

REALTY INCOME CORP  
Form 424B5  
March 23, 2006

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**The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion  
Preliminary Prospectus Supplement dated March 23, 2006**

**FILED PURSUANT TO RULE 424(b)(5)  
REGISTRATION NO. 333-113032**

**PROSPECTUS SUPPLEMENT**  
(To prospectus dated March 23, 2004)

## **4,600,000 Shares**

### **Common Stock**

All of the 4,600,000 shares are being sold by us. We currently pay regular monthly distributions to holders of our common stock, which is listed on the New York Stock Exchange, or NYSE, under the symbol "O." On March 22, 2006, the last reported sale price of our common stock on the NYSE was \$24.24 per share.

Realty Income Corporation, The Monthly Dividend Company®, is a Maryland corporation organized to operate as an equity real estate investment trust, or REIT. We are a fully integrated, self-administered real estate company with in-house acquisition, leasing, legal, retail research, real estate research, portfolio management and capital markets expertise. As of December 31, 2005, we owned a diversified portfolio of 1,646 retail properties located in 48 states with over 13.4 million square feet of leasable space leased to 101 different retail chains doing business in 29 separate retail industries.

**Investing in our common stock involves risks. See "Risk Factors" beginning on page S-6 of this prospectus supplement and on page 4 of the accompanying prospectus.**

	<b><u>Per Share</u></b>	<b><u>Total</u></b>
Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to Realty Income Corporation	\$	\$

The underwriters may also purchase up to an additional 690,000 shares from us to cover overallotments, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares of common stock will be ready for delivery on or about March , 2006.

**Merrill Lynch & Co.**

*Sole Book-Running Manager*

**A.G. Edwards**

**Raymond James**

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**Wachovia Securities**

**Banc of America Securities LLC**

**BB&T Capital Markets**

**Robert W. Baird & Co.**

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**Wells Fargo Securities**

The date of this prospectus supplement is March , 2006.

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You should rely on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. When you make a decision about whether to invest in our common stock, you must not rely upon any unauthorized information or representations and, if anyone provides you with unauthorized information or representations, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary may not contain all the information that may be important to you. You should read the entire prospectus supplement and the accompanying prospectus and the documents incorporated and deemed to be incorporated by reference herein and therein, including the financial statements and related notes, before making an investment decision. Unless this prospectus supplement otherwise indicates or the context otherwise requires, the terms "Realty Income," "our," "us" and "we" as used in this prospectus supplement refer to Realty Income Corporation and its subsidiaries on a consolidated basis. Unless otherwise expressly stated or the context otherwise requires, all information in this prospectus supplement assumes that the over-allotment option granted to the underwriters is not exercised, and information relating to our properties excludes properties owned by our wholly-owned subsidiary Crest Net Lease, Inc. and its wholly-owned subsidiary, CrestNet 1 LLC, which we collectively refer to as Crest Net.*

**Realty Income**

Realty Income is organized to operate as an equity real estate investment trust, commonly referred to as a REIT. Our primary business objective is to generate dependable monthly cash distributions from a consistent and predictable level of funds from operations, or FFO, per share. Additionally, we seek to increase distributions to stockholders and FFO per share through both active portfolio management and the acquisition of additional properties.

We are a fully integrated, self-administered real estate company with in-house acquisition, leasing, legal, retail research, real estate research, portfolio management and capital markets expertise. As of December 31, 2005, we owned a diversified portfolio of 1,646 retail properties located in 48 states, with over 13.4 million square feet of leasable space leased to 101 different retail chains doing business in 29 separate retail industries. Of the 1,646 properties in the portfolio, 1,641, or 99.7%, are single-tenant, retail properties and the remaining five are multi-tenant, distribution and office properties. At December 31, 2005, 1,617, or 98.5%, of the 1,641 single-tenant properties were leased with a weighted average remaining lease term (excluding extension options) of approximately 12.4 years.

**Recent Developments**

**Credit Facility**

In June 2005, Realty Income entered into a new unsecured \$300 million acquisition credit facility to replace our prior \$250 million acquisition credit facility that expired in October 2005. Under the terms of the new credit facility, which commenced in October 2005, the borrowing rate was reduced to LIBOR (London Interbank Offered Rate) plus 65 basis points with a facility fee of 15 basis points, for all-in drawn pricing of 80 basis points over LIBOR, based on our current credit ratings. The new credit facility offers us other interest rate options as well. The term of the new facility expires in October 2008, unless extended as provided in the credit agreement.

**Common Stock Issuance**

In September 2005, we issued 4.1 million shares of common stock. The net proceeds of \$92.7 million were used to fund new property acquisitions and for other general corporate purposes.

**Credit Ratings Upgrade**

In September 2005, our credit ratings were upgraded by Fitch Ratings. Our senior unsecured debt rating was raised to BBB+ from BBB and our preferred stock rating was raised to BBB from BBB-, in each case with a stable outlook.

In February 2006, Moody's Investors Service, Inc. affirmed its ratings on our senior unsecured debt of Baa2 and on our preferred stock of Baa3, and in each case raised the outlook to "positive" from "stable."

The credit ratings on our unsecured debt and our preferred stock are subject to ongoing evaluation by credit rating agencies, and we cannot assure you that these ratings will not be changed or withdrawn by a rating agency in the future if, in its judgment, circumstances warrant.

#### **Issuance of 12-Year Senior Unsecured Notes**

In September 2005, Realty Income issued \$175 million in aggregate principal amount of 12-year, 5<sup>3</sup>/<sub>8</sub>% senior unsecured notes due 2017. The price to the public for the notes was 99.974% of the principal amount for a yield to maturity of 5.378% per annum. The net proceeds from the offering were used to repay borrowings under our unsecured acquisition credit facility, for property acquisitions and for other general corporate purposes. Our outstanding unsecured notes and debentures are rated BBB+ by Fitch Ratings, Baa2 by Moody's Investors Service, Inc. and BBB by Standard & Poor's Ratings Group.

#### **Acquisitions During 2005**

During 2005, Realty Income and Crest Net invested in aggregate \$486.6 million in 156 new properties and properties under development. These 156 properties are located in 30 states and are 100% leased with an initial average lease term of 15.8 years. As described below, Realty Income acquired 135 properties and Crest Net acquired 21 properties.

Included in the \$486.6 million is \$430.7 million invested by Realty Income in 135 new properties and properties under development with an initial weighted average contractual lease rate of 8.4%. These 135 properties are located in 28 states, are 100% leased with an initial average lease term of 15.6 years and will contain over 1.7 million leasable square feet. The 135 new properties acquired by Realty Income are net-leased to 13 different retail chains in the convenience store, drug store, financial services, health and fitness, motor vehicle dealership, restaurant and theater industries.

Included in the \$486.6 million is \$55.9 million invested by Crest Net in 21 new retail properties and properties under development.

Of the \$430.7 million Realty Income invested in real estate during 2005, \$43.9 million was invested in 10 properties that were leased and under contract for development by the tenant at December 31, 2005 (with development costs funded by Realty Income). Rent on these properties is scheduled to begin at various times during 2006. At December 31, 2005, we also had committed to pay estimated unfunded development costs totaling \$42.2 million.

The initial weighted average contractual lease rate is computed as estimated contractual net operating income (in a net-leased property this is equal to the base rent or, in the case of properties under development, the estimated base rent under the lease) for the first year of each lease, divided by the estimated total costs. Since it is possible that a tenant could default on the payment of contractual rent, we cannot assure you that the actual initial weighted average contractual lease rate will be equal to the percentage set forth above.

#### **Investments in Existing Properties**

In 2005, we capitalized costs of \$1.6 million on existing properties in our portfolio, consisting of \$570,000 for re-leasing costs and \$1.0 million for building improvements.

### **Net Income Available to Common Stockholders**

Net income available to common stockholders was \$89.7 million in 2005 versus \$90.2 million in 2004, a decrease of \$452,000. On a diluted per common share basis, net income was \$1.12 per share in 2005 as compared to \$1.15 per share in 2004.

The calculation to determine net income available to common stockholders includes gains from the sale of investment properties. The amount of gains varies from period to period based on the timing of property sales and can significantly impact net income available to common stockholders.

The gain recognized from the sales of investment properties during 2005 was \$6.6 million as compared to \$12.7 million during 2004.

### **Funds from Operations (FFO)**

In 2005, our FFO increased by \$11.4 million, or 9.6%, to \$129.6 million versus \$118.2 million in 2004. On a diluted per common share basis, FFO was \$1.62 in 2005 compared to \$1.50 for 2004, an increase of \$0.12, or 8.0%.

See our discussion of FFO in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2005 (which is incorporated by reference in the accompanying prospectus) which includes a reconciliation of net income available to common stockholders to FFO.

### **Crest Net Property Sales**

During 2005, Crest Net sold 12 properties from its inventory for \$23.5 million, which resulted in a gain of \$3.3 million.

### **Crest Net's Property Inventory**

Crest Net's property inventory at December 31, 2005 and December 31, 2004 totaled \$45.7 million and \$10.1 million, respectively, and is included in "real estate held for sale, net" on our consolidated balance sheets, which are part of our Annual Report on Form 10-K for the year ended December 31, 2005, incorporated by reference in the accompanying prospectus.

### **Increases in Monthly Cash Distributions to Common Stockholders**

We continue our 36-year policy of paying distributions monthly. On March 15, 2006 our board of directors increased the monthly distribution on our common stock to \$0.116875 per share from \$0.11625 per share. The next distribution is payable on April 17, 2006 to stockholders of record as of April 3, 2006. Purchasers of shares of common stock in this offering will be entitled to receive the April 17, 2006 distribution, provided they are stockholders of record as of April 3, 2006.

In 2005, we paid the following monthly cash distributions per common share: three in the amount of \$0.11, three in the amount of \$0.110625, two in the amount of \$0.11125, one in the amount of \$0.115, and three in the amount of \$0.115625 totaling \$1.34625. In December 2005, January 2006 and February 2006, we declared distributions of \$0.11625 per share, which were paid on January 17, 2006, February 15, 2006 and March 15, 2006, respectively.

The increase in April 2006 was our 34th consecutive quarterly increase and the 38th increase in the amount of our dividend since our listing on the NYSE in 1994. The new monthly distribution of \$0.116875 per share represents a current annualized distribution of \$1.4025 per share, and an annualized distribution yield of approximately 5.8% based on the last reported sale price of our common stock on the NYSE of \$24.24 on March 22, 2006. Although we expect to continue our policy of paying monthly distributions, we cannot guarantee that we will maintain the current level of

distributions, that we will continue our pattern of increasing distributions per share, or what the actual distribution yield will be in any future period.

**Expiration of Stockholder Rights Plan**

On February 25, 2005, we announced that our board of directors had amended our stockholder rights plan by changing the expiration date of the plan from July 1, 2008 to February 28, 2005. Accordingly, the stockholder rights plan and the related preferred share purchase rights have expired and no preferred share purchase rights will be issued in respect of the shares of common stock sold in this offering. As a result, you should disregard all statements in the accompanying prospectus concerning our stockholder rights plan, including the statements concerning that plan appearing under the captions "Risk Factors Our charter contains provisions that may delay, defer or prevent a change of control transaction" and "Stockholder Rights Plan".

**Amendments to our Articles of Incorporation**

Our board of directors was previously divided into three classes of directors serving staggered terms of three years each. Following approval by our stockholders at our annual meeting held on May 10, 2005, we filed an amendment to our articles of incorporation that eliminated our classified board of directors and all of our directors currently serve a one year term. As a result of the foregoing amendment, all statements in the accompanying prospectus concerning our previously classified board of directors should be disregarded.

In addition, following approval by our stockholders at that meeting, we filed an additional amendment to our articles of incorporation that increased the total number of authorized shares of our common stock from 100,000,000 shares to 200,000,000 shares.

**The Offering**

We are selling all of the shares of common stock offered by this prospectus supplement and no shares are being sold by our stockholders. For a description of our common stock, see "Description of Common Stock" and "Restrictions on Ownership and Transfers of Stock" in the accompanying prospectus.

Securities Offered	4,600,000 shares of common stock, plus up to an additional 690,000 shares if the underwriters exercise their overallotment option in full.
Shares to be outstanding after this offering(1)	88,489,114
Use of proceeds	We intend to use most or all of the net proceeds from this offering of common stock to repay borrowings outstanding under our \$300 million acquisition credit facility and the remaining net proceeds, if any, for other general corporate purposes.
Restrictions on Ownership and Transfer	Our charter contains restrictions on ownership and transfer of our common stock intended to assist us in maintaining our status as a REIT for federal and/or state income tax purposes. For example, our charter restricts any person from acquiring actual or constructive ownership of more than 9.8% (in value or number of shares, whichever is more restrictive) of our outstanding shares of common stock, as more fully described in the section entitled "Restrictions on Ownership and Transfers of Stock" in the accompanying prospectus.
NYSE Symbol	"O"

- (1) Based on shares outstanding as of March 22, 2006. Does not include, as of March 22, 2006:
- (a) 123,736 shares of common stock issuable upon the exercise of outstanding options;
  - (b) 2,921,215 additional shares of common stock reserved for issuance under our stock incentive plans; or
  - (c) up to 690,000 shares of common stock issuable upon exercise of the underwriters' over-allotment option.

Our board of directors has declared a distribution of \$0.116875 per share of common stock payable on April 17, 2006 to stockholders of record of our common stock on April 3, 2006. Purchasers of shares of common stock in this offering will be entitled to receive the April 17, 2006 distribution provided they are stockholders of record as of April 3, 2006.

As of March 22, 2006, we had 5,100,000 shares of 7.375% Monthly Income Class D Cumulative Redeemable Preferred Stock outstanding. In the event that we liquidate, dissolve or wind up Realty Income, the holders of this preferred stock will have the right to receive \$25.00 per share, plus accrued and unpaid dividends, before any payment is made to the holders of our common stock. In addition, this preferred stock ranks senior to our common stock with respect to the payment of dividends and distributions.



## RISK FACTORS

In evaluating an investment in our common stock, you should carefully consider the following risk factors and the risk factors described in the accompanying prospectus under the caption "Risk Factors," in addition to the other risks and uncertainties described in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference therein, including the information appearing under Item 1A- "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2005. As used under the captions "Risk Factors," in this prospectus supplement and in the accompanying prospectus, references to our capital stock include both our common stock, including the common stock offered by this prospectus supplement, and any class or series of our preferred stock and references to our stockholders include holders of our common stock and any class or series of our preferred stock, in each case unless otherwise expressly stated or the context otherwise requires.

### **Matters pertaining to certain properties and tenants.**

Twenty-five of our properties were available for lease or sale at December 31, 2005, of which all but one are single-tenant properties. At December 31, 2005, 17 of our properties under lease were unoccupied and available for sublease by the tenants, all of which were current with their rent and other obligations.

For 2005, our tenants in the convenience store and child care industries accounted for approximately 18.7% and 12.7%, respectively, of our rental revenue. A downturn in either of these industries, whether nationwide or limited to specific sectors of the United States, could adversely affect tenants in these industries, which in turn could have a material adverse effect on our financial position, results of operations and our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions on our common stock and preferred stock. Individually, each of the other industries in our property portfolio accounted for less than 10% of our rental revenue for the year 2005.

In addition, a substantial number of our properties are leased to middle-market retail chains that generally have more limited financial and other resources than certain upper-market retail chains, and therefore they are more likely to be adversely affected by a downturn in their respective businesses or in the regional or national economy.

On March 5, 2006, ProCare Automotive Solutions LLC ("ProCare") filed a petition under chapter 11 of the U.S. Bankruptcy Code. ProCare, which represented 1.2% of our total rental revenue for the three months ended December 31, 2005, is current in its payment of rent on all of its leases with us. We cannot assure you that ProCare will remain current on its lease payments, and it is possible that ProCare could choose to reject all or some of our leases, in which case it would be obliged to vacate the relevant properties. If ProCare rejects any leases and vacates the relevant properties, we will seek to lease those properties to other tenants or sell those properties, but we cannot predict how long such efforts will take or whether we can obtain similar rents or an attractive sales price. Accordingly, we cannot guarantee that ProCare's bankruptcy will not have a material adverse effect on our results of operations or financial condition.

### **We depend on key personnel.**

We depend on the efforts of our executive officers and key employees. The loss of the services of our executive officers and key employees could have a material adverse effect on our results of operations or financial condition and on our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders. It is possible that we will not be able to recruit additional personnel with equivalent experience in the retail, net-leasing industry.

**Increases in market interest rates may adversely affect the price of our common stock.**

One of the factors that influences the price of our common stock in public trading markets is the annual yield from distributions on our common stock as compared to yields on other financial instruments. Thus, an increase in market interest rates will result in higher yields on other financial instruments, which could adversely affect the market price of our common stock.

**Future issuances of equity securities could dilute the interest of holders of our common stock.**

Our future growth will depend, in large part, upon our ability to raise additional capital. If we were to raise additional capital through the issuance of equity securities, we could dilute the interests of holders of our common stock. The interests of our common stockholders could also be diluted by the issuance of shares of common stock upon the exercise of outstanding options or pursuant to stock incentive plans. Likewise, our Board of Directors is authorized to cause us to issue preferred stock of any class or series (with dividend, voting and other rights as determined by the Board of Directors). Accordingly, the Board of Directors may authorize the issuance of preferred stock with voting, dividend and other similar rights that could dilute, or otherwise adversely affect, the interests of holders of our common stock.

