in the applicable prospectus supplement, the trustee will pay the principal of and any premium and interest on the debt securities and will register the transfer of any debt securities at its offices. However, at our option, we may distribute interest payments by mailing a check to the address of each holder of debt securities that appears on the register for the debt securities.

Any interest on a debt security not punctually paid or duly provided for on any interest payment date will cease to be payable to the holder on the applicable regular record date. This defaulted interest may be paid to the person in whose name the debt security is registered at the close of business on a special record date for the payment of the defaulted interest. We will set the special record date and give the holder of the debt security at least 10 days prior notice. In the alternative, this defaulted interest may be paid at any time in any other lawful manner, all as fully described in the applicable indenture.

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Subject to any limitations imposed upon debt securities issued in book-entry form, the debt securities of any series will be exchangeable for other debt securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations upon surrender to the applicable trustee of the debt securities. In addition, subject to any limitations imposed upon debt securities issued in book-entry form, a holder may surrender the debt securities to the trustee for conversion or registration of transfer. Every debt security surrendered for conversion, registration of transfer or exchange will be duly endorsed or accompanied by a written instrument of transfer from the holder. A holder will not have to pay a service charge for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any applicable tax or other governmental charge.

If the prospectus supplement refers to any transfer agent, in addition to the applicable trustee that we initially designated with respect to any series of debt securities, we may at any time rescind the designation of the transfer agent or approve a change in the location through which the transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the series. We may at any time designate additional transfer agents with respect to any series of debt securities.

Neither we nor the trustee will be required to:

issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before any selection of debt securities of that series to be redeemed and ending at the close of business on the day of mailing of the relevant notice of redemption;

register the transfer of or exchange any debt security, or portion thereof, called for redemption, except the unredeemed portion of any debt security being redeemed in part; or

issue, register the transfer of or exchange any debt security that has been surrendered for repayment at the holder's option, except the portion, if any, of the debt security not to be repaid.

### **Senior Debt Securities**

Any additional senior debt securities we issue will rank equally in right of payment with the senior debt securities offered by this prospectus and the applicable prospectus supplement. Further, the senior indenture does not prohibit us from issuing additional debt securities that may rank equally in right of payment to the senior debt securities. Any senior debt securities offered pursuant to the senior indenture will be senior in right of payment to all subordinated debt securities issued under the subordinated indenture.

### **Subordinated Debt Securities**

The subordinated debt securities will have a junior position to all of our senior debt. Under the subordinated indenture, payment of the principal, interest and any premium on the subordinated debt securities will generally be subordinated and junior in right of payment to the prior payment in full of all senior debt. The subordinated indenture provides that no payment of principal, interest and any premium on the subordinated debt securities may be made in the event:

of any insolvency, bankruptcy or similar proceeding involving us or our properties; or

we fail to pay the principal, interest, any premium or any other amounts on any senior debt when due.

The subordinated indenture will not limit the amount of senior debt that we may incur. All series of subordinated debt securities as well as other subordinated debt issued under the subordinated indenture will rank equally with each other in right of payment.

The subordinated indenture prohibits us from making a payment of principal, premium, interest or sinking fund payments for the subordinated debt securities during the continuance of any default on senior debt



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or any default under any agreement pursuant to which the senior debt was issued beyond the grace period, unless and until the default on the senior debt is cured or waived.

Upon any distribution of our assets in connection with any dissolution, winding up, liquidation, reorganization, bankruptcy or other similar proceeding, the holders of all senior debt securities will first be entitled to receive payment in full of the principal, any premium and interest due on the senior debt before the holders of the subordinated debt securities are entitled to receive any payment. Because of this subordination, if we become insolvent, our creditors who are not holders of senior debt or of the subordinated debt securities may recover less, ratably, than holders of senior debt but may recover more, ratably, than holders of the subordinated debt securities.

## **Global Certificates**

Unless the prospectus supplement otherwise provides, we will issue debt securities as one or more global certificates that will be deposited with The Depository Trust Company. Unless otherwise specified in the applicable prospectus supplement, debt securities issued in the form of a global certificate to be deposited with DTC will be represented by a global certificate registered in the name of DTC or its nominee. This means that we will not issue certificates to each holder. Generally, we will issue global securities in the total principal amount of the debt securities in a series. Debt securities in the form of a global certificate may not be transferred except as a whole among DTC, its nominee or a successor to DTC and any nominee of that successor.

We may determine not to use global certificates for any series. In that event, we will issue debt securities in certificated form.

The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in certificated form. Those laws and some conditions on transfer of global securities may impair the ability to transfer interests in global securities.

## **Ownership of Global Securities**

So long as DTC or its nominee is the registered owner of a global security, that entity will be the sole holder of the debt securities represented by that instrument. Both we and the trustee are only required to treat DTC or its nominee as the legal owner of those securities for all purposes under the indentures.

Unless otherwise specified in this prospectus or the prospectus supplement, no actual purchaser of debt securities represented by a global security will be entitled to receive physical delivery of certificated securities or will be considered the holder of those securities for any purpose under the indentures. In addition, no actual purchaser will be able to transfer or exchange global securities unless otherwise specified in this prospectus or the prospectus supplement. As a result, each actual purchaser must rely on the procedures of DTC to exercise any rights of a holder under the applicable indenture. Also, if an actual purchaser is not a DTC participant, the actual purchaser must rely on the procedures of the participant through which it owns its interest in a global security.

## **The Depository Trust Company**

DTC acts as securities depository for debt securities. DTC is:

a limited-purpose trust company organized under the New York Banking Law;

a banking organization under the New York Banking Law;

a member of the Federal Reserve System;

a clearing corporation under the New York Uniform Commercial Code; and





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a clearing agency registered under the provision of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its direct participants deposit with DTC. DTC also facilitates the settlement among direct participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in direct participants accounts, thereby eliminating the need for physical movement of securities certificates.

Direct participants of DTC include securities brokers and dealers (including underwriters), banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its direct participants and by The New York Stock Exchange, Inc., the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Indirect participants of DTC, such as securities brokers and dealers, banks and trust companies, can also access the DTC system if they maintain a custodial relationship with a direct participant.

If you are not a direct participant or an indirect participant and you wish to purchase, sell or otherwise transfer ownership of, or other interests in, the debt securities, you must do so through a direct participant or an indirect participant. DTC agrees with and represents to DTC participants that it will administer its book-entry system in accordance with its rules and bylaws and requirements of law. The SEC has on file a set of the rules applicable to DTC and its direct participants.

To facilitate subsequent transfers, all debt securities deposited with DTC are registered in the name of DTC's nominee, Cede & Co. The deposit of debt securities with DTC and their registration in the name of Cede & Co. has no effect on beneficial ownership. DTC has no knowledge of the actual beneficial owners of the debt securities. DTC's records reflect only the identity of the direct participants to whose accounts such debt securities are credited, which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants and by direct and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

### **Book-Entry Format**

Under the book-entry format, the trustee will pay interest or principal payments to Cede & Co., as nominee of DTC. DTC will forward the payment to the direct participants, who will then forward the payment to the indirect participants or to the beneficial owners. You may experience some delay in receiving your payments under this system.

Initial settlement for the global debt securities will be made in immediately available funds. Secondary market trading between DTC's participants will occur in the ordinary way in accordance with DTC's rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the debt securities among participants of DTC, it is under no obligation to perform or continue to perform the foregoing procedures and these procedures may be changed or discontinued at any time.

The trustee will not recognize you as a holder under the indentures, and you can only exercise the rights of a holder indirectly through DTC and its direct participants. DTC has advised us that it will only take action regarding a debt security if one or more of the direct participants to whom the debt security is credited direct DTC to take such action. DTC can only act on behalf of its direct participants. Your ability to pledge debt

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securities to indirect participants, and to take other actions, may be limited because you will not possess a physical certificate that represents your debt securities.

### **Certificated Debt Securities**

Unless and until they are exchanged, in whole or in part, for debt securities in definitive form in accordance with the terms of the debt securities, debt securities may not be transferred except as a whole by DTC to a nominee of DTC; as a whole by a nominee of DTC to DTC or another nominee of DTC; or as a whole by DTC or nominee of DTC to a successor of DTC or a nominee of such successor.

We will issue debt securities to you or your nominees, in fully certificated registered form, rather than to DTC or its nominees, only if:

we advise the trustee in writing that DTC is no longer willing or able to discharge its responsibilities properly or that DTC is no longer a registered clearing agency under the Securities Exchange Act of 1934, and the trustee or we are unable to locate a qualified successor within 90 days;

there has occurred and is continuing an Event of Default or any event which after notice or lapse of time or both would be an Event of Default, in which case we will issue debt securities to a holder of a beneficial interest in the debt securities at the request of that beneficial holder; or

we, at our option, elect to terminate use of the book-entry system through DTC.

If any of the above events occurs, DTC is required to notify all direct participants that debt securities in fully certificated registered form are available through DTC. DTC will then surrender the global debt securities along with instructions for re-registration. The trustee will re-issue the debt securities in full certificated registered form and will recognize the registered holders of the certificated debt securities as holders under the senior indenture.

### **Transfer or Exchange of Debt Securities**

You may transfer or exchange debt securities (other than global securities) without a service charge at the corporate trust office of the trustee. You may also surrender debt securities (other than global securities) for conversion or registration of transfer without a service charge at the corporate trust office of the trustee. You must execute a proper form of transfer and pay any taxes or other governmental charges resulting from that action.

### **Transfer Agent**

If we designate a transfer agent (in addition to the trustee) in a prospectus supplement, we may at any time rescind this designation or approve a change in the location through which any such transfer agent acts. We will, however, be required to maintain a transfer agent in each place of payment for a series of debt securities. We may at any time designate additional transfer agents for a series of debt securities.

### **Certain Covenants**

Under the indentures, we are required to:

pay the principal, interest and any premium on the debt securities when due;

maintain a place of payment;

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deliver a report to the trustee at the end of each fiscal year certifying our compliance with all of our obligations under the indentures;

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deposit sufficient funds with any paying agent on or before the due date for any principal, interest or any premium;

maintain an unencumbered total asset value (as defined in the indentures) in an amount of not less than 100% of the aggregate principal amount of all our outstanding debt;

except as described under Merger, Consolidation and Sale of Assets, do or cause to be done all things necessary to preserve and keep in full force and effect our existence, rights (declaration of trust and statutory) and franchises, unless the board of trust managers determines that the preservation thereof is no longer desirable in the conduct of our business;

cause all of our material properties used or useful for the conduct of our business to be maintained and kept in good condition, repair and working order and we will cause to be made all necessary repairs, renewals, replacements, betterments and improvements of our material properties to be made, all as in our judgment may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times;

keep all of our insurable properties insured against loss or damage at least equal to their then full insurable value with insurers of recognized responsibility and, if such insurer has publicly rated debt, the rating for such debt must be at least investment grade with the nationally recognized rating agencies; pay or discharge or cause to be paid or discharged, before they shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon us or upon our income, profits or property, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property; provided, however, we are not required to pay or discharge any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith; and

transmit by mail to all holders of debt securities, without cost to such holders, and file with the trustee copies of the annual reports, quarterly reports and other documents which we file with the SEC pursuant to Sections 13 and 15(d) of the Exchange Act.

Under the indentures, we may not:

incur or permit a subsidiary to incur any debt (as defined in the indentures) which causes the aggregate principal amount of all our outstanding debt to become greater than 60% of the sum of (1) our total assets (as defined in the indentures) at the end of the calendar quarter covered in our then most recent 10-K or 10-Q and (2) the purchase price of any real estate assets or mortgages receivable acquired and any securities offering proceeds received since the end of such calendar quarter to the extent such proceeds were not used by us to acquire real estate assets or mortgages receivable or used to reduce debt;

incur or permit a subsidiary to incur any debt if our ratio of consolidated income available for debt service (as defined in the indentures) to the annual service charge (as defined in the indentures) shall have been less than 1.5 for the four quarters then most recently ended; and

incur any debt or permit a subsidiary to incur any debt secured by any mortgage lien, charge, pledge, encumbrance or security interest in which the aggregate principal amount of all our outstanding secured debt is greater than 40% of our total assets.