**We are subject to risks associated with debt financing.**

We intend to incur additional indebtedness in the future, including borrowings under our \$300 million acquisition credit facility. At March 23, 2006, we had borrowings outstanding under our \$300 million acquisition credit facility of \$160.4 million and we had a total of \$755 million outstanding in unsecured debt securities. To the extent that new indebtedness is added to our current debt levels, the related risks that we now face would increase. As a result, we are and will be subject to risks associated with debt financing, including the risk that our cash flow could be insufficient to meet required payments on our debt. We also face variable interest rate risk as the interest rate on our \$300 million credit facility is variable and could therefore increase over time. We also face the risk that we may be unable to refinance or repay our debt as it comes due. In addition, our \$300 million credit facility contains financial covenants that could limit the amount of distributions payable by us on our capital stock in the event of deterioration in our results of operations or financial condition. Our \$300 million credit facility also provides that in the event of a failure to pay principal or interest on borrowings thereunder when due (subject to any applicable grace period), we and our subsidiaries may not pay any dividends on our capital stock, including our outstanding common and preferred stock. If this were to occur, it would likely have an adverse effect on the market price of our outstanding common and preferred stock and on the value of our debt securities.

Our indebtedness could also have other important consequences to holders of the common stock, such as:

increasing our vulnerability to general adverse economic and industry conditions;

limiting our ability to obtain additional financing to fund future working capital, capital expenditures and other general corporate requirements;

requiring the use of a substantial portion of our cash flow from operations to pay principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund working capital, capital expenditures and general corporate requirements;

limiting our flexibility in planning for, or reacting to, changes in our business and our industry; and

placing us at a disadvantage compared to our competitors with less indebtedness.

**Our business operations may not generate the cash needed to make distributions on our capital stock or to service our indebtedness.**

Our ability to make distributions on our common stock and preferred stock and payments on our indebtedness and to fund planned capital expenditures will depend on our ability to generate cash in the future. There can be no assurance that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to make distributions on our common stock and preferred stock, to pay our indebtedness or to fund our other liquidity needs.

**The market value of our capital stock could be substantially affected by various factors.**

The market value of our capital stock will depend on many factors, which may change from time to time, including, but not limited to:

interest rate increases that may have an adverse effect on the market value of our capital stock;

the market for other similar securities issued by other REITs;

general economic and financial market conditions;

the financial condition, performance and prospects of us and our competitors;

changes in financial estimates or recommendations by securities analysts with respect to us, our competitors or our industry;

changes in our credit ratings; and

actual or anticipated variations in quarterly operating results.

As a result of these and other factors, investors who purchase our common stock in this offering may experience a decrease, which could be substantial, in the market value of our common stock, including decreases unrelated to our operating performance or prospects.

**As a property owner, we may be subject to unknown environmental liabilities.**

Investments in real property can create a potential for environmental liability. An owner of property can face liability for environmental contamination created by the presence or discharge of hazardous substances on the property. We can face such liability regardless of:

our knowledge of the contamination;

the timing of the contamination;

the cause of the contamination; or

the party responsible for the contamination of the property.

There may be environmental problems of which we are unaware associated with our properties. In that regard, a number of our properties are leased to operators of convenience stores that sell petroleum-based fuels, as well as to operators of oil change and tune-up facilities. These facilities, and some other of our properties, use, or may have used in the past, underground lifts or underground tanks for the storage of petroleum-based or waste products, which could create a potential for release of hazardous substances.

The presence of hazardous substances on a property may adversely affect our ability to sell that property and we may incur substantial remediation costs. Although our leases generally require our tenants to operate in compliance with all applicable federal, state and local environmental laws, ordinances and regulations and to indemnify us against any environmental liabilities arising from the



tenants' activities on the property, we could nevertheless be subject to strict liability by virtue of our ownership interest. There also can be no assurance that our tenants could or would satisfy their indemnification obligations under their leases. The discovery of environmental liabilities attached to our properties could have an adverse effect on our results of operations, our financial condition or our ability to make distributions to stockholders and to pay the principal of and interest on our debt securities and other indebtedness.

In addition, several of our properties were built during the period when asbestos was commonly used in building construction and other facilities with asbestos may be acquired by us in the future. Environmental laws govern the presence, maintenance and removal of asbestos-containing materials, or ACMs, and require that owners or operators of buildings containing asbestos properly manage and maintain the asbestos, that they adequately inform or train those who may come into contact with asbestos and that they undertake special precautions, including removal or other abatement in the event that asbestos is disturbed during renovation or demolition of a building. These laws may impose fines and penalties on building owners or operators for failure to comply with these requirements and may allow third parties to seek recovery from owners or operators for personal injury associated with exposure to asbestos fibers.

**Compliance.** We have not been notified by any governmental authority, and are not otherwise aware, of any material noncompliance, liability or claim relating to hazardous substances, toxic substances, or petroleum products in connection with any of our present properties. Nevertheless, if environmental contamination should exist, we could be subject to strict liability by virtue of our ownership interest.

**Insurance and Indemnity.** In June 2005, we entered into a new seven-year environmental insurance policy on our property portfolio which replaced the previous five-year environmental insurance policy. The limits on our new policy are \$10 million per occurrence, and \$50 million in the aggregate, subject to a \$40,000 self insurance retention, per occurrence, for properties with underground storage tanks and a \$100,000 self insurance retention, per occurrence, for all other properties. It is possible that our insurance could be insufficient to address any particular environmental situation and that, in the future, we could be unable to obtain insurance for environmental matters at a reasonable cost, or at all.

Our tenants are generally responsible for and indemnify us against liabilities for environmental matters that occur on our properties. For properties that have underground storage tanks, in addition to providing an indemnity in our favor, the tenants generally obtain environmental insurance or rely upon the state funds in the states where these properties are located.

#### USE OF PROCEEDS

We estimate the net proceeds from the sale of common stock offered by this prospectus supplement will be approximately \$ \_\_\_\_\_ million, or approximately \$ \_\_\_\_\_ million if the underwriters' overallotment option is exercised in full, in each case after deducting the estimated underwriting discount but before estimated expenses payable by us. We intend to use most or all of the net proceeds from the offering of the common stock to repay borrowings outstanding under our \$300 million acquisition credit facility and the remaining net proceeds, if any, for other general corporate purposes. The term of the acquisition credit facility expires in 2008, unless extended as provided in the credit agreement. As of March 22, 2006, the acquisition credit facility balance was \$160.4 million and the acquisition credit facility currently bears interest at a rate of 5.3%, although the credit facility offers us other interest rate options. These borrowings were generally used to acquire properties. Borrowings we repay under the \$300 million acquisition credit facility may be reborrowed, subject to customary conditions.

**PRICE RANGE OF COMMON STOCK AND DISTRIBUTION HISTORY**

On March 22, 2006, the last reported sales price per share of our common stock on the NYSE was \$24.24. The table below sets forth for the periods indicated the high and low sales prices per share of our common stock, as reported by the NYSE, and distributions declared per share of our common stock.

	Price Per Share of Common Stock		Distributions Declared Per Share(1)
	High*	Low*	
<b>2003</b>			
First Quarter	\$ 18.48	\$ 16.44	\$ 0.293125
Second Quarter	19.70	17.81	0.295000
Third Quarter	20.40	18.75	0.296875
Fourth Quarter	20.49	19.58	0.298750
<b>2004</b>			
First Quarter	22.48	19.70	0.300625
Second Quarter	22.33	17.69	0.302500
Third Quarter	22.70	19.71	0.319375
Fourth Quarter	26.08	22.48	0.328750
<b>2005</b>			
First Quarter	25.61	22.00	0.330625
Second Quarter	25.69	22.50	0.332500
Third Quarter	25.65	22.00	0.341875
Fourth Quarter	23.97	21.08	0.347500
<b>2006</b>			
First Quarter, through March 22, 2006	24.93	21.57	0.349375(2)

(1) Common stock cash distributions currently are declared monthly by us, based on financial results for the prior months.

(2) Our board of directors has declared a monthly distribution of \$0.116875 per share of common stock, payable April 17, 2006 to stockholders of record on April 3, 2006, which is included in this distributions declared per share amount.

After the market close on December 31, 2004, a 2-for-1 common stock split, declared in November 2004, became effective. Common stockholders received a dividend of one additional share of common stock for each share they owned. Unless otherwise expressly stated or the context otherwise requires, data regarding the number of outstanding shares of our common stock and per share data in this prospectus supplement has been adjusted for the stock split.

Future distributions will be at the discretion of our board of directors and will depend on, among other things, our results of operations, funds from operations, cash flow from operations, financial condition and capital requirements, the annual distribution requirements under the REIT provisions of the Internal Revenue Code of 1986, as amended, our debt service requirements and any other factors our board of directors deems relevant. In addition, our \$300 million acquisition credit facility contains financial covenants that could limit the amount of distributions payable by us on our common stock and preferred stock in the event of a deterioration in our results of operations or financial condition, and our \$300 million credit facility provides that, in the event of a failure to pay principal of or interest on borrowings thereunder when due (subject to any applicable grace period), we and our subsidiaries may not pay any dividends on our capital stock, including our outstanding common stock and preferred stock. Accordingly, although we expect to continue our policy of paying monthly distributions on our common stock, we cannot guarantee that we will maintain the current level of distributions, that we will continue our pattern of increasing distributions per share, or what the actual distribution yield will be for any future period.

**PROPERTIES**

As of December 31, 2005, we owned a diversified portfolio:

Of 1,646 properties;

With an occupancy rate of 98.5%, or 1,621 properties occupied of the 1,646 properties in the portfolio;

Leased to 101 different retail chains doing business in 29 separate retail industries;

Located in 48 states;

With over 13.4 million square feet of leasable space; and

With an average leasable retail space of 8,200 square feet.

In addition to our real estate portfolio at December 31, 2005, our subsidiary, Crest Net, had invested \$45.7 million in a portfolio of 17 properties located in nine states. These properties are classified as held for sale. At December 31, 2005, 1,617, or 98.2%, of our 1,646 retail properties were owned under net-lease agreements. Net leases typically require the tenant to be responsible for minimum monthly rent and property operating expenses including property taxes, insurance and maintenance. In addition, tenants are typically responsible for future rent increases (generally subject to ceilings) based on increases in the consumer price index, fixed increases or, to a lesser degree, additional rent calculated as a percentage of the tenants' gross sales above a specified level.

Our net-leased retail properties primarily are leased to regional and national retail chain store operators. Most buildings are single-story structures with adequate parking on site to accommodate peak retail traffic periods. The properties tend to be on major thoroughfares with relatively high traffic counts and adequate access and proximity to a sufficient population base constituting a suitable market or trade area for the retailer's business.

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The following table sets forth certain information regarding Realty Income's property portfolio (excluding properties owned by Crest Net) classified according to the business of the respective tenants, expressed as a percentage of our total rental revenue:

Industries	Percentage of Rental Revenue(1)						
	For the Quarter Ended Dec 31, 2005	For the Years Ended					
		Dec 31, 2005	Dec 31, 2004	Dec 31, 2003	Dec 31, 2002	Dec 31, 2001	Dec 31, 2000
Apparel stores	1.4%	1.6%	1.8%	2.1%	2.3%	2.4%	2.4%
Automotive collision services	1.2	1.3	1.0	0.3			
Automotive parts	3.4	3.4	3.8	4.5	4.9	5.7	6.0
Automotive service	7.0	7.6	7.7	8.3	7.0	5.7	5.8
Automotive tire services	6.5	7.2	7.8	3.1	2.7	2.6	2.3
Book stores	0.3	0.3	0.3	0.4	0.4	0.4	0.5
Business services	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Child care	11.8	12.7	14.4	17.8	20.8	23.9	24.7
Consumer electronics	1.2	1.3	2.1	3.0	3.3	4.0	4.9
Convenience stores	17.8	18.7	19.2	13.3	9.1	8.4	8.4
Crafts and novelties	0.4	0.4	0.5	0.6	0.4	0.4	0.4
Drug stores	3.0	2.8	0.1	0.2	0.2	0.2	0.2
Entertainment	1.9	2.1	2.3	2.6	2.3	1.8	2.0
Equipment rental services	0.3	0.4	0.3	0.2			
Financial services	0.1	0.1	0.1				
General merchandise	0.5	0.5	0.4	0.5	0.5	0.6	0.6
Grocery stores	0.6	0.7	0.8	0.4	0.5	0.6	0.6
Health and fitness	3.3	3.7	4.0	3.8	3.8	3.6	2.4
Home furnishings	3.4	3.7	4.1	4.9	5.4	6.0	5.8
Home improvement	1.0	1.1	1.0	1.1	1.2	1.3	2.0
Motor vehicle dealerships	2.9	2.6	0.6				
Office supplies	1.6	1.5	1.6	1.9	2.1	2.2	2.3
Pet supplies and services	1.2	1.3	1.4	1.7	1.7	1.6	1.5
Private education	0.7	0.8	1.1	1.2	1.3	1.5	1.4
Restaurants	9.9	9.4	9.7	11.8	13.5	12.2	12.3
Shoe stores	0.0	0.3	0.3	0.9	0.8	0.7	0.8
Sporting goods	3.1	3.4	3.4	3.8	4.1	0.9	
Theaters	9.9	5.2	3.5	4.1	3.9	4.3	2.7
Travel plazas	0.3	0.3	0.4	0.3			
Video rental	2.3	2.5	2.8	3.3	3.3	3.7	3.9
Other	2.9	3.0	3.4	3.8	4.4	5.2	6.0
Totals	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

(1) Includes rental revenue for all properties owned by Realty Income at the end of each period presented, including revenue from properties reclassified to discontinued operations.



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The following table sets forth certain information regarding Realty Income's property portfolio (excluding properties owned by Crest Net) regarding the timing of the initial lease term expirations (excluding extension options) on our 1,617 net leased, single-tenant and certain other retail properties as of December 31, 2005 (dollars in thousands):

Year	Total Portfolio			Initial Expirations(3)			Subsequent Expirations(4)		
	Total Number of Leases Expiring(1)	Rental Revenue for the Quarter Ended 12/31/05(2)	% of Total Rental Revenue	Number of Leases Expiring	Rental Revenue for the Quarter Ended 12/31/05	% of Total Rental Revenue	Number of Leases Expiring	Rental Revenue for the Quarter Ended 12/31/05	% of Total Rental Revenue
2006	109	\$ 2,373	4.6%	50	\$ 1,111	2.2%	59	\$ 1,262	2.4%
2007	121	2,265	4.4	87	1,662	3.2	34	603	1.2
2008	104	2,334	4.5	66	1,634	3.2	38	700	1.3
2009	89	1,963	3.8	29	694	1.3	60	1,269	2.5
2010	69	1,527	2.9	43	1,072	2.0	26	455	0.9
2011	44	1,662	3.2	34	1,439	2.8	10	223	0.4
2012	44	1,379	2.7	42	1,329	2.6	2	50	0.1
2013	74	3,251	6.3	66	3,039	5.9	8	212	0.4
2014	48	2,007	3.9	36	1,752	3.4	12	255	0.5
2015	87	1,654	3.2	68	1,200	2.3	19	454	0.9
2016	17	513	1.0	15	431	0.8	2	82	0.2
2017	22	1,527	2.9	18	1,459	2.8	4	68	0.1
2018	23	1,090	2.1	23	1,090	2.1			
2019	95	4,480	8.7	94	4,342	8.4	1	138	0.3
2020	82	2,603	5.0	81	2,593	5.0	1	10	*
2021	126	4,082	7.9	126	4,082	7.9			
2022	96	2,592	5.0	95	2,591	5.0	1	1	*
2023	234	6,440	12.4	233	6,414	12.4	1	26	*
2024	57	1,707	3.3	57	1,707	3.3			
2025	63	5,273	10.2	63	5,273	10.2			
2026	2	89	0.2	2	89	0.2			
2028	2	54	0.1	2	54	0.1			
2030	1	21	*	1	21	*			
2033	3	357	0.7	3	357	0.7			
2034	2	230	0.4	2	230	0.4			
2037	2	325	0.6	2	325	0.6			
2043	1	13	*				1	13	*
Totals	1,617	\$ 51,811	100.0%	1,338	\$ 45,990	88.8%	279	\$ 5,821	11.2%

\*  
Less than 0.1%

(1) Excludes four multi-tenant properties and 25 vacant unleased properties, one of which is a multi-tenant property. The lease expirations for properties under construction are based on the estimated date of completion of those properties.

(2) Includes rental revenue of \$59 from properties reclassified to discontinued operations and excludes revenue of \$1,852 from four multi-tenant properties and from 25 vacant and unleased properties at December 31, 2005.

(3) Represents leases to the initial tenant of the property that are expiring for the first time.

(4) Represents lease expirations on properties in the portfolio, which have previously been renewed, extended or re-tenanted.