**Events of Default, Notice and Waiver**

Events of default under the indentures for any series of debt securities include:

failure for 30 days to pay interest on any debt securities of that series;

failure to pay principal of, or premium, if any, on any debt securities of that series;

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failure to pay any sinking fund payment when due;

failure to perform or breach of any covenant or warranty contained in the indentures (other than a covenant added to the indentures solely for the benefit of a particular series of debt securities), which continues for 60 days after written notice as provided in the indenture;

default under any of our other debt instruments with an aggregate principal amount outstanding of at least \$10,000,000; or

events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under an indenture. The trustee may withhold notice to the holders of debt securities of any default (except in the payment of principal or interest) if it considers such withholding of notice to be in the best interests of the holders.

If an event of default for any series of debt securities occurs and continues, the trustee or the holders of at least 25% of the total principal amount of the debt securities of the series may declare the entire principal of that series due and payable immediately. If an event of default occurs due to bankruptcy, insolvency or reorganization or court appointment of a receiver, liquidator or trustee, no advance notice of acceleration is required; acceleration is automatic.

Each indenture provides that, if an event of default has occurred, the trustee is to use the degree of care a prudent person would use in the conduct of his own affairs. Subject to those provisions, the trustee is under no obligation to exercise any of its rights or powers under an indenture at the request of any of the holders of the debt securities of a series unless they have furnished to the trustee reasonable security or indemnity.

Each indenture provides that, after a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in aggregate principal amount of the debt securities of that series, by written notice to us and the trustee, may rescind and annul such declaration if:

we have paid, or deposited with the trustee a sum sufficient to pay:

all overdue interest on all debt securities of the applicable series;

the principal of and premium, if any, on any debt securities of the applicable series which have become due other than by such declaration of acceleration, plus interest thereon at the rate borne by the debt securities;

to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the debt securities; and

all sums paid or advanced by the trustee under the indenture and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel; and

all events of default, other than the non-payment of principal of the debt securities which have become due solely by such declaration of acceleration, have been cured or waived.

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The trustee is required to give notice to the holders of debt securities within 90 days of a default under the applicable indenture unless such default shall have been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to such series (except a default in the payment of the principal of, and premium, if any, or interest on any debt security of such series or in the payment of any sinking fund installment in respect of any debt security of such series) if the trustee considers such withholding to be in the interest of the holders.



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### **Limitation on Suits**

The indentures limit the right of holders of debt securities to institute legal proceedings. No holder of any debt securities will have the right to bring a claim under an indenture unless:

the holder has given written notice to the trustee of default under the terms of that series of debt;

the holders of not less than 25% of the aggregate principal amount of debt securities of that series shall have made a written request to the trustee to bring the claim and furnished the trustee reasonable indemnification as it may require;

the trustee has not commenced an action within 60 days of receipt of the notice, request and offer of indemnity; and

no direction inconsistent with a request has been given to the trustee by the holders of not less than a majority of the aggregate principal amount of the debt securities.

The holders of a majority in aggregate principal amount of any series of debt securities may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any power conferred on the trustee with respect to the securities of any series; provided, however, that

the direction does not conflict with any rule of law or an indenture,

the trustee may take any action it deems proper and which is consistent with the direction of the holders; and

the trustee is not required to take any action that would unduly prejudice the holders of the debt securities not taking part in the action or would impose personal liability on the trustee.

### **Modification of the Indentures**

In order to change or modify an indenture, we must obtain the consent of holders of at least a majority in principal amount of all outstanding debt securities affected by that change. The consent of holders of at least a majority in principal amount of each series of outstanding debt securities is required to waive compliance by us with specific covenants in an indenture. We must obtain the consent of each holder affected by a change:

to extend the maturity, or to reduce the principal, redemption premium or interest rate;

change the place of payment, or the coin or currency, for payment;

limit the right to sue for payment; or

reduce the level of consents needed to approve a change to an indenture; or modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required level of consents needed to approve a change to an indenture.

**Defeasance**

Unless stated otherwise in a prospectus supplement, we will be able to discharge our obligations under debt securities at any time by taking the actions described below. The discharge of all obligations using this process is known as defeasance. If we defease debt securities, all obligations under the series of debt securities that is defeased will be deemed to have been discharged, except for:

the rights of holders of outstanding debt securities to receive, solely from funds deposited for this purpose, payments in respect of the principal of, premium, if any, and interest on those debt securities when the payments are due;

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the obligations with respect to the debt securities concerning issuing temporary debt securities, registration of debt securities, mutilated, destroyed, lost or stolen debt securities, and the maintenance of an office or agency for payment and money for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

We will also be able to free ourselves from certain covenants that are described in the indentures by taking the actions described below. The discharge of obligations using this process is known as covenant defeasance. If we defease covenants under debt securities, then certain events (not including non-payment, enforceability of any guarantee, bankruptcy and insolvency events) described under Events of Default, Notice and Waiver will no longer constitute an event of default with respect to the debt securities.

Unless stated otherwise in a prospectus supplement, in order to exercise either defeasance or covenant defeasance as to the outstanding debt securities of a series:

we must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the debt securities of the applicable series, an amount in (1) currency in which those debt securities are then specified as payable at maturity, (2) government securities (as defined in the applicable indenture) or (3) any combination thereof, as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the trustee, to pay and discharge the principal of, premium, if any, and interest on the debt securities of the applicable series on the stated maturity of such principal or installment of principal or interest and any mandatory sinking fund payments;

in the case of defeasance, we will deliver to the trustee an opinion of counsel confirming that either:

we have received from, or there has been published by, the Internal Revenue Service a ruling, or

since the date we issued the applicable debt securities, there has been a change in the applicable federal income tax law, the effect of either being that the holders of the outstanding debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

in the case of covenant defeasance, we will deliver to the trustee an opinion of counsel to the effect that the holders of the debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

no default or event of default shall have occurred and be continuing on the date of such deposit or insofar as Sections 501(6) and 501(7) of the indentures are concerned, at any time during the period ending on the 91<sup>st</sup> day after the date of deposit;

the defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, the indenture or any other material agreement or instrument to which we are a party or by which we are bound;

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we will deliver to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent provided for that relate to either the defeasance or the covenant defeasance, as the case may be, have been met; and

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we will deliver to the trustee an opinion of counsel to the effect that either (1) as a result of the deposit pursuant to the first bullet in this paragraph and the election to defease, registration is not required under the Investment Company Act of 1940, as amended, with respect to the trust funds representing the deposit, or (2) all necessary registrations under the Investment Company Act have been effected.

### **Conversion**

Debt securities may be convertible into or exchangeable for common shares or preferred shares. The prospectus supplement will describe the terms of any conversion rights. To protect our status as a REIT, debt securities are not convertible if, as a result of that conversion, any person would then be deemed to own, directly or indirectly, more than 9.8% of our capital shares. See **Restrictions On Ownership** on page 8.

### **Merger, Consolidation and Sale of Assets**

Each indenture generally permits us to consolidate or merge with another entity. The indentures also permit us to sell all or substantially all of our property and assets. If this happens, the remaining or acquiring entity must assume all of our responsibilities and liabilities under the indentures including the payment of all amounts due on the debt securities and performance of the covenants in the indentures. However, we will only consolidate or merge with or into any other entity or sell all or substantially all of our assets according to the terms and conditions of the indentures. The remaining or acquiring entity will be substituted for us in the indentures with the same effect as if it had been an original party to the indentures. Thereafter, the successor entity may exercise our rights and powers under any indenture, in our name or in its own name. Any act or proceeding required or permitted to be done by our board of trust managers or any of our officers may be done by the board or officers of the successor entity.

### **Modifications and Amendments**

Unless stated otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture with the consent of the holders of a majority in aggregate principal amount of the outstanding debt securities of all series affected by the modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each outstanding debt security of all series affected by the modification or amendment:

change the stated maturity of the principal of, or any installment of interest on, any debt security;

reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof;

change the currency in which the principal or premium, if any, of any debt security or the interest thereon is payable;

reduce the percentage in principal amount of outstanding debt securities of any series for which the consent of the holders is required for any such supplemental indenture, or for any waiver of compliance with certain provisions of the indenture or certain defaults; or

modify any of the provisions that relate to supplemental indentures and that require the consent of holders, that relate to the waiver of past defaults, that relate to the waiver of certain covenants, except to increase the percentage in principal amount of outstanding debt securities required to take such actions or to provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each debt security affected thereby.

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Unless we say otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture without the consent of the holders if the modification or amendment does only the following:

evidences the succession of another person to us and the assumption by any such successor of any covenants under the indenture and in the debt securities of any series;

adds to our covenants for the benefit of the holders of all or any series of debt securities or surrenders any of our rights or powers;

adds any additional event of default for the benefit of the holders of all or any series of debt securities;

adds or changes any provisions to the extent necessary to provide that bearer securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on bearer securities, to permit bearer securities to be issued in exchange for registered securities or bearer of securities of other authorized denominations, or to permit or facilitate the issuance of securities in uncertificated form;

changes or eliminates any provision affecting only debt securities not yet issued;

secures the debt securities of any series;

establishes the form or terms of debt securities of any series not yet issued;

evidences and provides for successor trustees or adds or changes any provisions of the indenture to the extent necessary to permit or facilitate the appointment of a separate trustee or trustees for specific series of debt securities;

cures any ambiguity, corrects or supplements any provisions which may be defective or inconsistent with any other provision, or makes any other provisions with respect to matters or questions arising under the indenture which shall not be inconsistent with the provisions of the indenture; provided, however, that no such modification or amendment may adversely affect the interest of holders of debt securities of any series then outstanding in any material respect; or

supplements any provision of the indenture to such extent as shall be necessary to permit the facilitation of defeasance and discharge of any series of debt securities; provided, however, that any such action may not adversely affect the interest of holders of debt securities of any series then outstanding in any material respect.

## **Original Issue Discount**

We may issue debt securities under either indenture for less than their stated principal amount. Such securities may be treated as original issue discount securities, and they may be subject to special tax consequences. In addition, some debt securities that are offered and sold at their stated principal amount may, under certain circumstances, be treated as issued at an original issue discount for federal income tax purposes. We will describe the federal income tax consequences and other special consequences applicable to securities treated as original issue discount securities in the prospectus supplement relating to such securities. Original issue discount security generally means any debt security that:

does not provide for the payment of interest prior to maturity; or

is issued at a price lower than its face value and provides that upon redemption or acceleration of its stated maturity an amount less than its principal amount shall become due and payable.

**Governing Law**

Unless stated otherwise in a prospectus supplement, each indenture and the debt securities will be governed by the laws of the State of New York.

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**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of preferred shares or common shares. We may issue warrants independently or together with debt securities, preferred shares or common shares or attached to or separate from the offered securities. We will issue each series of warrants under a separate warrant agreement between us and a bank or trust company as warrant agent, as specified in the applicable prospectus supplement.

The warrant agent will act solely as our agent in connection with the warrants and will not act for or on behalf of warrant holders. The following sets forth certain general terms and provisions of the warrants that may be offered under this registration statement. Further terms of the warrants and the applicable warrant agreements will be set forth in the applicable prospectus supplement.

The applicable prospectus supplement will describe the terms of the warrants in respect of which this prospectus is being delivered, including, where applicable, the following:

the title of such warrants;

the aggregate number of such warrants;

the price or prices at which such warrants will be issued;

the type and number of securities purchasable upon exercise of such warrants;

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

the date, if any, on and after which such warrants and the related securities will be separately transferable;

the price at which each security purchasable upon exercise of such warrants may be purchased;

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

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

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

any anti-dilution protection;

a discussion of certain federal income tax considerations; and



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

Warrant certificates will be exchangeable for new warrant certificates of different denominations and warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise or to any dividend payments or voting rights as to which holders of the preferred shares or common shares purchasable upon such exercise may be entitled.