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The following table sets forth certain state-by-state information regarding Realty Income's property portfolio (excluding properties owned by Crest Net) as of December 31, 2005 (dollars in thousands):

State	Number of Properties	Percent Leased	Approximate Leasable Square Feet	Rental Revenue For the Quarter Ended Dec 31, 2005(1)	Percentage of Rental Revenue
Alabama	17	94%	146,600	\$ 419	0.8%
Alaska	2	100	128,500	259	0.5
Arizona	70	100	335,500	1,900	3.5
Arkansas	8	88	48,800	139	0.3
California	61	100	1,057,100	4,044	7.5
Colorado	46	100	385,700	1,785	3.3
Connecticut	16	100	245,600	929	1.7
Delaware	16	100	29,100	338	0.6
Florida	128	99	1,252,600	4,958	9.2
Georgia	103	99	699,300	2,733	5.1
Idaho	14	93	91,900	371	0.7
Illinois	55	100	696,200	3,184	5.9
Indiana	37	95	349,600	1,516	2.8
Iowa	12	92	63,800	181	0.3
Kansas	20	90	188,300	515	1.0
Kentucky	15	100	51,900	320	0.6
Louisiana	14	100	65,200	285	0.5
Maryland	24	100	218,800	1,182	2.2
Massachusetts	37	100	203,100	994	1.9
Michigan	13	100	81,600	300	0.6
Minnesota	20	100	337,100	1,278	2.4
Mississippi	38	89	205,200	711	1.3
Missouri	32	94	244,500	784	1.5
Montana	2	100	30,000	79	0.1
Nebraska	13	100	104,500	436	0.8
Nevada	15	100	191,000	837	1.6
New Hampshire	10	100	89,600	358	0.7
New Jersey	26	100	200,100	1,069	2.0
New Mexico	7	100	53,300	152	0.3
New York	28	96	386,300	1,871	3.5
North Carolina	50	100	322,800	1,470	2.7
North Dakota	5	100	31,900	35	*
Ohio	105	100	661,500	2,520	4.7
Oklahoma	20	95	99,300	685	1.3
Oregon	17	100	253,300	587	1.1
Pennsylvania	81	100	481,300	2,269	4.2
Rhode Island	1	100	3,500	29	0.1
South Carolina	55	100	215,800	1,416	2.6
South Dakota	7	100	18,300	30	0.1
Tennessee	98	100	451,400	2,199	4.1
Texas	182	98	1,835,500	4,859	9.1
Utah	6	100	35,100	108	0.2
Vermont	1	100	2,500	22	*
Virginia	62	100	431,900	2,309	4.3
Washington	37	100	243,900	783	1.5
West Virginia	2	0	16,800		0.0
Wisconsin	16	94	153,700	370	0.7
Wyoming	2	100	9,300	45	0.1
<b>Totals/Average</b>	<b>1,646</b>	<b>99%</b>	<b>13,448,600</b>	<b>\$ 53,663</b>	<b>100.0%</b>

\*

Less than 0.1%

(1)

Includes rental revenue for all properties owned by Realty Income at December 31, 2005, including revenue from properties reclassified to discontinued operations of \$59.

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**UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following is a general summary of the material United States federal income tax consequences to you of purchasing, owning and disposing of our common stock and the material United States federal income tax considerations related to our REIT election. This summary supersedes, in its entirety, the discussion in the accompanying prospectus entitled "United States Federal Income Tax Considerations Related to Our REIT Election." This summary is for general information only and is not tax advice.

The information in this summary is based on:

the Internal Revenue Code of 1986, as amended (the "Code");

current, temporary and proposed United States Treasury regulations ("Treasury Regulations") promulgated under the Code;

the legislative history of the Code;

current administrative interpretations and practices of the Internal Revenue Service ("IRS"); and

court decisions;

in each case, as of the date of this prospectus supplement. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations described in this prospectus supplement. Any such change could apply retroactively to transactions preceding the date of the change. We have not requested, and do not plan to request, any rulings from the IRS concerning our tax treatment, and the statements in this prospectus supplement are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this summary will not be challenged by the IRS or will be sustained by a court if challenged by the IRS. This summary does not discuss any state, local or foreign tax considerations.

**You are urged to consult your tax advisors regarding the tax consequences to you of:**

**the acquisition, ownership and sale or other disposition of the common stock offered under this prospectus supplement, including the federal, state, local, foreign and other tax consequences;**

**our election to be taxed as a REIT for United States federal income tax purposes; and**

**potential changes in the tax laws.**

**Taxation of Realty Income Corporation**

*General.* We elected to be taxed as a REIT under Sections 856 through 860 of the Code commencing with our taxable year ended December 31, 1994. We believe we have been organized and have operated in a manner which allows us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 1994. We currently intend to continue to be organized and operate in this manner. However, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through our actual annual operating results, asset composition and distribution levels and the diversity of the ownership of our stock. Accordingly, no assurance can be given that we have been organized and have operated, or will continue to be organized and operate, in a manner so as to qualify or remain qualified as a REIT. See the section below entitled " Failure to Qualify." Further, the anticipated income tax treatment described in this prospectus supplement may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time.



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The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following sets forth the material aspects of the sections of the Code that govern the United States federal income tax treatment of a REIT and the holders of its common stock. This summary is qualified in its entirety by the applicable Code provisions, relevant rules and regulations promulgated under the Code, and administrative and judicial interpretations of the Code and these rules and regulations.

Latham & Watkins LLP has acted as our tax counsel in connection with our filing of this prospectus supplement and our election to be taxed as a REIT. As a condition to the closing of the sale of our common stock, Latham & Watkins LLP will render an opinion to our underwriters to the effect that, commencing with our taxable year ended December 31, 1994, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion will be based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate to be provided by one of our officers. In addition, this opinion will be based upon our factual representations set forth in this prospectus supplement and the accompanying prospectus. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed or verified by Latham & Watkins LLP. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year have satisfied or will satisfy those requirements. Latham & Watkins LLP has no obligation to update its opinion subsequent to the date it is rendered. See " Failure to Qualify".

Provided we qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our net income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation" that typically results from investment in a C corporation. A C corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation generally means taxation that occurs once at the corporate level when income is earned and once again at the stockholder level when the income is distributed. We will be required to pay United States federal income tax, however, as follows:

first, we will be required to pay tax at regular corporate tax rates on any undistributed REIT taxable income, including undistributed net capital gains.

second, we may be required to pay the "alternative minimum tax" on our items of tax preference under some circumstances.

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

fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held as inventory or primarily for sale to customers in the ordinary course of business.

fifth, if we fail to satisfy the 75% or the 95% gross income tests, as described below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (a) the greater of (i) the amount by which 75% of our

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gross income exceeds the amount qualifying under the 75% gross income test described below and (ii) the amount by which 95% of our gross income exceeds the amount qualifying under the 95% gross income test, multiplied by (b) a fraction intended to reflect our profitability.

sixth, if we fail to satisfy any of the REIT asset tests (other than a de minimis failure of the 5% or 10% asset tests), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

seventh, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the REIT gross income tests or certain violations of the asset tests described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but will be required to pay a penalty of \$50,000 for each such failure.

eighth, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (a) 85% of our REIT ordinary income for the year, (b) 95% of our REIT capital gain net income for the year, and (c) any undistributed taxable income from prior periods.

ninth, if we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of such gain assume that we or the C corporation from whom we acquire the assets will make or refrain from making the appropriate elections under the applicable Treasury Regulations then in effect.

tenth, we will be subject to a 100% tax on any "redetermined rents," "redetermined deductions" or "excess interest." In general, redetermined rents are rents from real property that are overstated as a result of services furnished by a "taxable REIT subsidiary" of ours to any of our tenants. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. See " Penalty Tax" below.

*Requirements for Qualification as a Real Estate Investment Trust.* The Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation but for Sections 856 through 860 of the Code;
- (4) that is not a financial institution or an insurance company within the meaning of the Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, as defined in the Code to include certain entities, during the last half of each taxable year; and



(7)

that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), pension funds and other specified tax-exempt entities generally are treated as individuals, except that a "look-through" exception applies with respect to pension funds.

We believe that we have been organized, have operated and have issued sufficient shares of capital stock with sufficient diversity of ownership to allow us to satisfy conditions (1) through (7), inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding the ownership and transfer of our shares. These restrictions are intended to assist us in continuing to satisfy the share ownership requirements described in conditions (5) and (6) above. These stock ownership and transfer restrictions are described in "Restrictions on Ownership and Transfers of Stock" in the accompanying prospectus. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in conditions (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in the applicable Treasury Regulations that require us to ascertain the actual ownership of our shares, and we do not know, and would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See " Failure to Qualify."

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have and will continue to have a calendar taxable year.

*Ownership of Partnership and Limited Liability Company Interests.* We may from time to time own and operate one or more properties through partnerships and limited liability companies. Treasury Regulations provide that if we are a partner in a partnership, we will be deemed to own our proportionate share of the assets of the partnership based on our interest in partnership capital, subject to special rules relating to the 10% REIT asset test described below. We will also be deemed to be entitled to our proportionate share of the income of the partnership. The character of the assets and gross income of the partnership retains the same character in our hands for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. In addition, the assets and items of income of any partnership in which we own a direct or indirect interest include such partnership's share of assets and items of income of any partnership in which it owns an interest. We have included a brief summary of the rules governing the United States federal income taxation of partnerships and their partners below in " Tax Aspects of the Partnerships." The treatment described above also applies with respect to the ownership of interests in limited liability companies or other entities that are treated as partnerships for United States federal income tax purposes.

We have direct or indirect control of certain partnerships and limited liability companies and intend to continue to operate them in a manner consistent with the requirements for our qualification as a REIT. From time to time we may be a limited partner or non-managing member in certain partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest were to take actions which could jeopardize our status as a REIT or require us to pay tax, we could be forced to dispose of our interest in that entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a REIT income or asset test, and that we would not become aware of such action in time to dispose of our interest in the applicable entity or take other corrective action on a timely basis. In such a case, unless we were entitled to relief, as described below, we could fail to qualify as a REIT.

*Ownership of Interests in Qualified REIT Subsidiaries.* We currently own and may from time to time own and operate certain properties through wholly-owned subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of its outstanding stock and if we do not elect with the subsidiary to treat it as a "taxable REIT subsidiary," described below. A corporation that is a qualified REIT subsidiary is not treated as a separate corporation for United States federal income tax purposes, and 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 (as the case may be) of the parent REIT for all purposes under the Code (including all REIT qualification tests). Thus, in applying the federal tax requirements described in this prospectus supplement, the subsidiaries in which we own a 100% interest (other than any taxable REIT subsidiaries) are ignored, and all assets, liabilities and items of income, deduction and credit of such subsidiaries are treated as our assets, liabilities, and items of income, deduction and credit. A qualified REIT subsidiary is not required to pay United States federal income tax, and our ownership of the stock of such a qualified REIT subsidiary does not violate the restrictions on ownership of securities, as described below under " Asset Tests."

*Ownership of Interests in Taxable REIT Subsidiaries.* A taxable REIT subsidiary is a corporation other than a REIT in which a REIT directly or indirectly holds stock and that has made a joint election with the REIT to be treated as a taxable REIT subsidiary. A taxable REIT subsidiary also includes any corporation other than a REIT with respect to which a taxable REIT subsidiary owns, directly or indirectly, securities possessing more than 35% of the total voting power or value of the outstanding securities of such corporation. A taxable REIT subsidiary generally may engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT, except that a taxable REIT subsidiary may not directly or indirectly operate or manage a lodging or health care facility or directly or indirectly provide to any other person (under a franchise, license or otherwise) rights to any brand name under which any lodging or health care facility is operated. A taxable REIT subsidiary is subject to United States federal income tax, and state and local income tax where applicable, as a regular C corporation. In addition, a taxable REIT subsidiary of ours may be prevented from deducting interest on debt that we directly or indirectly fund if certain tests regarding the taxable REIT subsidiary's debt-to-equity ratio and interest expense are not satisfied. We currently own 100% of the stock of a taxable REIT subsidiary and may from time to time acquire interests in additional taxable REIT subsidiaries. See " Asset Tests."

*Income Tests.* We must satisfy two gross income requirements annually to maintain our qualification as a REIT:

first, in each taxable year, we must derive directly or indirectly at least 75% of our gross income, excluding gross income from prohibited transactions, from (a) certain investments relating to real property or mortgages on real property, including "rents from real property" and, in some circumstances, interest, or (b) some types of temporary investments; and

second, in each taxable year, we must derive at least 95% of our gross income, excluding gross income from prohibited transactions, from (a) the real property investments described above, and (b) dividends, interest and gain from the sale or disposition of stock or securities.

For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. An amount received or accrued generally will not be excluded from the term "interest," however, solely by reason of being based on a fixed percentage or percentages of receipts or sales.

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

the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales;

we, or an actual or constructive owner of 10% or more of our stock, must not actually or constructively own 10% or more of the interests in the assets or net profits of the tenant, or, if the tenant is a corporation, 10% or more of the voting power or total value of all classes of stock of the tenant. Rents we receive from such a tenant that is a taxable REIT subsidiary of ours, however, will not be excluded from the definition of "rents from real property" if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a "controlled taxable REIT subsidiary" is modified and such modification results in an increase in the rents payable by such taxable REIT subsidiary, any such increase will not qualify as "rents from real property." For purpose of this rule, a "controlled taxable REIT subsidiary" is a taxable REIT subsidiary in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary;

rent attributable to personal property leased in connection with a lease of real property must not be greater than 15% of the total rent we receive under the lease. If this requirement is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property;" and

we generally must not operate or manage our property or furnish or render services to the tenants of the property, subject to a 1% *de minimis* exception and except as provided below. We may, however, directly perform certain services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of such services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we may employ an independent contractor from whom we derive no revenue to provide customary services, or a taxable REIT subsidiary, which may be wholly or partially owned by us, to provide both customary and non-customary services, to our tenants without causing the rent we receive from those tenants to fail to qualify as "rents from real property." Any amounts we receive from a taxable REIT subsidiary with respect to its provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

We generally do not intend to receive rent which fails to satisfy any of the above conditions. Notwithstanding the foregoing, we may have taken and may in the future take actions which fail to satisfy one or more of the above conditions to the extent that we determine, based on the advice of our tax counsel, that those actions will not jeopardize our tax status as a REIT.

We believe that the aggregate amount of our nonqualifying income, from all sources, in any taxable year will not exceed the limits on nonqualifying income under the gross income tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. Commencing with our taxable year beginning January 1, 2005, we generally may avail ourselves of the relief provisions if:

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following our identification of the failure to meet the 75% or 95% gross income test for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income test for such taxable year in accordance with Treasury Regulations to be issued; and

the failure to meet these tests was due to reasonable cause and not due to willful neglect.

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

*Prohibited Transaction Income.* Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Our gain would include any gain realized by our qualified REIT subsidiaries and our share of any gain realized by any of the partnerships or limited liability companies in which we own an interest. This prohibited transaction income may also adversely affect our ability to satisfy the income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. We intend to hold our properties for investment with a view to long-term appreciation and to engage in the business of acquiring, developing and owning our properties. We have made, and may in the future make, occasional sales of the properties as are consistent with our investment objectives. We do not intend to enter into any sales that are prohibited transactions. The IRS may successfully contend, however, that one or more of these sales is a prohibited transaction subject to the 100% penalty tax.

*Penalty Tax.* Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of services furnished by one of our taxable REIT subsidiaries to any of our tenants, and redetermined deductions and excess interest represent amounts that are deducted by a taxable REIT subsidiary for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. Rents we receive will not constitute redetermined rents if they qualify for the safe harbor provisions contained in the Code.

We do not believe that we have been, and do not expect to be, subject to this penalty tax, although our rental or service arrangements may not satisfy the safe-harbor provisions described above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay this 100% penalty tax on the excess of an arm's length fee for tenant services over the amount actually paid.

*Asset Tests.* At the close of each quarter of our taxable year, we also must satisfy four tests relating to the nature and diversification of our assets:

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first, at least 75% of the value of our total assets, including assets held by our qualified REIT subsidiaries and our allocable share of the assets held by the partnerships and limited liability companies in which we own an interest, must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public debt offering with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds;

second, not more than 25% of the value of our total assets may be represented by securities other than those securities included in the 75% asset test;

third, of the investments included in the 25% asset class and except for investments in other REITs and our qualified REIT subsidiaries and taxable REIT subsidiaries, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total voting power or value of the outstanding securities of any one issuer except, in the case of the 10% value test, certain "straight debt" securities having specified characteristics. Certain types of securities are disregarded as securities solely for the 10% value test, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, commencing with our taxable year beginning January 1, 2005, solely for the purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code; and

fourth, not more than 20% of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries.

As of the date of this prospectus supplement, we own 100% of the outstanding stock of Crest Net Lease, Inc. Crest Net Lease has elected, together with us, to be treated as a taxable REIT subsidiary. So long as Crest Net Lease qualifies as our taxable REIT subsidiary, we will not be subject to the 5% asset test, the 10% voting securities limitation or the 10% value limitation with respect to our ownership of its securities. We or Crest Net Lease may acquire securities in other taxable REIT subsidiaries in the future. We believe that the aggregate value of our taxable REIT subsidiaries has not exceeded and will not exceed 20% of the aggregate value of our gross assets. With respect to each issuer in which we currently own an interest that does not qualify as a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary, we believe that our ownership of the securities of any such issuer has complied with the 5% asset test, the 10% voting securities limitation and the 10% value limitation with respect to our ownership of its securities. No independent appraisals have been obtained to support these conclusions, and there can be no assurance that the IRS will not disagree with our determinations of value.

The asset tests described above must be satisfied at the close of each calendar quarter of our taxable year in which we (directly or through our qualified REIT subsidiaries, partnerships or limited liability companies) acquire securities in the applicable issuer, and also at the close of each calendar quarter in which we increase our ownership of securities of such issuer, including as a result of increasing our interest in a partnership or limited liability company which owns such securities, or acquiring other assets. For example, our indirect ownership of securities of an issuer may increase as a result of our capital contributions to, or the redemption of other partners' or members' interests in, a partnership or limited liability company in which we have an ownership interest. After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy

the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy an asset test because we acquire securities or other property during a quarter (including as a result of an increase in our interests in a partnership or limited liability company), we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe that we have maintained and we intend to continue to maintain adequate records of the value of our assets to ensure compliance with the asset tests. In addition, we intend to take such actions within 30 days after the close of any quarter as may be required to cure any noncompliance.

Commencing with our calendar year beginning January 1, 2005, certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% and 10% asset tests if the value of our nonqualifying assets (i) does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) \$10,000,000 and (ii) we dispose of the nonqualifying assets or otherwise meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the time period prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% and 10% asset tests, in excess of the *de minimis* exception described above, we may avoid disqualification as a REIT after the 30-day cure period by taking steps including (i) the disposition of sufficient nonqualifying assets to meet the asset tests or the taking any other actions so as to enable us to meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the time period prescribed by Treasury Regulations to be issued, (ii) paying a tax equal to the greater of (a) \$50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (iii) disclosing certain information to the IRS.

Although we believe that we have satisfied the asset tests described above and we plan to take steps to ensure that we satisfy such tests for any quarter with respect to which retesting is to occur, there can be no assurance that such steps will always be successful or will not require a reduction in our overall interest in an issuer (including in a taxable REIT subsidiary). If we fail to timely cure any noncompliance with the asset tests in a timely manner, and cannot avail ourselves of the relief provisions described above, we will cease to qualify as a REIT.

*Annual Distribution Requirements.* To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

90% of our "REIT taxable income"; and

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

the excess of the sum of specified items of our non-cash income items over 5% of "REIT taxable income" as described below.

Our "REIT taxable income" is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount on purchase money debt, cancellation of indebtedness, and any like-kind exchanges that are later determined to be taxable.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the ten-year period following our acquisition of such asset, we would be required to distribute at least 90% of the after-tax gain, if any, we recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case, on the date we acquired the asset.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment following such declaration, provided such payment is made during the 12-month period following the close of such year. Except as provided below, these distributions are taxable to our stockholders, other than tax-exempt entities, in the year in which paid. This is so even though these distributions relate to the prior year for purposes of our 90% distribution requirement. The amount distributed must not be preferential, which means that every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our "REIT taxable income," as adjusted, we will be required to pay tax on the undistributed amount at regular corporate tax rates. We believe we have made, and intend to continue to make, timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations.

We anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements because of timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. If these timing differences occur, we may be required to borrow funds to pay dividends or pay dividends in the form of taxable stock dividends in order to meet the distribution requirements.

Under certain circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying "deficiency dividends" to stockholders in a later year, which we may include in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends.

In addition, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year, at least the sum of 85% of our REIT ordinary income for such year, 95% of our REIT net capital gain income for such year and any undistributed taxable income from prior periods. Any REIT taxable income and net capital gain income on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax.

For purposes of the 90% distribution requirement and excise tax described above, distributions declared during the last three months of the calendar year, which are payable to our stockholders of record on a specified date during such period and which are paid during January of the following year, will be treated as having been paid by us and received by our stockholders on December 31 of the year in which they are declared.

*Like-Kind Exchanges.* We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Like-kind exchanges are intended to result in the deferral of gain for United States federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could subject us to United States federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

## Failure to Qualify

Commencing with our taxable year beginning January 1, 2005, specified cure provisions are available to us in the event that we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT. Except with respect to violations of the REIT income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a \$50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions of the Code do not apply, we will be required to pay tax, including applicable alternative minimum tax, on our taxable income at regular corporate tax rates. Distributions to our stockholders in any year in which we fail to qualify as a REIT will not be deductible by us, and we will not be required to distribute any amounts to our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce our cash available for distribution to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to our stockholders will be taxable at rates applicable to regular corporate dividends to the extent of our current and accumulated earnings and profits. In this event, subject to certain limitations under the Code, corporate distributees may be eligible for the dividends-received deduction. Unless entitled to relief under specific statutory provisions, we will also be disqualified from taxation as a REIT for the four taxable years following the year in which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

## Tax Aspects of the Partnerships

*General.* From time to time, we may own, directly or indirectly, interests in various partnerships and limited liability companies. We expect these will be treated as partnerships (or disregarded entities) for United States federal income tax purposes. In general, entities that are classified as partnerships (or disregarded entities) for United States federal income tax purposes are "pass-through" entities which are not required to pay United States federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the entity, and are potentially required to pay tax on such income without regard to whether the partners or members receive a distribution of cash from the entity. We include in our income our allocable share of the foregoing items for purposes of computing our REIT taxable income, based on the partnership agreement. For purposes of applying the REIT income and asset tests, we include our pro rata share of the income generated by and the assets held by the partnerships and limited liability companies in which we own an interest, including their shares of the income and assets of any subsidiary partnerships and limited liability companies based on our capital interests. See "Taxation of Realty Income Corporation."

Our ownership interests in such partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships (or disregarded entities), as opposed to associations taxable as corporations, for United States federal income tax purposes. If a partnership or limited liability company in which we own an interest, or one or more of its subsidiary partnerships or limited liability companies, were treated as an association, it would be taxable as a corporation and therefore be subject to an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change, and could prevent us from satisfying the REIT asset tests and/or the REIT income tests (see "Taxation of Realty Income Corporation Asset Tests" and "Taxation of Realty Income Corporation Income Tests"). This, in turn, could prevent us from qualifying as a REIT. See "Failure to Qualify" for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of one or more of the partnerships or limited liability companies in which we own an interest might be treated as a taxable event. If so, we might incur a tax liability without any related cash distributions.



Treasury Regulations that apply for tax periods beginning on or after January 1, 1997 provide that a domestic business entity not otherwise organized as a corporation may elect to be treated as a partnership or disregarded entity for United States federal income tax purposes. Unless it elects otherwise, an eligible entity in existence prior to January 1, 1997, will have the same classification for United States federal income tax purposes that it claimed under the entity classification Treasury Regulations in effect prior to this date. In addition, an eligible entity that did not exist or did not claim a classification prior to January 1, 1997 will be classified as a partnership or disregarded entity for United States federal income tax purposes unless it elects otherwise. All of the partnerships in which we own an interest intend to claim classification as partnerships or disregarded entities under these Treasury Regulations. As a result, we believe that these partnerships will be classified as partnerships or disregarded entities for United States federal income tax purposes. The treatment described above also applies with respect to our ownership of interests in limited liability companies that are treated as partnerships for tax purposes.

*Allocations of Income, Gain, Loss and Deduction.* A partnership or limited liability company agreement will generally determine the allocation of income and losses among partners or members. These allocations, however, will be disregarded for tax purposes if they do not comply with the provisions of Section 704(b) of the Code and the related Treasury Regulations. Generally, Section 704(b) of the Code and the related Treasury Regulations require that partnership and limited liability company allocations respect the economic arrangement of their partners or members. If an allocation is not recognized for United States federal income tax purposes, the relevant item will be reallocated according to the partners' or members' interests in the partnership or limited liability company, as the case may be. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners or members with respect to such item. The allocations of taxable income and loss in each of the partnerships and limited liability companies in which we own an interest are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder.

*Tax Allocations With Respect to the Properties.* Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership or limited liability company in exchange for an interest in the partnership or limited liability company must be allocated in a manner so that the contributing partner or member is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution, as adjusted from time to time. The amount of the unrealized gain or unrealized loss is generally equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution. These allocations are solely for United States federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners or members. Some of the partnerships and/or limited liability companies in which we own an interest were formed by way of contributions of appreciated property. The relevant partnership and/or limited liability company agreements require that allocations be made in a manner consistent with Section 704(c) of the Code.

#### **United States Federal Income Tax Considerations for Holders of Our Common Stock**

The following summary describes the principal United States federal income tax consequences to you of purchasing, owning and disposing of our common stock. This summary deals only with common stock held as a "capital asset" (generally, property held for investment within the meaning of Section 1221 of the Code). It does not address all the tax consequences that may be relevant to you in light of your particular circumstances. In addition, this discussion does not address the tax consequences relevant to persons who receive special treatment under the United States federal income tax law, except where specifically noted. Holders receiving special treatment include, without limitation:

financial institutions, banks and thrifts;

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insurance companies;

tax-exempt organizations;

"S" corporations;

traders in securities that elect to mark to market;

persons holding the common stock through a partnership or other pass-through entity;

stockholders subject to the alternative minimum tax;

regulated investment companies and real estate investment trusts;

broker-dealers or dealers in securities or currencies;

United States expatriates;

persons holding our common stock as a hedge against currency risks, as part of a "conversion" or "integrated transaction," or as a position in a straddle; and

U.S. stockholders (as defined below) whose functional currency is not the United States dollar.

If you are considering purchasing our common stock, you should consult your tax advisors concerning the application of United States federal income tax laws to your particular situation as well as any consequences of the purchase, ownership and disposition of our common stock arising under the laws of any state, local or foreign taxing jurisdiction.

When we use the term "U.S. stockholder," we mean a holder of shares of our common stock who, for United States federal income tax purposes:

is a citizen or resident of the United States;

is a corporation, partnership, limited liability company or other entity created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia unless, in the case of a partnership or limited liability company, Treasury Regulations provide otherwise;

is an estate the income of which is subject to United States federal income taxation regardless of its source; or

is a trust whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust. Notwithstanding the preceding sentence, to the extent provided in the Treasury Regulations, certain trusts in existence on August 20, 1996, and treated as United States persons prior to this date that elect to continue to be treated as United States persons, shall also be considered U.S. stockholders.

If you hold shares of our common stock and are not a U.S. stockholder, you are a "non-U.S. stockholder."

**Taxation of Taxable U.S. Stockholders Generally**

*Distributions Generally.* Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax discussed below, will be taxable to our taxable U.S. stockholders as ordinary income. See " Tax Rates" below. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. stockholders that are corporations. For purposes of determining whether distributions to holders of common stock are out of current or accumulated earnings and profits, our earnings and profits will be allocated first to our outstanding preferred stock and then to our outstanding common stock.

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

*Capital Gain Dividends.* Dividends that we properly designate as capital gain dividends will be taxable to our taxable U.S. stockholders as a gain from the sale or disposition of a capital asset, to the extent that such gain does not exceed our actual net capital gain for the taxable year. These gains may be taxable to non-corporate U.S. stockholders at a 15% or 25% rate. U.S. stockholders that are corporations may, however, be required to treat up to 20% of some capital gain dividends as ordinary income. If, for any taxable year, we designate as a "capital gain dividend," as defined in Section 857 of the Code, any portion (the "Capital Gains Amount") of the dividends, as determined for United States federal income tax purposes, paid or made available for that year to holders of all classes of our stock, then, except as otherwise required by applicable law, the portion of the Capital Gains Amount that shall be allocable to the holders of the common stock will be in proportion to the amount that the total dividends, as determined for United States federal income tax purposes, paid or made available to holders of common stock for the year bear to the total dividends paid or made available for that year to holders of all classes of our stock. In addition, except as otherwise required by applicable law, we will make a similar allocation with respect to any undistributed long-term capital gains which are to be included in our stockholders' long-term capital gains, based on the allocation of the Capital Gains Amount which would have resulted if those undistributed long-term capital gains had been distributed as "capital gain dividends" by us to our stockholders.

*Passive Activity Losses and Investment Interest Limitations.* Distributions we make and gain arising from the sale or exchange by a U.S. stockholder of our shares will not be treated as passive activity income. As a result, U.S. stockholders generally will not be able to apply any "passive losses" against this income or gain. A U.S. stockholder may elect to treat capital gain dividends, capital gains from the disposition of stock and qualified dividend income as investment income for purposes of computing the investment interest limitation, but in such case, the stockholder will be taxed at ordinary income rates on such amount. Other distributions made by the Company, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

*Retention of Net Capital Gains.* We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, a U.S. stockholder generally would:

include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;

be deemed to have paid the capital gains tax imposed on us on the designated amounts included in the U.S. stockholder's long-term capital gains;

receive a credit or refund for the amount of tax deemed paid by it;

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increase the adjusted basis of its common stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and

in the case of a U.S. stockholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

*Dispositions of Our Common Stock.* If a U.S. stockholder sells or disposes of shares of common stock, it will recognize gain or loss for United States federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder's adjusted basis in the shares for tax purposes. This gain or loss will be long-term capital gain or loss if the holder has held the common stock for more than one year. However, if a U.S. stockholder recognizes loss upon the sale or other disposition of common stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. stockholder received distributions from us which were required to be treated as long-term capital gains.

### **Tax Rates**

The maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain "capital gain dividends," has generally been reduced to 15% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) "qualified dividend income" has generally been reduced to 15%. In general, dividends payable by REITs are not eligible for the reduced tax rate on corporate dividends, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year). In addition, as described in "Taxation of Taxable U.S. Stockholders Generally Capital Gain Dividends" above, dividends properly designated by the REIT as "capital gain dividends" may be taxable to non-corporate U.S. stockholders at a 15% or 25% rate. The currently applicable provisions of the United States federal income tax laws relating to the 15% tax rate are currently scheduled to "sunset" or revert to the provisions of prior law effective for taxable years beginning after December 31, 2008, at which time the capital gains tax rate will be increased to 20% and the rate applicable to dividends will be increased to the tax rate then applicable to ordinary income.

### **Backup Withholding**

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

### **Taxation of Tax Exempt Stockholders**

Dividend income from us and gain arising upon a sale of shares generally will not be unrelated business taxable income to a tax-exempt stockholder, except as described below. This income or gain will be unrelated business taxable income, however, if a tax-exempt stockholder holds its shares as "debt-financed property" within the meaning of the Code or if the shares are used in a trade or business of the tax-exempt stockholder. Generally, debt-financed property is property the acquisition or holding of which was financed through a borrowing by the tax-exempt stockholder.

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

Notwithstanding the above, however, a portion of the dividends paid by a "pension-held REIT" may be treated as unrelated business taxable income as to some trusts that hold more than 10%, by value, of the interests in the REIT. A REIT will not be a "pension-held REIT" if it is able to satisfy the "not closely held" requirement without relying on the "look-through" exception with respect to certain trusts. As a result of limitations on the transfer and ownership of stock contained in our charter, we do not expect to be classified as a "pension-held REIT," and as a result, the tax treatment described in this paragraph should be inapplicable to our stockholders. However, because our stock will be publicly traded, we cannot guarantee that this will always be the case.

### **Taxation of Non-U.S. Stockholders**

The preceding discussion does not address the rules governing United States federal income taxation of the ownership and disposition of our common stock by persons that are non-U.S. stockholders. In general, non-U.S. stockholders may be subject to special tax withholding requirements on distributions from us and with respect to their sale or other disposition of our common stock, except to the extent reduced or eliminated by an income tax treaty between the United States and the non-U.S. stockholder's country. A non-U.S. stockholder who is a stockholder of record and is eligible for reduction or elimination of withholding must file an appropriate form with us in order to claim such treatment. Non-U.S. stockholders should consult their own tax advisors concerning the United States federal income tax consequences to them of an acquisition of shares of our common stock, including the United States federal income tax treatment of dispositions of interests in and the receipt of distributions from us.

### **Other Tax Consequences**

State, local and foreign income tax laws may differ substantially from the corresponding United States federal income tax laws, and this discussion does not purport to describe any aspect of the tax laws of any state, local or foreign jurisdiction. You should consult your tax advisors regarding the effect of state and local tax laws with respect to our tax treatment as a REIT and on an investment in our common stock.

**UNDERWRITING**

Subject to the terms and conditions contained in a purchase agreement between us and each of the underwriters, for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated is acting as sole book-running manager, we have agreed to sell to the underwriters, and the underwriters severally have agreed to purchase from us, the number of shares listed opposite their names below.