Each warrant will entitle the holder to purchase for cash such number of preferred shares or common shares, at such exercise price as shall, in each case, be set forth in, or be determinable as set forth in, the applicable prospectus supplement relating to the warrants offered thereby. Unless otherwise specified in the applicable prospectus supplement, warrants may be exercised at any time up to 5:00 p.m. New York City time on the expiration date set forth in applicable prospectus supplement. After 5:00 p.m. time on the expiration date, unexercised warrants will become void.

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Warrants may be exercised as set forth in the applicable prospectus supplement relating to the warrants. Upon receipt of payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the warrants are presented by such warrant certificate of exercise, a new warrant certificate will be issued for the remaining amount of warrants.

### **FEDERAL INCOME TAX CONSEQUENCES**

This section summarizes the material federal income tax issues that you, as a holder of our securities, may consider relevant. Because this section is a summary, it does not address all of the tax issues that may be important to you. Locke Lord Bissell & Liddell LLP has acted as our special tax counsel, has reviewed this summary, and is of the opinion that the discussion contained herein fairly summarizes the federal income tax consequences that are likely to be material to a holder of our securities. The discussion does not address all aspects of taxation that may be relevant to a particular holder of our securities in light of their personal investment or tax circumstances, or to certain types of holders of our securities that are subject to special treatment under the federal income tax laws, such as insurance companies, tax-exempt organizations, financial institutions or broker-dealers, and non-U.S. individuals or foreign corporations.

The statements in this section and the opinion of Locke Lord Bissell & Liddell LLP are based on the current federal income tax laws governing qualification as a REIT. We cannot assure you that new laws, interpretations of law or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

**We urge you to consult your own tax advisor regarding the specific tax consequences to you of ownership of our securities and of our taxation as a REIT. Specifically, you should consult your own tax advisor regarding the state, local, foreign, and other tax consequences of such ownership and taxation, and regarding potential changes in applicable tax laws.**

#### **Taxation of our Company**

We elected to be taxed as a REIT under the federal income tax laws commencing with our taxable year ended December 31, 1985. We believe that we have been organized and have operated in such a manner so as to qualify for taxation as a REIT under the federal income tax laws, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to qualify or remain qualified as a REIT. This section discusses the laws governing the federal income tax treatment of a REIT. These laws are highly technical and complex.

In the opinion of Locke Lord Bissell & Liddell LLP, we qualified to be taxed as a REIT for our taxable year ended December 31, 2003, and our organization and currently proposed method of operation will enable us to continue to qualify as a REIT for our taxable year ending December 31, 2004. Investors should be aware that Locke Lord Bissell & Liddell LLP's opinion is based upon customary assumptions, is conditioned upon certain representations made by us, including representations regarding the nature of our properties and the conduct of our business, and is not binding upon the Internal Revenue Service or any court. In addition, Locke Lord Bissell & Liddell LLP's opinion is based on existing federal income tax law governing qualification as a REIT, which is subject to change either prospectively or retroactively. Moreover, our qualification and taxation as a REIT depend upon our ability to meet on a continuing basis, through actual annual operating results, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. Locke Lord Bissell & Liddell LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given

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that the actual results of our operations for any particular taxable year will satisfy such requirements. For a discussion of the tax consequences of our failure to qualify as a REIT, see Failure to Qualify.

If we qualify as a REIT, we generally will not be subject to federal income tax on the taxable income that we distribute to our shareholders. The benefit of that tax treatment is that it avoids the double taxation, or taxation at both the corporate and shareholder levels, that generally results from owning stock in a corporation. However, we will be subject to federal tax in the following circumstances:

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to shareholders during, or within a specified time period after, the calendar year in which the income is earned.

We may be subject to the alternative minimum tax on any items of tax preference that we do not distribute or allocate to shareholders.

We will pay income tax at the highest corporate rate on:

Net income from the sale or other disposition of property acquired through foreclosure ( foreclosure property ) that we hold primarily for sale to customers in the ordinary course of business, and

Other non-qualifying income from foreclosure property.

We will pay 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.

If we fail to satisfy the 75% gross income test or the 95% gross income test, as described below under Requirements for Qualification Income Tests, and nonetheless continue to qualify as a REIT because we meet other requirements, we will pay a 100% tax on:

The gross income attributable to the greater of (i) the amount by which we fail the 75% gross income test and (ii) the amount by which 90% of our gross income exceeds the amount of income qualifying under the 95% gross income test; multiplied, in each case, by

A fraction intended to reflect our profitability.

If we fail to distribute during a calendar year at least the sum of:

85% of our REIT ordinary income for the year;

95% of our REIT capital gain net income for the year; and

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any undistributed taxable income from the earlier periods, we will pay a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed.

We may elect to retain any pay income tax on our net long-term capital gain. In that case, a U.S. shareholder would be taxed on its proportionate share of our undistributed long-term capital gain (to the extent that we make a timely designation of such gain to the shareholder) and would receive a credit or refund for its proportionate share of the tax we paid.

We will be subject to a 100% tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis.

If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of the asset during the 10-year period after we acquire the asset. The amount of gain on which we will pay tax is the lesser of:

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The amount of gain that we recognize at the time of the sale or disposition; and

The amount of gain we would have recognized if we had sold the asset at the time we acquired it.

### **Requirements for Qualification**

A REIT is a corporation, trust or association that meets each of the following requirements:

1. It is managed by one or more trustees or directors;
2. Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest;
3. It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws;
4. It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws;
5. At least 100 persons are beneficial owners of its shares or ownership certificates;
6. Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year;
7. It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the Internal Revenue Service that must be met to elect and maintain REIT status; and

8. It meets certain other qualification tests, described below, regarding the nature of its income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. For purposes of determining share ownership under requirement 6, an individual generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our shares in proportion to their actuarial interests in the trust for purposes of requirement 6.

Our outstanding common shares are owned by a sufficient number of investors and in appropriate proportions to permit us to satisfy the share ownership requirements. To protect against violations of the share ownership requirements, our declaration of trust generally provides that no person is permitted to own, applying constructive ownership tests set forth in the Internal Revenue Code, more than 9.8% of our outstanding common shares. In addition, our declaration of trust contains restrictions on transfers of capital shares, as well as provisions that automatically convert common shares into excess securities to the extent that the ownership otherwise might jeopardize our REIT status. These restrictions, however may not ensure that we will, in all cases, be able to satisfy the share ownership requirements. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, 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 50% requirement described above, we will be treated as having met this requirement. See the section below entitled Failure to Qualify.



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To monitor our compliance with the share ownership requirements, we are required to and we do maintain records disclosing the actual ownership of our common shares. To do so, we will demand written statements each year from the record holders of certain percentages of shares in which the record holders are to disclose the actual owners of the shares (*i.e.*, the persons required to include in gross income the REIT dividends). A list of those persons failing or refusing to comply with this demand will be maintained as part of our records. Shareholders who fail or refuse to comply with the demand must submit a statement with their tax returns disclosing the actual ownership of the shares and certain other information.

We currently satisfy, and expect to continue to satisfy, the share ownership requirements discussed above. We also currently satisfy, and expect to continue to satisfy, the requirements that are separately described below concerning the nature and amounts of our income and assets and the levels of required annual distributions.

A corporation that is a qualified REIT subsidiary is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A qualified REIT subsidiary is a corporation, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any qualified REIT subsidiary that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

An unincorporated domestic entity, such as a partnership or limited liability company, that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. An unincorporated domestic entity with two or more owners is generally treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, our proportionate share of the assets, liabilities and items of income of any partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which we acquire an interest, directly or indirectly, will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

A REIT is permitted to own up to 100% of the stock of one or more taxable REIT subsidiaries. A taxable REIT subsidiary is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. However, a taxable REIT subsidiary may not directly or indirectly operate or manage any hotels or health care facilities or provide rights to any brand name under which any hotel or health care facility is operated. The subsidiary and the REIT must jointly elect to treat the subsidiary as a taxable REIT subsidiary. A taxable REIT subsidiary will pay income tax at regular corporate rates on any income that it earns. In addition, the taxable REIT subsidiary rules limit the deductibility of interest paid or accrued by a taxable REIT subsidiary to its parent REIT to assure that the taxable REIT subsidiary is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a taxable REIT subsidiary and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis.

### **Income Tests**

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

Rents from real property;

Interest on loans secured by real property;

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Dividends or other distributions on, and gains from the sale of, shares in other REITs;

Gain from the sale of real estate assets;

Income derived from the temporary investment of new capital that is attributable to the issuance of our shares of beneficial interest or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we received such new capital;

Income from the operation and gain from the sale of property acquired in connection with the foreclosure of a mortgage securing that property;

Abatements and refunds of real property taxes; and

Amounts received as consideration for entering into agreements to make loans secured by real property or to purchase or lease real property.

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities, income from certain hedging instruments or any combination of these. Gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business is excluded from both the numerator and the denominator in both income tests. The following paragraphs discuss the specific application of the gross income tests to us.

*Rents from Real Property.* Rent that we receive from our real property will qualify as rents from real property, which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met.

First, the rent must not be based in whole or in part on the income or profits of any person. Participating rent, however, will qualify as rents from real property if it is based on percentages of receipts or sales and the percentages:

Are fixed at the time the leases are entered into;

Are not renegotiated during the term of the leases in a manner that has the effect of basing rent on income or profits; and

Conform with normal business practice.

More generally, the rent will not qualify as rents from real property if, considering the lease and all the surrounding circumstances, the arrangement does not conform with normal business practice, but is in reality used as a means of basing the rent on income or profits. We generally do not intend to lease property and receive rentals based on the tenant's income or profit.

Second, we must not own, actually or constructively, 10% or more of the stock or the assets or net profits of any lessee (a related party tenant) other than a taxable REIT subsidiary. The constructive ownership rules generally provide that, if 10% or more in value of our stock is owned, directly or indirectly, by or for any person, we are considered as owning the stock owned, directly or indirectly, by or for such person.

As described above, we may own up to 100% of the stock of the stock of one or more taxable REIT subsidiaries. As an exception to the related party tenant rule described in the preceding paragraph, rent that we receive from a taxable REIT subsidiary will qualify as rents from real property as long as (1) the taxable REIT subsidiary is a qualifying taxable REIT subsidiary, (2) at least 90% of the leased space in the property is leased to persons other than taxable REIT subsidiaries and related party tenants, and (3) the amount paid by the taxable



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REIT subsidiary to rent space at the property is substantially comparable to rents paid by other tenants of the property for comparable space.

Third, the rent attributable to the personal property leased in connection with the lease of a party must not be greater than 15% of the total rent received under the lease. The rent attributable to the personal property contained in a property is the amount that bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property contained in the property at the beginning and at the end of such taxable year (the personal property ratio).

Fourth, we cannot furnish or render noncustomary services to the tenants of our properties, or manage or operate our properties, other than through an independent contractor who is adequately compensated and from whom we do not derive or receive any income or through a taxable REIT subsidiary. However, we need not provide services through an independent contractor, but instead may provide services directly or indirectly to our tenants, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of noncustomary services to the tenants of a property, other than through an independent contractor, as long as our income from the services does not exceed 1% of our income from the related property. Finally, we may own up to 100% of the stock of one or more taxable REIT subsidiaries, which may provide noncustomary services to our tenants without tainting our rents from the related properties.

We believe that the only material services generally to be provided to tenants will be those usually or customarily rendered in connection with the rental of space for occupancy only. We do not intend to provide services that might be considered rendered primarily for the convenience of the tenants. Consequently, we believe that substantially all of our rental income will be qualifying income under gross income tests, and that our provision of services will not cause the rental income to fail to be included under that test.

If a portion of the rent that we receive from a property does not qualify as rents from real property because the rent attributable to personal property exceeds 15% of the total rent for a taxable year, the portion of the rent that is attributable to personal property will not be qualifying income for purposes of either the 75% or 95% gross income test.

In addition to the rent, the lessees are required to pay certain additional charges. To the extent that such additional charges represent (1) reimbursements of amounts that we are obligated to pay to third parties, such as a lessee's proportionate share of a property's operational or capital expenses, or (2) penalties for nonpayment or late payment of such amounts, such charges should qualify as rents from real property. However, to the extent that such charges do not qualify as rents from real property, they instead may be treated as interest that qualifies for the 95% gross income test.