<b>Underwriter</b>	<b>Number of Shares</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
A.G. Edwards & Sons, Inc.	
Raymond James & Associates, Inc.	
Wachovia Capital Markets, LLC	
Banc of America Securities LLC	
BB&T Capital Markets, a division of Scott & Stringfellow, Inc.	
Robert W. Baird & Co. Incorporated	
Wells Fargo Securities, LLC	
Total	4,600,000

The underwriters have agreed to purchase all of the shares sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officers' certificates. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

**Commissions and Discounts**

The underwriters have advised us that they propose initially to offer the shares to the public at the initial public offering price listed on the cover page of this prospectus supplement and to dealers at that price less a concession not in excess of \$ \_\_\_\_\_ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of \$ \_\_\_\_\_ per share to other dealers. After the initial public offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to Realty Income Corporation. This information assumes either no exercise or full exercise by the underwriters of their overallotment option.

	<b>Per Share</b>	<b>Without Option</b>	<b>With Option</b>
Public offering price	\$	\$	\$
Underwriting discount	\$	\$	\$
Proceeds, before expenses, to Realty Income Corporation	\$	\$	\$

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The expenses of this offering, not including the underwriting discount, are estimated at \$220,000 and are payable by Realty Income. The underwriters have agreed to reimburse Realty Income for some expenses associated with this offering.

### Over-allotment Option

We have granted an option to the underwriters to purchase up to 690,000 additional shares at the initial public offering price less the underwriting discount and less any dividends or distributions declared or paid by us on the shares initially purchased by the underwriters but not on the shares to be purchased upon exercise of the over-allotment option. The underwriters may exercise this option for 30 days from the date of this prospectus supplement solely to cover any over-allotments. If the underwriters exercise this option, each underwriter will be obligated, subject to conditions contained in the purchase agreement, to purchase approximately the same percentage of those additional shares that the number of shares of common stock to be purchased by that underwriter as shown in the above table represents as a percentage of the total number of shares shown in that table.

### No Sales of Similar Securities

We have agreed, with exceptions, not to sell or transfer any common stock for 90 days after the date of this prospectus supplement without first obtaining the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated. Specifically, we have agreed not to directly or indirectly:

offer, pledge, sell or contract to sell any common stock;

sell any option or contract to purchase any common stock;

purchase any option or contract to sell any common stock;

grant any option, right or warrant to purchase any common stock;

otherwise transfer or dispose of any common stock; or

enter into any swap or other agreement or transaction that transfers, in whole or in part, the economic consequence of ownership of any common stock,

whether any such swap, agreement or transaction is to be settled by delivery of common stock or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. Merrill Lynch, Pierce, Fenner & Smith Incorporated may, in its sole discretion and at any time or from time to time, without notice, release all or any of the shares or other securities subject to this lock-up provision.

Our lock-up agreement contains an exception that permits us to issue shares of common stock in connection with acquisitions and in connection with joint ventures and similar arrangements, so long as the recipients of those shares agree not to sell or transfer those shares for 90 days after the date of this prospectus supplement. Our lock-up agreement also contains exceptions that permit us to issue shares of common stock to the underwriters in this offering, to issue shares of common stock upon the exercise of outstanding options, to issue shares and options pursuant to employee benefit plans and to issue shares of common stock pursuant to non-employee director stock plans.

### New York Stock Exchange Listing

Our common stock is listed on the New York Stock Exchange under the symbol "O."



**Price Stabilization and Short Positions**

Until the distribution of the shares is completed, Securities and Exchange Commission rules may limit the underwriters and selling group members from bidding for or purchasing our common stock. However, the underwriters may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

If the underwriters create a short position in the common stock in connection with the offering, i.e., if they sell more shares than are listed on the cover of this prospectus supplement, the underwriters may reduce that short position by purchasing shares in the open market. The underwriters may also elect to reduce any short position by exercising all or part of the overallotment option described above. Purchases of the common stock to stabilize its price or to reduce a short position may cause the price of the common stock to be higher than it might be in the absence of such purchases.

Neither we, nor any of the underwriters, makes any representation or prediction as to the direction or the magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we, nor any of the underwriters, makes any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

**Other Relationships**

The underwriters and/or their affiliates have provided, and may in the future provide, investment banking, commercial banking and/or other financial services to us in the ordinary course of business. They have received and may in the future receive customary fees and commissions for these services. In that regard, affiliates of some of the underwriters are lenders under our \$300 million acquisition credit facility, and, as such, will receive a portion of the net proceeds of this offering through the repayment of borrowings under the acquisition credit facility.

**LEGAL MATTERS**

The validity of the common stock to be issued in connection with this offering will be passed upon for us by Venable LLP, Baltimore, Maryland. Certain legal matters relating to this offering will be passed upon for us by Latham & Watkins LLP, Costa Mesa, California. Sidley Austin LLP, San Francisco, California will act as counsel for the underwriters. William J. Cernius, a partner of Latham & Watkins LLP, beneficially owns 7,931 shares of our common stock. Eric S. Haueter, a partner of Sidley Austin LLP, beneficially owns approximately 7,132 shares of our common stock and \$20,000 aggregate principal amount of our 8 1/4% Monthly Income Senior Notes due 2008. Paul C. Pringle, a partner of Sidley Austin LLP, beneficially owns approximately 49,465 shares of our common stock.

**EXPERTS**

The consolidated financial statements and schedule of Realty Income Corporation and subsidiaries as of December 31, 2005 and 2004, and for each of the years in the three-year period ended December 31, 2005, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2005, have been incorporated by reference in the accompanying prospectus in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference therein, and upon the authority of said firm as experts in accounting and auditing.

**INCORPORATION BY REFERENCE**

As described in the accompanying prospectus under the caption "Incorporation of Information We File with the SEC," we have incorporated by reference in the accompanying prospectus specified documents that we have filed or may file with the SEC under the Securities Exchange Act of 1934, including our Annual Report on Form 10-K for the year ending December 31, 2005. However, no document or information that we have "furnished" or may in the future "furnish" with the SEC pursuant to the Exchange Act shall be incorporated by reference into the accompanying prospectus or this prospectus supplement.

## PROSPECTUS

**\$800,000,000**

### REALTY INCOME CORPORATION

#### DEBT SECURITIES, PREFERRED STOCK AND COMMON STOCK

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Realty Income Corporation may from time to time offer in one or more series (1) our debt securities, (2) shares of our preferred stock, \$1.00 par value per share, or (3) shares of our common stock, \$1.00 par value per share, with an aggregate public offering price of up to \$800,000,000 on terms to be determined at the time of the offering. Our debt securities, our preferred stock and our common stock (collectively referred to as our securities), may be offered, separately or together, in separate series, in amounts, at prices and on terms that will be set forth in one or more prospectus supplements to this prospectus.

The specific terms of the securities with respect to which this prospectus is being delivered will be set forth in the applicable prospectus supplement and will include, where applicable:

in the case of our debt securities, the specific title, aggregate principal amount, currency, form (which may be registered, bearer, certificated or global), authorized denominations, maturity, rate (or manner of calculating the rate) and time of payment of interest, terms for redemption at our option or repayment at the holder's option, terms for sinking fund payments, terms for conversion into shares of our preferred stock or common stock, covenants and any initial public offering price;

in the case of our preferred stock, the specific designation, preferences, conversion and other rights, voting powers, restrictions, limitations as to transferability, dividends and other distributions and terms and conditions of redemption and any initial public offering price; and

in the case of our common stock, any initial public offering price.

In addition, the specific terms may include limitations on actual, beneficial or constructive ownership and restrictions on transfer of the securities, in each case as may be appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes. The applicable prospectus supplement will also contain information, where applicable, about United States federal income tax considerations, and any exchange listing of the securities covered by the prospectus supplement.

Our common stock is traded on the New York Stock Exchange under the symbol "O." On February 19, 2004, the last reported sale price of the common stock was \$42.75 per share.

Our securities may be offered directly, through agents designated from time to time by us, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of our securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth in the applicable prospectus supplement. None of our securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of those securities.

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

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The date of this prospectus is March 23, 2004.

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC utilizing a "shelf" registration process. Under this shelf registration process, we may sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$800,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information."

As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. For further information, we refer you to the registration statement, including its exhibits and schedules. Statements contained in this prospectus about the provisions or contents of any contract, agreement or any other document referred to are not necessarily complete. For each of these contracts, agreements or documents filed as an exhibit to the registration statement, we refer you to the actual exhibit for a more complete description of the matters involved. You should not assume that the information in this prospectus or any applicable prospectus supplement is accurate as of any date other than the date on the front of those documents. For further information about us or the securities offered under this prospectus, you should refer to the registration statement, which you can obtain from the SEC as described below under the heading "Where You Can Find More Information."

All references to "Realty Income," "our" and "we" in this prospectus mean Realty Income Corporation and its wholly-owned subsidiaries and other entities controlled by Realty Income Corporation except where it is clear from the context that the term means only the issuer, Realty Income Corporation.

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**THE COMPANY**

Realty Income Corporation, the Monthly Dividend Company®, a Maryland corporation ("Realty Income," the "Company," "our" or "we") was organized to operate as an equity real estate investment trust, or REIT. Over the past 35 years Realty Income and its predecessors have been acquiring and owning freestanding retail properties that generate rental revenue under long-term (primarily 15 to 20 years) lease agreements. Our monthly distributions are supported by the cash flow from our portfolio of retail properties leased to regional and national retail chains.

We are a fully integrated, self-administered real estate company with in-house acquisition, leasing, legal, retail and real estate research, portfolio management and capital markets expertise.

Our primary business objective is to generate dependable monthly distributions from a consistent and predictable level of funds from operations, or FFO, per share. Additionally, we seek to increase distributions to stockholders and FFO per share through both active portfolio management and the acquisition of additional properties.

Our portfolio management focus includes:

Contractual rent increases on existing leases;

Rental increases at the termination of existing leases when market conditions permit; and

The active management of our property portfolio, including re-leasing of vacant properties and selective sales of properties.

Our acquisition of additional properties adheres to a focused strategy of primarily acquiring properties that are:

Freestanding, single-tenant, retail locations;

Leased to regional and national retail chains; and

Leased under long-term, net-lease agreements.

As of December 31, 2003, we owned a diversified portfolio:

Of 1,404 retail properties;

With an occupancy rate of 98.1%, or 1,378 properties occupied, of the 1,404 properties;

Leased to 85 different retail chains;

Doing business in 28 separate retail industries;

Located in 48 states;

With over 11.3 million square feet of leasable space; and

With an average leasable retail space of 8,100 square feet.

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Of the 1,404 properties in the portfolio, 1,399, or 99.6%, are single-tenant retail properties with the remaining five being multi-tenant properties. As of December 31, 2003, 1,374, or 98.2%, of the 1,399 single-tenant properties were leased with a weighted average remaining lease term (excluding extension options) of approximately 11.8 years.

In addition to our real estate portfolio, at December 31, 2003 our subsidiary, Crest Net Lease, Inc. had invested \$55.3 million in a portfolio of 37 properties. These properties are held for sale.

We typically acquire, and then lease back, retail store locations from chain store operators, providing capital to the operators for continued expansion and other corporate purposes. Our

acquisition and investment activities are concentrated in well-defined target markets and generally focus on middle-market retailers providing goods and services intended to satisfy basic consumer needs.

Our net-lease agreements generally:

Are for initial terms of 15 to 20 years;

Require the tenant to pay minimum monthly rents and property operating expenses (taxes, insurance and maintenance); and

Provide for future rent increases (typically subject to ceilings) based on increases in the consumer price index, fixed increases, or additional rent calculated as a percentage of the tenants' gross sales above a specified level.

We believe that the long-term ownership of an actively managed, diversified portfolio of retail properties under long-term, net-lease agreements can produce consistent, predictable income. We also believe that a portfolio of long-term leases that require tenants to be responsible for property expenses generally produces a more predictable income stream than many other types of real estate portfolios, while continuing to offer the potential for growth in rental income.

Our net-leased retail properties are primarily leased to regional and national retail chain store operators. Generally, our properties contain single-story buildings and adequate parking on site to accommodate peak retail traffic periods. The properties tend to be on major thoroughfares with relatively high traffic counts and adequate access, egress and proximity to a sufficient population base to constitute a suitable market or trade area for the retailer's business.

Our principal executive offices are located at 220 West Crest Street, Escondido, California 92025 and our telephone number is (760) 741-2111.

#### **FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. When used in this prospectus, the words estimated, anticipated and similar expressions are intended to identify forward-looking statements. Forward-looking statements are subject to risks, uncertainties, and assumptions about Realty Income Corporation, including, among other things:

Our anticipated growth strategies;

Our intention to acquire additional properties and the timing of these acquisitions;

Our intention to sell properties and the timing of these property sales;

Our intention to re-lease vacant properties;

Anticipated trends in our business, including trends in the market for long-term net leases of freestanding, single-tenant retail properties;

Future expenditures for development projects; and

Profitability of our subsidiary, Crest Net Lease, Inc.

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Future events and actual results, financial and otherwise, may differ materially from the results discussed in the forward-looking statements. In particular, some of the factors that could cause actual results to differ materially are:

Our continued qualification as a real estate investment trust;

General business and economic conditions;



Competition;

Fluctuating interest rates;

Accessibility of debt and equity capital markets;

Other risks inherent in the real estate business including tenant defaults, potential liability relating to environmental matters and illiquidity of real estate investments; and

Changes in the tax laws of the United States of America; and

Acts of terrorism and war.

Additional factors that may cause risks and uncertainties include those discussed in the sections entitled "Business" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this prospectus. We undertake no obligation to publicly release the results of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events. In light of these risks and uncertainties, the forward-looking events discussed in this prospectus might not occur.

## RISK FACTORS

In evaluating an investment in our securities, you should carefully consider the following risk factors, in addition to the other risks and uncertainties described in this prospectus and the documents incorporated by reference therein, including the information appearing under the heading "Business Properties Matters Pertaining to Certain Properties and Tenants" and "Business Other Items" in our Annual Report on Form 10-K for the year ended December 31, 2003. As used under this caption "Risk Factors," references to our capital stock include our common stock and any class or series of our preferred stock and references to our stockholders include holders of our common stock or any class or series of our preferred stock, in each case unless otherwise expressly stated or the context otherwise requires.

### **In order to grow we need to continue to acquire investment properties which may be subject to competitive pressures.**

We need to continue to acquire investment properties in order to grow. We face competition in the acquisition, operation and sale of property. We expect competition from:

businesses;

individuals;

fiduciary accounts and plans; and

other entities engaged in real estate investment and financing.

Some of these competitors are larger than we are and have greater financial resources. This competition may result in a higher cost for properties that we wish to purchase.

### **Our tenants' creditworthiness and ability to pay rent may be affected by competition in their industries.**

The tenants leasing our properties generally face significant competition from other operators. This competition may adversely impact:

that portion, if any, of the rental stream to be paid to us based on a tenant's revenues; and

the tenant's results of operations or financial condition.

### **As a property owner, we may be subject to unknown environmental liabilities.**

Investments in real property can create a potential environmental liability. An owner of property can face liability for environmental contamination created by the presence or discharge of hazardous substances on the property. We may face liability regardless of:

our knowledge of the contamination;

the timing of the contamination;

the cause of the contamination; or

the party responsible for the contamination of the property.

There may be environmental problems associated with our properties of which we are unaware. In that regard, a number of our properties are leased to operators of oil change and tune-up facilities as well as convenience stores that sell petroleum-based fuels. These facilities, and

some of our other properties, use, or may have used in the past, underground lifts or underground tanks for the storage of petroleum-based or waste products, which could create a potential for release of hazardous substances.

The presence of hazardous substances on a property may adversely affect our ability to sell the property and we may incur substantial remediation costs. Although our leases generally require our tenants to operate in compliance with all applicable federal, state and local environmental laws, ordinances and regulations and to indemnify us against any environmental liabilities arising from the tenants' activities on the property, we could nevertheless be subject to strict liability by virtue of our ownership interest, and we cannot assure you that our tenants could or would satisfy their indemnification obligations under the leases. The discovery of environmental liabilities attached to our properties could have a material adverse effect on our results of operations and financial condition and our ability to pay principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders.

**Compliance.** We have not been notified by any governmental authority, and are not otherwise aware, of any material noncompliance, liability or claim relating to hazardous or toxic substances or petroleum products in connection with any of the properties we currently own. Nevertheless, if environmental contamination should exist, we could be subject to strict liability for the contamination by virtue of our ownership interest.

**Insurance.** Since December 1996, we have maintained an environmental insurance policy on our property portfolio. The limit on our current policy is \$10 million per occurrence and \$50 million in the aggregate, subject to a \$25,000 self insurance retention per occurrence for properties with underground storage tanks and a \$100,000 self insurance retention per occurrence for all other properties. It is possible that our insurance will be insufficient to address any particular environmental situation and that we could be unable to continue to obtain insurance for environmental matters, at a reasonable cost or at all, in the future.

**If we fail to qualify as a real estate investment trust, the amount of dividends we are able to pay would decrease, which would adversely affect the market price of our capital stock and could adversely affect the value of our debt securities.**

We believe that we are organized and have operated, commencing with our taxable year ended December 31, 1994, and we intend to continue to operate, so as to qualify as a "real estate investment trust" under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). However, we cannot assure you that we have been organized or have operated in a manner that has satisfied the requirements for qualification as a REIT, or that we will continue to be organized in a manner that will allow us to qualify as a REIT, or that we will continue to be able to operate in a manner so that we qualify or remain qualified as a REIT.