*Interest.* The term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of such 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 being based on a fixed percentage or percentages of receipts of sales. Furthermore, to the extent that interest from a loan that is based on the residual cash proceeds from the sale of the property securing the loan constitutes a shared appreciation provision, income attributable to such participation feature will be treated as gain from the sale of the secured property.

*Prohibited Transactions.* A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of trade or business. We believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of business depends, however, on the facts

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and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot assure you, however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property that we hold primarily for sale to customers in the ordinary course of a trade or business.

*Foreclosure Property.* We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

That is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or default was imminent on a lease of such property or on indebtedness that such property secured;

For which the related loan was acquired by the REIT at a time when the default was not imminent or anticipated; and

For which the REIT makes a proper election to treat the property as foreclosure property.

Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property or longer if an extension is granted by the Secretary of the Treasury. This grace period terminates and foreclosure property ceases to be foreclosure property on the first day;

On which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;

On which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or

Which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT does not derive or receive any income.

*Failure to Satisfy Gross Income Tests.* If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

Our failure to meet such tests is due to reasonable cause and not due to willful neglect;

We attach a schedule of the sources of our income to our tax return; and

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

We cannot predict, however, whether in all circumstances we would qualify for the relief provisions. In addition, as discussed above in *Taxation of Our Company*, even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of (i) the amount by which we fail the 75% gross income test and (ii) the amount by which 90% of our gross income exceeds the amount of qualifying income under the 95% gross income test, multiplied by a fraction intended to reflect our profitability.



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### Asset Tests

To maintain our qualification as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year.

First, at least 75% of the value of our total assets must consist of:

cash or cash items, including certain receivables;

government securities;

interests in real property, including leaseholds and options to acquire real property and leaseholds;

interests in mortgages on real property;

shares in other REITs; and

investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or public offerings of debt with at least a five-year term.

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer's securities may not exceed 5% of the value of our total assets.

Third, we may not own more than 10% of the voting power or value of any one issuer's outstanding securities.

Fourth, no more than 20% of the value of our total assets may consist of the securities of one or more taxable REIT subsidiaries.

Fifth, no more than 25% of the value of our total assets may consist of securities, other than government securities and securities that constitute real estate assets.

For purposes of the second and third asset tests, the term "securities" does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or taxable REIT subsidiary, mortgage loans that constitute real estate assets, or equity interests in a partnership. The term "securities," however, generally includes debt securities issued by a partnership or another REIT, except that certain "straight debt" securities are not treated as "securities" for purposes of the 10% value test (for example, qualifying debt securities of a corporation of which we own no equity interest or of a partnership if we own at least a 20% profits interest in the partnership).

We will monitor the status of our assets for purposes of the various asset tests and will manage our portfolio in order to comply at all times with such tests. If we fail to satisfy the asset test at the end of a calendar quarter, we will not lose our REIT status if:

We satisfied the asset tests at the end of the preceding calendar quarter; and

The discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets.

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.



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### **Distribution Requirements**

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our shareholders in an aggregate amount at least equal to:

The sum of:

90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain or loss; and

90% of our after-tax net income, if any, from foreclosure property; minus

the sum of certain items of non-cash income.

We must pay such distributions in the taxable year to which they relate, or in the following taxable year if we declare the distribution before we timely file our federal income tax return for the year and pay the distribution on or before the first regular dividend payment date after such declaration.

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to shareholders. Furthermore, if we fail to distribute during a calendar year, or by the end of January following the calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

85% of our REIT ordinary income for such year;

95% of our REIT capital gain income for such year; and

any undistributed taxable income for prior periods.

We will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distribute. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% nondeductible excise tax described above. We have made, and we intend to continue to make, timely distributions sufficient to satisfy the annual distribution requirements and to avoid corporate income tax and the 4% nondeductible excise tax.

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. For example, we may not deduct recognized capital losses from our REIT taxable income. Further, it is possible that, from time to time, we may be allocated a share of net capital gain attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional securities.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying deficiency dividends to our shareholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the Internal Revenue Service based upon the amount of any deduction we take for deficiency dividends.

### **Recordkeeping Requirements**

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We must maintain certain records in order to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis information from our shareholders designated to disclose the actual ownership of our outstanding shares. We have complied, and intend to continue to comply, with these requirements.

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### **Failure to Qualify**

If we fail to qualify as a REIT in any taxable year, and no relief provision applies, we would be subject to federal income tax and any applicable alternative minimum tax on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct amounts paid out to shareholders. In fact, we would not be required to distribute any amounts to shareholders in that year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to shareholders would be taxable as ordinary income. Subject to certain limitations of the federal income tax laws, corporate shareholders might be eligible for the dividends received deduction. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

### **Taxable REIT Subsidiaries**

As described above, we may own up to 100% of the stock of one or more taxable REIT subsidiaries. A taxable REIT subsidiary is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by us. A taxable REIT subsidiary may provide services to our lessees and perform activities unrelated to our lessees, such as third-party management, development, and other independent business activities. However, a taxable REIT subsidiary may not directly or indirectly operate or manage any hotels or health care facilities or provide rights to any brand name under which any hotel or health care facility is operated. We and our corporate subsidiary must elect for the subsidiary to be treated as a taxable REIT subsidiary. A corporation of which a qualifying taxable REIT subsidiary directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a taxable REIT subsidiary. Overall, no more than 20% of the value of our assets may consist of securities of one or more taxable REIT subsidiaries, and no more than 25% of the value of our assets may consist of the securities of taxable REIT subsidiaries and other taxable subsidiaries and other assets that are not qualifying assets for purposes of the 75% asset test.

### **State and Local Taxes**

We and/or you may be subject to taxation by various states and localities, including those in which we or you transact business, own property or reside. The state and local tax treatment may differ from the federal income tax treatment described above. Consequently, you should consult your own tax advisors regarding the effect of state and local tax laws upon an investment in our securities.