Qualification as a REIT involves the satisfaction of numerous requirements under highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations, and the determination of various factual matters and circumstances not entirely within our control.

For example, in order to qualify as a REIT, at least 95% of our gross income in each year must be derived from qualifying sources and we must pay distributions to stockholders aggregating annually at least 90% of our REIT taxable income (as defined in the Code and determined without regard to the dividends paid deduction and by excluding net capital gains).

In the future it is possible that new legislation, regulations, administrative interpretations or court decisions will change the tax laws with respect to qualification as a REIT, or the federal income tax consequences of that qualification.

If we were to fail to qualify as a REIT in any taxable year:

we would be required to pay federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates;

we would not be allowed a deduction in computing our taxable income for amounts distributed to our stockholders;

we may be disqualified from treatment as a REIT for the four taxable years following the year during which qualification is lost;

we would no longer be required to make distributions to stockholders; and

this treatment would substantially reduce amounts available for investment or distribution to stockholders because of the additional tax liability for the years involved, which would likely have a material adverse effect on the market price of our capital stock and could have a material adverse effect on the value of our debt securities.

In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits, which also could have a material adverse effect on the market price of our capital stock and the value of our debt securities. Even if we qualify for and maintain our REIT status, we will be subject to specified federal, state and local taxes on our income and property. For example, if we have net income from a prohibited transaction, that income will be subject to a 100% tax. In addition, any taxable REIT subsidiary in which we own an interest, including Crest Net, will be required to pay federal and state taxes at the applicable tax rates on its income and property.

**Distribution requirements imposed by law limit our flexibility.**

To maintain our status as a REIT for federal income tax purposes, we generally are required to distribute to our stockholders at least 90% of our REIT taxable income determined without regard to the dividends paid deduction and by excluding net capital gains each year.

We are also subject to tax at regular corporate rates to the extent that we distribute less than 100% of our REIT taxable income (including net capital gains) each year.

In addition, we are required to pay a 4% nondeductible excise tax to the extent that distributions we pay in a calendar year are less than the sum of 85% of our ordinary income for that calendar year, 95% of our capital gain net income for the calendar year, and any income that was not distributed in prior years.

We intend to continue to make distributions to our stockholders to comply with the distribution requirements of the Code and to reduce exposure to federal income taxes and the nondeductible excise tax. Differences in timing between the receipt of income and the payment of expenses to arrive at taxable income, along with the effect of required debt amortization payments, could require us to borrow funds on a short-term basis to meet the distribution requirements that are necessary to achieve the tax benefits associated with qualifying as a REIT.

**Real estate ownership is subject to particular economic conditions that may have a negative impact on our revenue.**

We are subject to all of the general risks associated with the ownership of real estate. In particular, we face the risk that rental revenue from our properties will be insufficient to cover operating expenses, debt service payments on indebtedness we incur and distributions on our stock. Additional real estate ownership risks include:

adverse changes in general or local economic conditions;

changes in supply of, or demand for, similar or competing properties;

changes in interest rates and operating expenses;

competition for tenants;

changes in market rental rates;

inability to lease properties upon termination of existing leases;

renewal of leases at lower rental rates;

inability to collect rents from tenants due to financial hardship, including bankruptcy;

changes in tax, real estate, zoning and environmental laws that may have an adverse impact upon the value of real estate;

uninsured property liability;

property damage or casualty losses;

unexpected expenditures for capital improvements or to bring properties into compliance with applicable federal, state and local laws;

acts of terrorism and war; and

acts of God and other factors beyond the control of management.

**An uninsured loss or a loss that exceeds the policy limits on our properties could subject us to lost capital or revenue on those properties.**

Under the terms and conditions of the leases currently in force on our properties, tenants generally are required to indemnify and hold us harmless from liabilities resulting from injury to persons, air, water, land or property, due to activities conducted on the properties, except for claims arising from the negligence or intentional misconduct of us or our agents. Additionally, tenants are generally required, at the tenant's expense, to obtain and keep in full force during the term of the lease, liability and property damage insurance policies. The insurance policies our tenants are required to maintain for property damage are generally in amounts not less than the full replacement cost of the improvements less slab, foundations, supports and other customarily excluded improvements. Our tenants are generally required to maintain general liability coverage varying between \$1,000,000 and \$10,000,000 depending on the tenant and the industry in which it operates.

In addition to the indemnities and required insurance policies identified above, many of our properties are also covered by flood and earthquake insurance policies (subject to substantial deductibles) obtained and paid for by the tenants as part of their risk management programs. Additionally, we have obtained blanket liability, flood and earthquake (subject to substantial deductibles) and property damage insurance policies to protect us and our properties against loss should the indemnities and insurance policies provided by the tenants fail to restore the properties to their condition prior to a loss. However, should a loss occur that is uninsured or in an amount exceeding the combined aggregate limits for the policies noted above, or in the event of a loss that is subject to a substantial deductible under an insurance policy, we could lose all or part of our capital invested in, and anticipated revenue from, one or more of the properties, which could have a material adverse effect on our results of operations or financial condition and on our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders.

**Compliance with the Americans With Disabilities Act of 1990 and fire, safety, and other regulations may require us to make unintended expenditures that could adversely impact our results of operations.**

Our properties are generally required to comply with the Americans with Disabilities Act of 1990, or the ADA. The ADA has separate compliance requirements for "public accommodations" and



"commercial facilities," but generally requires that buildings be made accessible to people with disabilities. Compliance with the ADA requirements could require removal of access barriers and non-compliance could result in imposition of fines by the U.S. government or an award of damages to private litigants. The retailers to whom we lease properties are obligated by law to comply with the ADA provisions, and we believe that these retailers may be obligated to cover costs associated with compliance. If required changes involve greater expenditures than anticipated, or if the changes must be made on a more accelerated basis than anticipated, the ability of these retailers to cover costs could be adversely affected and we could be required to expend our own funds to comply with the provisions of the ADA, which could materially adversely affect our results of operations or financial condition and our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders. In addition, we are required to operate our properties in compliance with fire and safety regulations, building codes and other land use regulations, as they may be adopted by governmental agencies and bodies and become applicable to our properties. We may be required to make substantial capital expenditures to comply with those requirements and these expenditures could materially adversely affect our results of operations or financial condition and our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders.

**Property taxes on our properties may increase without notice.**

Each of our properties is subject to real property taxes. The real property taxes on our properties and any other properties that we develop or acquire in the future may increase as property tax rates change and as those properties are assessed or reassessed by tax authorities.

**Matters pertaining to particular properties and tenants.**

Twenty-six of our properties were available for sale or lease at December 31, 2003, 25 of which are single-tenant properties and one of which is a multi-tenant property. Seventeen of the properties had been previously leased to child care operators, five to restaurant operators, one to an automotive service operator, one (which is a multi-tenant property) to a grocery store operator, one to a home improvement operator and one to a shoe store operator. At December 31, 2003, 19 of our properties under lease were unoccupied and available for sublease by the tenants, all of which were current with their rent and other obligations.

For 2003, our largest tenant was Children's World Learning Centers which accounted for approximately 8.2% of our rental revenue. Children's World Learning Centers operates child care facilities. However, as a result of acquisitions during 2003, The Pantry, Inc., an operator of convenience stores, was our largest tenant at December 31, 2003 based on annualized rental revenue. At December 31, 2003, The Pantry, Inc. accounted for 7.8% of our annualized rental revenue and Children's World accounted for 7.3% of our annualized rental revenue. Annualized rental revenue is calculated by multiplying the monthly contractual base rent for each of the applicable properties by 12 and adding the previous 12 month's historic percentage rent, excluding properties owned by Crest Net. In general, a downturn in the convenience store or child care industries, whether nationwide or limited to specific sectors of the United States, could adversely affect these tenants and other tenants in these industries, which in turn could materially adversely affect our financial position and results of operations and our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to stockholders. In addition, a substantial number of our properties are leased to middle market retail chains which generally have more limited financial and other resources than certain upper market retail chains, and therefore are more likely to be adversely affected by a downturn in their respective businesses or in the regional or national economy generally.

Our tenants in the child care, convenience store and restaurant industries accounted for approximately 17.8%, 13.3% and 11.8%, respectively, of our rental revenue during 2003. Based on



annualized rental revenue at December 31, 2003, tenants in the child care, convenience store and restaurant industries accounted for approximately 15.3%, 15.9% and 10.5%, respectively, of our annualized rental revenue. A downturn in any of these industries generally, whether nationwide or limited to specific sectors of the United States, could adversely affect tenants in those industries, which in turn could materially adversely affect our financial position and results of operations and our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders. Individually, each of the other industries in our property portfolio accounted for less than 10% of both our rental revenue for 2003 and our annualized rental revenue as of December 31, 2003.

**Our charter contains provisions that may delay, defer or prevent a change of control transaction.**

***Our charter contains restrictions upon ownership of our common stock.*** Our charter restricts any person from acquiring actual or constructive ownership of more than 9.8% (in value or number of shares, whichever is more restrictive) of our outstanding common stock. See "Restrictions on Ownership and Transfers of Stock." This provision, although intended to assist us in maintaining our status as a REIT for federal and/or state income tax purposes, could have anti-takeover effects and could reduce the possibility that a third party will attempt to acquire control of Realty Income.

***Our board of directors is divided into classes that serve staggered terms.*** Our board of directors is divided into three classes with staggered terms. The staggered terms for directors may reduce the possibility of a tender offer or an attempt to complete a change of control transaction even if a tender offer or a change in control were in our stockholders' interests.

***We could issue preferred stock without stockholder approval.*** Our charter authorizes our board of directors to issue up to 20,000,000 shares of preferred stock, including convertible preferred stock, without stockholder approval. The board of directors may establish the preferences, rights and other terms of any preferred stock we may issue, including the right to vote and the right to convert into common stock any shares issued. The issuance of preferred stock could delay or prevent a tender offer or a change of control even if a tender offer or a change of control were in our stockholders' interests. In addition, we have designated and authorized the issuance of up to 1,000,000 shares of Class A Junior Participating Preferred Stock in connection with our stockholder rights plan. As of March 10, 2004, we had outstanding 2,745,700 shares of 9.375% Class B Cumulative Redeemable Preferred Stock and 1,380,000 shares of 9.50% Class C Cumulative Redeemable Preferred Stock. See "General Description of Preferred Stock."

***We have a stockholder rights plan.*** Each share of our common stock includes the right to purchase one one-hundredth (1/100th) of a share of our Class A Junior Participating Preferred Stock. The rights have anti-takeover effects and would cause substantial dilution to a person or group that attempts to acquire us on terms that our board of directors does not approve. We may redeem the shares for \$0.01 per right prior to the time that a person or group has acquired beneficial ownership of 15% or more of our outstanding common stock. Therefore, the rights should not interfere with any merger or business combination approved by our board of directors. See "Stockholder Rights Plan."

The ownership restrictions contained in our charter, the staggered terms for directors, the future issuance of preferred stock and our stockholder rights plan may:

delay or prevent a change of control over us, even if a change of control might be beneficial to our stockholders;

deter tender offers that may be beneficial to our stockholders; or

limit stockholders' opportunity to receive a potential premium for their shares if an investor attempted to acquire us or otherwise to effect a change of control.

**Terrorist attacks and other acts of violence or war may affect the value of our debt and equity securities, the markets in which we operate and our results of operations.**

Terrorist attacks may negatively affect our operations and your investment. There can be no assurance that there will not be further terrorist attacks against the United States or United States businesses. These attacks or armed conflicts may directly impact our physical facilities or the businesses of our tenants.

Also, the United States is currently engaged in an armed conflict in Iraq which could have an impact on our tenants. The consequences of this or any other armed conflicts are unpredictable, and we may not be able to foresee events that could have an adverse effect on our business or your investment.

More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. and worldwide financial markets and economy. They also could result in or prolong an economic recession in the U.S. or abroad. Any of these occurrences could have a significant adverse impact on our operating results and revenues and on the market price of our capital stock and on the value of our debt securities, and may have a material adverse effect on our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders.

**Other general risks**

***Effect of market interest rates on the price of our capital stock and the value of our debt securities.*** One of the factors that influences the price of our capital stock in public trading markets is the annual yield from distributions on our capital stock as compared to yields on other financial instruments. Thus, an increase in market interest rates will result in higher yields on other financial instruments, which could adversely affect the market price of our capital stock. An increase in market interest rates would also be likely to have an adverse effect on the value of our debt securities.

***Risks of debt financing.*** At March 19, 2004, we had borrowings of approximately \$103.2 million outstanding under our \$250 million acquisition credit facility and \$110 million in aggregate principal amount of our 7<sup>3</sup>/<sub>4</sub>% Notes due 2007, \$100 million in aggregate principal amount of our 8<sup>1</sup>/<sub>4</sub>% Monthly Income Senior Notes due 2008, \$20 million in aggregate principal amount of our 8% Notes due 2009, \$100 million in aggregate principal amount of our 5<sup>3</sup>/<sub>8</sub>% Senior Notes due 2013 and \$150 million in aggregate principal amount of our 5<sup>1</sup>/<sub>2</sub>% Senior Notes due 2015 were outstanding. As a result, we will be subject to risks associated with debt financing, including the risk that our cash flow could be insufficient to meet required payments on our debt, particularly in light of the fact that the interest rate on our credit facility is variable and could increase over time, and the risk that we may be unable to refinance or repay our debt as it comes due. In addition, our credit facility provides that, in the event of a failure to pay principal or interest on borrowings thereunder when due (subject to any applicable grace period), we and our subsidiaries may not pay any dividends on our capital stock, including the common stock. If this were to occur, it would likely have a material adverse effect on the market price of our capital stock and could have a material adverse effect on the value of our debt securities.

***Dependence on key personnel.*** We depend on the efforts of our executive officers and key employees. The loss of the services of any of our executive officers and key employees could have a material adverse effect on our results of operations or financial condition and on our ability to pay the principal of and interest on our debt securities and other indebtedness and to make distributions to our stockholders. It is possible that we will not be able to recruit additional personnel with equivalent experience in the retail, net-leasing industry.

***Dilution of common stock.*** Our future growth will depend in large part upon our ability to raise additional capital. If we were to raise additional capital through the issuance of equity securities, the

interests of holders of common stock could be diluted. The interests of our common stockholders could also be diluted by the issuance of shares of common stock upon the exercise of outstanding options or pursuant to stock incentive plans. Likewise, our Board of Directors is authorized to cause Realty Income to issue preferred stock in one or more series, entitled to such dividends and voting and other rights as the Board of Directors may determine. Accordingly, the Board of Directors may authorize the issuance of preferred stock with voting, dividend and other similar rights that could dilute, or otherwise adversely affect, the interests of holders of our common stock.

**USE OF PROCEEDS**

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from the sale of our securities for general corporate purposes, which may include, among other things, the repayment of indebtedness, the development and acquisition of additional properties and other acquisition transactions, and the expansion and improvement of certain properties in our portfolio.

**RATIOS OF EARNINGS TO FIXED CHARGES**

The following table sets forth ratios of earnings to fixed charges for the periods shown. The ratios of earnings to fixed charges were computed by dividing earnings by fixed charges. For this purpose, earnings consist of net income before interest expense. Fixed charges consist of interest costs (including capitalized interest) and the amortization of debt issuance costs. In computing the ratios of earnings to combined fixed charges and preferred stock dividends, preferred stock dividends consist of dividends on our 9.375% Class B cumulative redeemable preferred stock and 9.50% Class C cumulative redeemable preferred stock.

	<b>Year Ended December 31,</b>				
	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Ratio of Earnings to Fixed Charges	2.7x	2.6x	3.5x	4.3x	4.1x
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	2.3x	2.0x	2.6x	3.0x	3.0x

## DESCRIPTION OF DEBT SECURITIES

### General

This prospectus describes certain general terms and provisions of our debt securities. When we offer to sell a particular series of debt securities, we will describe the specific terms of the series in a prospectus supplement or a pricing supplement. We will also indicate in the supplement whether the general terms and provisions described in this prospectus apply to a particular series of debt securities. Our debt securities will be our direct obligations and they may be secured or unsecured, senior or subordinated indebtedness. We may issue our debt securities under one or more indentures and each indenture will be dated on or before the issuance of the debt securities to which it relates. Additionally, each indenture must be in the form filed as an exhibit to the Registration Statement containing this prospectus or in a form incorporated by reference to this prospectus in a post-effective amendment to the Registration Statement or a Form 8-K. The form of indenture is subject to any amendments or supplements that may be adopted from time to time. We will enter into each indenture with a trustee and the trustee for each indenture may be the same. The indenture will be subject to, and governed by, the Trust Indenture Act of 1939, as amended. Because this description of debt securities is a summary, it does not contain all the information that may be important to you. You should read all provisions of our indenture and our debt securities to assure that you have all the important information you need to make any required decisions. All capitalized terms used, but not defined, in this section shall have the meanings set forth in the applicable indenture.

### Terms

The particular terms of any series of our debt securities will be described in a prospectus supplement. Additionally, any applicable modifications of or additions to the general terms of our debt securities described in this prospectus and in the applicable indenture will also be described in a prospectus supplement. Accordingly, for a description of the terms of any series of our debt securities, you must refer to both the prospectus supplement relating to those debt securities and the description of the debt securities set forth in this prospectus. If any particular terms of our debt securities described in a prospectus supplement differ from any of the terms described in this prospectus, then those terms as set forth in the relevant prospectus supplement will control.

Except as set forth in any prospectus supplement, our debt securities may be issued without limit as to aggregate principal amount, in one or more series, in each case as established from time to time by our Board of Directors, a committee of the Board of Directors or as set forth in the applicable indenture or one or more supplements to the indenture. All of our debt securities of one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional debt securities without the consent of the holders of the debt securities of that series.

Each indenture will provide that we may, but need not, designate more than one trustee for the indenture, each with respect to one or more series of our debt securities. Any trustee under an indenture may resign or be removed with respect to one or more series of our debt securities, and a successor trustee may be appointed to act with respect to that series. If two or more persons are acting as trustee to different series of our debt securities, each trustee shall be a trustee of a trust under the applicable indenture separate and apart from the trust administered by any other trustee and, except as otherwise indicated in this prospectus, any action taken by a trustee may be taken by that trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the applicable indenture.

This summary sets forth certain general terms and provisions of the indenture and our debt securities. For a detailed description of a specific series of debt securities, you should consult the

prospectus supplement for that series. The prospectus supplement will contain all of the following information:

- (1) the title of those debt securities;
- (2) the aggregate principal amount of those debt securities and any limit on the aggregate principal amount;
- (3) the price (expressed as a percentage of the principal amount of those debt securities) at which those debt securities will be issued and, if other than the principal amount of those debt securities, the portion of the principal amount payable upon declaration of acceleration of the maturity thereof, or (if applicable) the portion of the principal amount of those debt securities that is convertible into common stock or preferred stock, or the method by which any convertible portion of those debt securities shall be determined;
- (4) if those debt securities are convertible, the terms on which they are convertible, including the initial conversion price or rate and conversion period and, in connection with the preservation of our status as a REIT, any applicable limitations on the ownership or transferability of the common stock or the preferred stock into which those debt securities are convertible;
- (5) the date or dates, or the method for determining the date or dates, on which the principal of those debt securities will be payable;
- (6) the rate or rates (which may be fixed or variable), or the method by which the rate or rates shall be determined, at which those debt securities will bear interest, if any;
- (7) the date or dates, or the method for determining the date or dates, from which any interest will accrue, the dates upon which that interest will be payable, the record dates for payment of that interest, or the method by which any of those dates shall be determined, the persons to whom that interest shall be payable, and the basis upon which that interest shall be calculated if other than that of a 360-day year of twelve 30-day months;
- (8) the place or places where the principal of (and premium, if any) and interest, if any, on debt securities will be payable, where debt securities may be surrendered for conversion or registration of transfer or exchange and where notices or demands to or upon us relating to debt securities and the indenture may be served;
- (9) the period or periods, if any, within which, the price or prices at which and the terms and conditions upon which those debt securities may be redeemed, as a whole or in part, at our option;
- (10) our obligation, if any, to redeem, repay or purchase those debt securities pursuant to any sinking fund or analogous provision or at the option of a holder of those debt securities, and the period or periods within which, the price or prices at which and the terms and conditions upon which those debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to this obligation;
- (11) if other than U.S. dollars, the currency or currencies in which those debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the terms and conditions relating thereto;
- (12) whether the amount of payments of principal of (and premium, if any) or interest, if any, on those debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not, be based on a currency, currencies, currency unit or units or composite currency or currencies) and the manner in which those amounts shall be determined;

(13) whether those debt securities will be issued in certificated and/or book-entry form, and, if in book-entry form, the identity of the depository for those debt securities;

(14) whether those debt securities will be in registered or bearer form and, if in registered form, the denominations thereof if other than \$1,000 and any integral multiple thereof and, if in bearer form, the denominations thereof and terms and conditions relating thereto;

(15) the applicability, if any, of the defeasance and covenant defeasance provisions described herein or set forth in the applicable indenture, or any modification of the indenture;

(16) any deletions from, modifications of or additions to the events of default or our covenants with respect to those debt securities;

(17) whether and under what circumstances we will pay any additional amounts on those debt securities in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem those debt securities in lieu of making this payment;

(18) the subordination provisions, if any, relating to those debt securities;

(19) the provisions, if any, relating to any security provided for those debt securities; and

(20) any other terms of those debt securities.

If the applicable prospectus supplement provides, we may issue the debt securities at a discount below their principal amount and provide for less than the entire principal amount of the debt securities to be payable upon declaration of acceleration of the maturity thereof ("Original Issue Discount Securities"). In those cases, any material U.S. federal income tax, accounting and other considerations applicable to Original Issue Discount Securities will be described in the applicable prospectus supplement.

#### **Denominations, Interest, Registration and Transfer**

Unless otherwise described in the applicable prospectus supplement, the debt securities of any series will be issuable in denominations of \$1,000 and integral multiples of \$1,000.

Unless otherwise described in the applicable prospectus supplement, we will pay the principal of (and premium, if any) and interest on any series of debt securities at the applicable trustee's corporate trust office, the address of which will be set forth in the applicable prospectus supplement; provided, however, that, unless otherwise provided in the applicable prospectus supplement, we may make interest payments (1) by check mailed to the address of the person entitled to the payment as that address appears in the applicable register for those debt securities, or (2) by wire transfer of funds to the person at an account maintained within the United States.

Subject to certain limitations imposed on debt securities issued in book-entry form, the debt securities of any series will be exchangeable for any authorized denomination of other debt securities of the same series and of a like aggregate principal amount and tenor upon surrender of those debt securities at the office of any transfer agent we designate for that purpose. In addition, subject to certain limitations imposed on debt securities issued in book-entry form, the debt securities of any series may be surrendered for conversion or registration of transfer thereof at the office of any transfer agent we designate for that purpose. Every debt security surrendered for conversion, registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer and the person requesting that transfer must provide evidence of title and identity satisfactory to us and the applicable transfer agent. No service charge will be made for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. We may at any time rescind the designation of any transfer agent appointed with respect to the debt securities of any series or approve a change in

the location through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for that series. We may at any time designate additional transfer agents with respect to any series of debt securities.

Neither we nor any trustee shall be required to

issue, register the transfer of or exchange debt securities of any series if that debt security may be among those selected for redemption during a period beginning at the opening of business 15 days before the mailing or first publication, as the case may be, of notice of redemption of those debt securities and ending at the close of business on

1. the day of mailing of the relevant notice of redemption if the debt securities of that series are issuable only in registered form, or
2. the day of the first publication of the relevant notice of redemption if the debt securities of that series are issuable in bearer form, or
3. the day of mailing of the relevant notice of redemption if those debt securities are issuable in both bearer and registered form and there is no publication; or

register the transfer of or exchange any debt security in registered form, or portion thereof, so selected for redemption, in whole or in part, except the unredeemed portion of any debt security being redeemed in part; or

exchange any debt security in bearer form so selected for redemption, except in exchange for a debt security of that series in registered form that is simultaneously surrendered for redemption; 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 that debt security not to be so repaid.

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

Each indenture will provide that we will not consolidate with, sell, lease or convey all or substantially all of our assets to, or merge with or into, any person unless

either we shall be the continuing entity, or the successor person (if not us) formed by or resulting from the consolidation or merger or which shall have received the transfer of the assets shall be a corporation organized and existing under the laws of the United States or any State thereof and shall expressly assume (1) our obligation to pay the principal of (and premium, if any) and interest on all the debt securities issued under the indenture and (2) the due and punctual performance and observance of all the covenants and conditions contained in the indenture and in the debt securities;

immediately after giving effect to the transaction and treating any indebtedness that becomes our obligation or the obligation of any Subsidiary as a result of the transaction as having been incurred, and treating any liens on any property or assets of ours or any Subsidiary that are incurred, created or assumed as a result of the transaction as having been created, incurred or assumed, by us or the Subsidiary at the time of the transaction, no event of default under the indenture, and no event that, after notice or the lapse of time, or both, would become an event of default, shall have occurred and be continuing; and

an officers' certificate and legal opinion covering these conditions shall be delivered to the trustee.



**Certain Covenants**

*Existence.* Except as permitted under the heading above, entitled " Merger, Consolidation or Sale of Assets," we will be required under each indenture to do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, all material rights (by charter, bylaws and statute) and all material franchises; provided, however, that we shall not be required to preserve any right or franchise if our Board of Directors determines that the preservation thereof is no longer desirable in the conduct of our business.

*Maintenance of Properties.* Each indenture will require us to cause all of our material properties used or useful in the conduct of our business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will require us to cause to be made all necessary repairs, renewals, replacements, betterments and improvements to those properties, as in our judgment may be necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times; provided, however, that we and our Subsidiaries shall not be prevented from selling or otherwise disposing of these properties for value in the ordinary course of business.

*Insurance.* Each indenture will require us and each of our Subsidiaries to keep in force upon all of our properties and operations policies of insurance carried with responsible companies in amounts and covering all risks as shall be customary in the industry in accordance with prevailing market conditions and availability.

*Payment of Taxes and Other Claims.* Each indenture will require us to pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all taxes, assessments and governmental charges levied or imposed on us, our income, profits or property, or any Subsidiary, its income, profits or property and (b) all lawful claims for labor, materials and supplies that, if unpaid, might by law become a lien upon our property or the property of any Subsidiary; provided, however, that we shall not be required to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim the amount, applicability or validity of which we are contesting in good faith through appropriate proceedings.

*Provisions of Financial Information.* Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will be required by each indenture, within 15 days after each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the Commission if we were subject to those Sections of the Exchange Act to:

transmit by mail to all holders of debt securities issued under the indenture, as their names and addresses appear in the applicable register for those debt securities, without cost to the holders, copies of the annual reports, quarterly reports and other documents that we would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to those Sections;

file with the applicable trustee copies of the annual reports, quarterly reports and other documents that we would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to those Sections; and

supply promptly, upon written request and payment of the reasonable cost of duplication and delivery, copies of these documents to any prospective holder of the debt securities.

Except as may otherwise be provided in the prospectus supplement relating to any series of debt securities, the term "Subsidiary", as used in the indenture means any other Person of which more than 50% of (a) the equity or other ownership interests or (b) the total voting power of shares of capital stock or other ownership interests entitled (without regard to the occurrence of any contingency) to

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vote in the election of directors, managers, trustees or general or managing partners thereof is at the time owned by us or one or more of our Subsidiaries or a combination thereof.

*Additional Covenants.* If we make any additional covenants with respect to any series of debt securities, those covenants will be set forth in the prospectus supplement relating to those debt securities.

### Events of Default, Notice and Waiver

Unless otherwise provided in the applicable indenture, each indenture will provide that the following events are "events of default" for any series of debt securities issued under it:

- (1) default for 30 days in the payment of any installment of interest on any debt security of that series;
- (2) default in the payment of the principal of (or premium, if any, on) any debt security of that series when due, whether at stated maturity or by declaration of acceleration, notice of redemption, notice of option to elect repayment or otherwise;
- (3) default in making any sinking fund payment as required for any debt security of that series;
- (4) default in the performance of any of our other covenants contained in the indenture (other than a covenant added to the indenture solely for the benefit of a series of debt securities issued thereunder other than that series), which continues for 60 days after we receive written notice from the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series;
- (5) default under any bond, debenture, note or other evidence of indebtedness for money borrowed by us or any of our Subsidiaries (including obligations under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles, but not including any indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$25,000,000 or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us or any of our Subsidiaries (including such leases, but not including such indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of \$25,000,000, whether the indebtedness exists at the date of the relevant indenture or shall thereafter be created, which default shall have resulted in the indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable or which default shall have resulted in the obligation being accelerated, without the acceleration having been rescinded or annulled;
- (6) certain events of bankruptcy, insolvency or reorganization with respect to us or any of our Significant Subsidiaries; or
- (7) any other Event of Default provided with respect to a particular series of debt securities.

The term "Significant Subsidiary" as used above has the meaning ascribed to the term in Rule 1-02 of Regulation S-X promulgated under the Securities Act, as the Regulation was in effect on January 1, 1996.

If an event of default under any indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then the applicable trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of that series may declare the principal amount (or, if the debt securities of that series are Original Issue Discount Securities or Indexed Securities, that portion of the principal amount as may be specified in the terms thereof) of all the debt securities of

that series to be due and payable immediately by written notice thereof to us (and to the applicable trustee if given by the holders). However, at any time after the declaration of acceleration with respect to debt securities of a series has been made, but before a judgment or decree for payment of the money due has been obtained by the applicable trustee, the holders of not less than a majority of the principal amount of the outstanding debt securities of that series may rescind and annul the declaration and its consequences if:

we shall have deposited with the applicable trustee all required payments of the principal of (and premium, if any) and interest on the debt securities of that series (other than principal which has become due solely as a result of the acceleration), plus certain fees, expenses, disbursements and advances of the applicable trustee; and

all events of default, other than the nonpayment of accelerated principal (or specified portion thereof), premium, if any, and interest with respect to debt securities of that series have been cured or waived as provided in the indenture.

Each indenture will also provide that the holders of not less than a majority in principal amount of the outstanding debt securities of any series may waive any past default with respect to that series and its consequences, except:

a default in the payment of the principal of (or premium, if any) or interest on any debt security of that series; or

a default in respect of a covenant or provision contained in the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security of the series affected by the default.

Each indenture will require each trustee to give notice of a default under the indenture to the holders of debt securities within 90 days unless the default shall have been cured or waived, subject to certain exceptions; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to that series (except a default in the payment of the principal of (or premium, if any) or interest on any debt security of that series or in the payment of any sinking fund installment in respect of any debt security of that series) if specified Responsible Officers of the trustee consider a withholding to be in those holders' interest.

Each indenture will provide that no holders of debt securities of any series may institute any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder, except in the case of failure of the trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of that series, as well as an offer of indemnity reasonably satisfactory to it, and no direction inconsistent with the written request has been given to the trustee during the 60-day period by holders of a majority in principal amount of the outstanding debt securities of that series. This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of (and premium, if any) and interest on those debt securities at the respective due dates thereof.

Each indenture will provide that, subject to provisions in the Trust Indenture Act of 1939 relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders of any series of the debt securities then outstanding under the indenture, unless those holders shall have offered to the trustee reasonable security or indemnity. The holders of not less than a majority in principal amount of the outstanding debt securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee; provided that the direction shall not conflict with any rule of law or the indenture, and provided further that the trustee may refuse to follow any direction that may involve the trustee in

personal liability or that may be unduly prejudicial to the holders of debt securities of that series not joining in the direction to the trustee.

Within 120 days after the close of each fiscal year, we will be required to deliver to the trustee a certificate, signed by one of several specified officers, stating whether or not the officer has knowledge of any default under the indenture and, if so, specifying each default and the nature and status thereof.

#### **Modification of the Indenture**

Modifications and amendments of any indenture will be permitted with the consent of the holders of not less than a majority in principal amount of all outstanding debt securities of each series issued under the indenture affected by the modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each debt security affected thereby,

change the stated maturity of the principal of, or any installment of principal of, or interest (or premium, if any) on, any debt security;

reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, any debt security, or reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon declaration of acceleration of the maturity of the Original Issue Discount Security or would be provable in bankruptcy, or adversely affect any right of repayment at the option of the holder of any debt security (or reduce the amount of premium payable upon any repayment);

change the place of payment, or the coin or currency, for payment of principal of (or premium, if any) or interest on any debt security;

impair the right to institute suit for the enforcement of any payment on or with respect to any debt security when due;

reduce the above-stated percentage of outstanding debt securities of any series necessary to modify or amend the indenture to waive compliance with certain provisions of the indenture or certain defaults and consequences under the indenture or to reduce the quorum or voting requirements set forth in the 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 percentage to effect the action or to provide that certain other provisions may not be modified or waived without the consent of the holder of each outstanding debt security affected thereby.

The holders of a majority in aggregate principal amount of outstanding debt securities of any series may, on behalf of all holders of debt securities of that series waive, insofar as that series is concerned, our compliance with certain restrictive covenants in the applicable indenture.

We, along with the trustee, shall be permitted to modify and amend an indenture without the consent of any holder of debt securities for any of the following purposes:

to evidence the succession of another person to our obligations under the indenture;

to add to our covenants for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon us in the indenture;

to add events of default for the benefit of the holders of all or any series of debt securities;

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to add or change any provisions of the indenture to facilitate the issuance of, or to liberalize certain terms of, debt securities in bearer form, or to permit or facilitate the issuance of debt

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securities in uncertificated form, provided that this action shall not adversely affect the interests of the holders of the debt securities of any series in any material respect;

to change or eliminate any provisions of the indenture, provided that any such change or elimination does not apply to any outstanding debt securities of a series created prior to the date of the amendment or supplement that are entitled to the benefit of that provision;

to secure the debt securities;

to establish the form or terms of debt securities of any series, including the provisions and procedures, if applicable, for the conversion of debt securities into common stock or preferred stock;

to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the indenture by more than one trustee;

to cure any ambiguity, defect or inconsistency in the indenture or to make any other provisions with respect to matters or questions arising under the indenture, provided, however, that this action shall not adversely affect the interests of holders of debt securities of any series in any material respect; or

to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate defeasance, covenant defeasance and discharge of any series of debt securities, provided, however, that this action shall not adversely affect the interests of the holders of the debt securities of any series in any material respect.