## **PLAN OF DISTRIBUTION**

We may sell the securities being offered hereby in one or more of the following ways from time to time:

through agents to the public or to investors;

to underwriters for resale to the public or to investors;

directly to investors; or

through a combination of any of these methods of sale.

We will set forth in a prospectus supplement the terms of the offering of securities, including:

the name or names of any agents or underwriters;

the purchase price of the securities being offered and the proceeds we will receive from the sale;



any over-allotment options under which underwriters may purchase additional securities from us;

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any agency fees or underwriting discounts and other items constituting agents or underwriters compensation;

any initial public offering price;

any discounts or concessions allowed or reallocated or paid to dealers; and

any securities exchanges on which such securities may be listed.

### **Agents**

We may designate agents who agree to use their reasonable efforts to solicit purchases for the period of their appointment or to sell securities on a continuing basis.

We may also engage certain companies to act as our agent ( Offering Agent) for one or more offerings, from time to time, of our common shares. If we reach agreement with an Offering Agent with respect to a specific offering, including the number of common shares and any minimum price below which sales may not be made, then the Offering Agent will try to sell such common shares on the agreed terms. The Offering Agent could make sales in privately negotiated transactions and/or any other method permitted by law, including sales deemed to be an at-the-market offering as defined in Rule 415 promulgated under the Securities Act, including sales made directly on the New York Stock Exchange, or sales made to or through a market maker other than on an exchange. At-the-market offerings may not exceed 10% of the aggregate market value of our outstanding voting securities held by non-affiliates on a date within 60 days prior to the filing of the registration statement of which this prospectus is a part. The Offering Agent will be deemed to be an underwriter within the meaning of the Securities Act, with respect to any sales effected through an at-the-market offering.

### **Underwriters**

If we use underwriters for a sale of securities, the underwriters will acquire the securities for their own account. The underwriters may resell the securities in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may change from time to time any public offering price and any discounts or concessions the underwriters allow or reallocate or pay to dealers. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement naming the underwriter the nature of any such relationship.

### **Direct Sales**

We may also sell securities directly to one or more purchasers without using underwriters or agents. Underwriters, dealers and agents that participate in the distribution of the securities may be underwriters as defined in the Securities Act and any discounts or commissions they receive from us and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the Securities Act. We will identify in the applicable prospectus supplement any underwriters, dealers or agents and will describe their compensation. We may have agreements with the underwriters, dealers and agents to indemnify them against specified civil liabilities, including liabilities under the Securities Act. Underwriters, dealers and agents may engage in transactions with or perform services for us in the ordinary course of their businesses.

### **Trading Markets and Listing of Securities**

Unless otherwise specified in the applicable prospectus supplement, each class or series of securities will be a new issue with no established trading market, other than our common stock, which is listed on the New York Stock Exchange. We may elect to list any other class or series of securities on any exchange, but we are not

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obligated to do so. It is possible that one or more underwriters may make a market in a class or series of securities, but the underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We cannot give any assurance as to the liquidity of the trading market for any of the securities.

## **Stabilization Activities**

Any underwriter may engage in over-allotment, stabilizing transactions, short covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

## **LEGAL MATTERS**

Unless otherwise noted in a prospectus supplement, Locke Lord Bissell & Liddell LLP, Dallas, Texas, will pass on the legality of the securities offered through this prospectus and certain tax matters. Counsel for any underwriters or agents will be noted in the applicable prospectus supplement.

## **EXPERTS**

The financial statements and the related financial statement schedules incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2003, as amended in the Current Report on Form 8-K filed on September 8, 2004, and the Current Report on Form 8-K filed on September 9, 2004, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC's web site at [www.sec.gov](http://www.sec.gov). In addition, you may read and copy our SEC filings at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005 or at the SEC's Public Reference Room at Room 1200, 450 Fifth Street, N.W., Washington, D.C. 20549. Our website address is [www.weingarten.com](http://www.weingarten.com).

This prospectus is only part of a registration statement we filed with the SEC under the Securities Act of 1933, as amended, and therefore omits certain information contained in the registration statement. We have also filed exhibits and schedules to the registration statement that we have excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or document. You may inspect or obtain a copy of the registration statement, including exhibits and schedules, as described in the previous paragraph.

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**INCORPORATION OF DOCUMENTS BY REFERENCE**

This prospectus incorporates by reference information that we have filed with the SEC under the Exchange Act, which means that we are disclosing important information to you by referring you to those documents. Any statement contained in this prospectus or in any document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any subsequently filed document which also is, or is deemed to be, incorporated by reference into this prospectus modifies or supercedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. We incorporate by reference the following documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than Current Reports furnished under Items 2.02 or 7 of Form 8-K):

Annual Report on Form 10-K for the year ended December 31, 2003.

Quarterly Report on Form 10-Q for the quarter ended June 30, 2004.

Current Report on Form 8-K filed with the SEC under Item 8.01 on September 8, 2004.

Current Report on Form 8-K filed with the SEC under Item 2.01 on September 9, 2004.

Schedule 14A filed with the SEC on March 17, 2004.

The description of our common shares of beneficial interest contained in our registration statement on Form 8-A filed March 17, 1988.

The description of our 6.75% Series D Cumulative Redeemable Preferred Shares contained in our registration statement on Form 8-A filed April 17, 2003.

The description of our 6.95% Series E Cumulative Redeemable Preferred Shares contained in our registration statement on Form 8-A filed on July 8, 2004.

You may request copies of these filings at no cost by writing or telephoning our Investor Relations Department at the following address and telephone number:

Weingarten Realty Investors

2600 Citadel Plaza Drive

Suite 300

Houston, Texas 77008

(713) 866-6000.



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**3,000,000 Shares**

**Common Shares of Beneficial Interest**

**PROSPECTUS SUPPLEMENT**

**Merrill Lynch & Co.**

**Morgan Stanley**

**Banc of America Securities LLC**

**J.P.Morgan**

**RBC Capital Markets**

**Robert W. Baird & Co.**

**J.J.B. Hilliard, W.L. Lyons, LLC**

**Edward Jones**

**Stifel Nicolaus**

**October 2, 2008**