Each indenture will provide that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver described in the indenture or whether a quorum is present at a meeting of holders of debt securities,

the principal amount of an Original Issue Discount Security that shall be deemed to be outstanding shall be the amount of the principal of that security that would be due and payable as of the date of the determination upon declaration of acceleration of the maturity thereof;

the principal amount of any debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. dollar equivalent, determined on the issue date for the debt security, of the principal amount (or, in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the issue date of the debt security of the amount determined as provided in the first bullet above);

the principal amount of an Indexed Security that shall be deemed outstanding shall be the principal face amount of the Indexed Security at original issuance, unless otherwise provided with respect to the Indexed Security in the applicable indenture; and

debt securities owned by us or any other obligor upon the debt securities or any affiliate of ours or of the other obligor shall be disregarded.

Each indenture will contain provisions for convening meetings of the holders of debt securities of a series. A meeting may be permitted to be called at any time by the trustee, and also, upon our request or request of the holders of at least 10% in principal amount of the outstanding debt securities of a series, in any case upon notice given as provided in the indenture. Except for any consent or waiver that must be given by the holder of each debt security affected thereby, any resolution presented at a meeting or at an adjourned meeting duly reconvened at which a quorum is present, may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series; provided, however, that, except as referred to above, any resolution with respect to any request, demand, authorization, direction,

notice, consent, waiver or other action that may be made,

given or taken by the holders of a specified percentage, which is less than a majority, in principal amount of the outstanding debt securities of the series may be adopted at a meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of the holders of the specified percentage in principal amount of the outstanding debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the indenture will be binding on all holders of debt securities of that series. The persons holding or representing a majority in principal amount of the outstanding debt securities of a series shall constitute a quorum for a meeting of holders of that series; provided, however, that if any action is to be taken at a meeting with respect to a consent or waiver that may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of that series, the persons holding or representing the specified percentage in principal amount of the outstanding debt securities of that series will constitute a quorum.

Notwithstanding the foregoing provisions, each indenture will provide that if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the indenture expressly provides may be made, given or taken by the holders of that series and one or more additional series: (a) there shall be no minimum quorum requirement for the meeting and (b) the principal amount of the outstanding debt securities of all those series that are entitled to vote in favor of the request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether the request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the indenture.

### **Discharge, Defeasance and Covenant Defeasance**

Unless otherwise indicated in the applicable prospectus supplement, upon our request any indenture shall cease to be of further effect with respect to any series of debt securities issued under the indenture specified in our request (except as to certain limited provisions of the indenture which shall survive) when either (a) all debt securities of that series have been delivered to the trustee for cancellation or (b) all debt securities of that series have become due and payable or will become due and payable within one year (or are scheduled for redemption within one year) and we have irrevocably deposited with the applicable trustee, in trust, funds in the currency or currencies, currency unit or units or composite currency or currencies in which those debt securities are payable an amount sufficient to pay the entire indebtedness on those debt securities in respect of principal (and premium, if any) and interest to the date of the deposit (if those debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be.

Each indenture will provide that, unless otherwise indicated in the applicable prospectus supplement, we may elect either to:

defeasance and be discharged from any and all obligations with respect to any series of debt securities (except for the obligation, if any, to pay additional amounts in respect of certain taxes imposed on non-U.S. holders of debt securities and the obligations to register the transfer or exchange of the debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of the debt securities and to hold money for payment in trust) ("defeasance"); or

be released from our obligations with respect to certain covenants (which will be described in the relevant prospectus supplement) applicable to the debt securities under the applicable indenture (which may include, subject to a limited exception, the covenants described under " Certain Covenants"), and any omission to comply with these obligations shall not constitute a default or an event of default with respect to those debt securities ("covenant defeasance"),



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in either case upon our irrevocable deposit with the applicable trustee, in trust, of an amount, in the currency or currencies, currency unit or units or composite currency or currencies in which those debt securities are payable at stated maturity, or Government Obligations (as defined below), or both, applicable to those debt securities that through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and interest on those debt securities, and any mandatory sinking fund or analogous payments on those debt securities, on the scheduled due dates.

A trust may only be established if, among other things, we have delivered to the applicable trustee an opinion of counsel (as specified in the applicable indenture) to the effect that the holders of those debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the defeasance or covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the defeasance or covenant defeasance had not occurred. Additionally, in the case of defeasance, an opinion of counsel must refer to and be based on a ruling of the Internal Revenue Service (the "IRS") or a change in applicable U.S. federal income tax law occurring after the date of the applicable indenture. In the event of defeasance, the holders of those debt securities will thereafter be able to look only to the trust fund for payment of principal (and premium, if any) and interest.

"Government Obligations" means securities that are (a) direct obligations of the United States of America or the government which issued the foreign currency in which the debt securities of a particular series are payable, for the payment of which its full faith and credit is pledged, or (b) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the government which issued the foreign currency in which the debt securities of that series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or the other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any Government Obligation or a specific payment of interest on or principal of any Government Obligation held by a custodian for the account of the holder of a depository receipt; provided, however, that (except as required by law) the custodian is not authorized to make any deduction from the amount payable to the holder of the depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by the depository receipt.

Unless otherwise provided in the applicable prospectus supplement, if after we have deposited funds and/or Government Obligations to effect defeasance or covenant defeasance with respect to debt securities of any series,

the holder of a debt security of that series is entitled to, and does, elect pursuant to the applicable indenture or the terms of that debt security to receive payment in a currency, currency unit or composite currency other than that in which the deposit has been made in respect of that debt security or

a Conversion Event (as defined below) occurs in respect of the currency, currency unit or composite currency in which the deposit has been made,

then the indebtedness represented by that debt security will be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any) and interest on that debt security as they become due out of the proceeds yielded by converting the amount so deposited in respect of that debt security into the currency, currency unit or composite currency in

which the debt security becomes payable as a result of the election or Conversion Event based on the applicable market exchange rate. "Conversion Event" means the cessation of use of:

a currency, currency unit or composite currency both by the government of the country which issued the currency and for the settlement of transactions by a central bank or other public institution of or within the international banking community;

the ECU both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities; or

any currency unit or composite currency other than the ECU for the purposes for which it was established.

In the event we effect a covenant defeasance with respect to any debt securities and those debt securities are declared due and payable because of the occurrence of any event of default, other than an event of default due to a breach of any of the covenants as to which there has been covenant defeasance (which covenants would no longer be applicable to those debt securities as a result of such covenant defeasance), the Government Obligations on deposit with the applicable trustee may not be sufficient to pay amounts due on those debt securities at the time of the acceleration resulting from the event of default. We would, however, remain liable to make payment of the amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting the defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

#### **Conversion Rights**

The terms and conditions, if any, upon which the debt securities are convertible into common stock or preferred stock will be set forth in the applicable prospectus supplement relating to those debt securities. The terms will include whether the debt securities are convertible into common stock or preferred stock, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at our option or the option of the holders, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of the debt securities and any restrictions on conversion, including restrictions directed at maintaining our REIT status.

#### **Unclaimed Payments**

We will be repaid for all amounts we pay to a paying agent or a trustee for the payment of the principal of or any premium or interest on any debt security that remains unclaimed at the end of two years after the principal, premium or interest has become due and payable, and the holder of that debt security may look only to us for payment of the principal, premium or interest.

#### **Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities (the "Global Securities") that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to that series. Global Securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depository arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to that series.

## DESCRIPTION OF COMMON STOCK

We have authority to issue 100,000,000 shares of our common stock, \$1.00 par value per share. As of March 10, 2004, we had outstanding 38,009,717 shares of our common stock.

### General

The following description of our common stock sets forth certain general terms and provisions of our common stock to which any prospectus supplement may relate, including a prospectus supplement providing that our common stock will be issuable upon conversion of our debt securities or our preferred stock. The statements below describing our common stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter and Bylaws.

### Terms

Subject to the preferential rights of any other shares or series of stock and to the provisions of our charter regarding the restrictions on transfer of stock, holders of our common stock are entitled to receive dividends when, as and if authorized by our board of directors and declared by us out of assets legally available therefor. The terms of our outstanding preferred stock provide in general that if we fail to declare or pay full cumulative dividends on that preferred stock for all past dividend periods and the then current dividend period, no dividends or distributions on our common stock (other than dividends payable in shares of common stock or other shares of our capital stock ranking junior to the outstanding preferred stock) may be declared or paid nor may we purchase or otherwise acquire any of our common stock (except in exchange for other capital stock ranking junior to the outstanding preferred stock and except for certain purchases of our stock for the purpose of preserving our qualification as a REIT for federal and/or state income tax purposes). Payment and authorization of dividends on our common stock and purchases of those shares by us may also be subject to certain restrictions if we fail to pay dividends on any other preferred stock we may issue in the future. If we were to experience liquidation, dissolution or winding up, holders of our common stock would be entitled to share equally and ratably in any assets available for distribution to them, after payment or adequate provision for payment of our debts and other liabilities and the preferential amounts owing with respect to our outstanding preferred stock.

Subject to the provisions of our charter regarding the restrictions on transfer of stock (See "Restrictions on Ownership and Transfers of Stock" below), each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, except as provided with respect to any other class or series of stock, the holders of such shares will possess the exclusive voting power. Our board of directors is divided into three classes of directors. The terms of the Class I, Class II and Class III directors will next expire in 2004, 2005 and 2006, respectively. Each class is chosen for three-year terms upon the expiration of their current terms and each year one class of directors will be elected by the stockholders. The staggered terms of directors may reduce the possibility of a tender offer or an attempt to change control of us even though a tender offer or change in control might be in the best interest of the stockholders.

Holders of our common stock do not have cumulative voting rights in the election of directors, which means that holders of more than 50% of all the shares of our common stock voting for the election of directors can elect all the directors of the class standing for election at the time if they choose to do so and the holders of the remaining shares cannot elect any directors of that class. Holders of shares of common stock do not have preemptive rights, which means they have no right under the charter, Bylaws, or Maryland law to acquire any additional shares of common stock that may be issued by us at a subsequent date. Holders of shares of common stock have no preference, conversion, exchange, sinking fund, or redemption rights. Under Maryland law, stockholders generally

are not liable for the corporation's debts or obligations. All shares of common stock now outstanding are, and additional shares of common stock offered will be when issued, fully paid and nonassessable.

Under the Maryland General Corporation Law, or MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides that any such action shall be effective if approved by the affirmative vote of holders of shares entitled to cast a majority of all the votes entitled to be cast on the matter.

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

#### **Maryland Business Combination Law**

Under the MGCL, certain "business combinations" (including certain issuances of equity securities) between a Maryland corporation and any person who beneficially owns ten percent or more of the voting power of the corporation's shares, or an affiliate or associate of the corporation who beneficially owned ten percent or more of the voting power at any time within the preceding two years, in each case referred to as an interested stockholder, or an affiliate thereof are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Thereafter, any such business combination must be approved by two super-majority stockholder votes unless, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its common shares. The business combination provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by the Board of Directors prior to the time that the interested stockholder becomes an interested stockholder. These provisions of the MGCL may delay, defer or prevent a transaction or a change in control of us that might involve a premium price for the common stock or otherwise be in the best interests of the stockholders.

#### **Maryland Control Share Acquisitions Law**

The MGCL provides that "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquiror or by officers or directors who are employees of the corporation. "Control shares" are shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power; (1) one-tenth or more but less than one-third, (2) one-third or more but less than a majority, or (3) a majority or more of all voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses), may compel the board of directors of the

corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any and all of the control shares (except those for which the voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

"Control share acquisition" does not include (1) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (b) acquisitions exempted by the charter or bylaws of the corporation, adopted at any time before the acquisition of the shares.

As permitted by the MGCL, the Bylaws contain a provision exempting us from the control share acquisition statute. That Bylaw provision states that the control share statute shall not apply to any acquisition by any person of shares of our stock. There can be no assurance that such provision will not be amended or eliminated by the Board of Directors at any time in the future.

### **Restrictions on Ownership**

For us to qualify as a REIT under the Internal Revenue Code of 1986, as amended, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement and certain other requirements relating to our tax status as a REIT, we may take certain actions to limit the actual, beneficial or constructive ownership by a single person or entity of our outstanding equity securities. See "Restrictions on Ownership and Transfers of Stock" below.

### **Transfer Agent**

The registrar and transfer agent for our common stock is The Bank of New York.

**GENERAL DESCRIPTION OF PREFERRED STOCK**

We are authorized to issue 20,000,000 shares of preferred stock, \$1.00 par value per share. As of March 10, 2004, we had outstanding 2,745,700 shares of 9<sup>3</sup>/<sub>8</sub>% Class B cumulative redeemable preferred stock and 1,380,000 shares of 9<sup>1</sup>/<sub>2</sub>% Class C cumulative redeemable preferred stock. In addition, our board of directors has authorized the issuance of 1,000,000 shares of our Class A Junior Participating Preferred Stock (the "Class A Preferred Stock") pursuant to our stockholder rights plan, although no shares of such class are currently outstanding. See "Stockholder Rights Plan."

**General**

The following description of our preferred stock sets forth certain general terms and provisions of our preferred stock to which any prospectus supplement may relate. The statements below describing our preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter (including the applicable articles supplementary designating the terms of a series of preferred stock) and our bylaws. You should review the articles supplementary for the Class B cumulative redeemable preferred stock and the articles supplementary for the Class C cumulative redeemable preferred stock, copies of which may be obtained as described below under "Where You Can Find More Information."

Our charter authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any class or series. Prior to issuance of shares of each series, our board is required by the MGCL and our charter to set, subject to the provisions of our charter regarding the restrictions on transfer of stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such series. Thus, the board could authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control of us that might involve a premium price for holders of our common stock or otherwise be in their best interest. Any additional preferred stock will, when issued, be fully paid and nonassessable and will have no preemptive rights. The following discussion is applicable to any additional preferred stock that we may issue.

You should refer to the prospectus supplement relating to the preferred stock offered thereby for specific terms of and other information concerning the preferred stock, including:

- (1) the title of the preferred stock;
- (2) the number of shares of the preferred stock offered, the liquidation preference per share and the offering price of the preferred stock;
- (3) the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation thereof applicable to the preferred stock;
- (4) whether the preferred stock is cumulative or not and, if cumulative, the date from which dividends on the preferred stock shall accumulate;
- (5) the procedures for any auction and remarketing, if any, for the preferred stock;
- (6) the provision for a sinking fund, if any, for the preferred stock;
- (7) any voting rights of the preferred stock;
- (8) the provision for redemption, if applicable, of the preferred stock;
- (9) any listing of the preferred stock on any securities exchange;
- (10) the terms and conditions, if applicable, upon which the preferred stock will be convertible into common stock, including the conversion price (or manner of calculation thereof);

(11) a discussion of federal income tax considerations applicable to the preferred stock;

(12) any limitations on actual, beneficial or constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve our REIT status;

(13) the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

(14) whether liquidation preferences on preferred stock will be counted as liabilities of ours in determining whether distributions to junior stockholders can be made under the MGCL;

(15) any limitations on issuance of any series or class of preferred stock ranking senior to or on a parity with such series or class of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs; and

(16) any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

## **Rank**

Unless otherwise specified in the applicable prospectus supplement, the preferred stock of any series or class will rank, with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

senior to all classes or series of our common stock, to the Class A Preferred Stock and to all other equity securities issued by us other than equity securities referred to in the two immediately following bullet points;

on a parity with all equity securities issued by us the terms of which specifically provide that such equity securities rank on a parity with the preferred stock of such series or class with respect to rights to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up; and

junior to all equity securities issued by us the terms of which specifically provide that such equity securities rank senior to the preferred stock of such series or class with respect to rights to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up.

For these purposes, the term "equity securities" does not include convertible debt securities.

## **Dividends**

Holders of shares of our preferred stock of each series or class shall be entitled to receive, when, as and if authorized by our board of directors and declared by us, out of our assets legally available for payment, cash dividends at rates and on dates as will be set forth in the applicable prospectus supplement. Each dividend shall be payable to holders of record as they appear on our stock transfer books on the record dates as shall be fixed by our board of directors.

Dividends on any series or class of our preferred stock may be cumulative or noncumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If our board of directors fails to authorize a dividend payable on a dividend payment date on any series or class of preferred stock for which dividends are noncumulative, then the holders of such series or class of preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for such period, whether or not dividends on such series or class are declared or paid for any future period.

If any shares of preferred stock of any series or class are outstanding, no full dividends shall be declared or paid or set apart for payment on the preferred stock of any other series or class ranking, as to dividends, on a parity with or junior to the preferred stock of that series or class for any period unless:

if the series or class of preferred stock has a cumulative dividend, full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the preferred stock of such series or class for all past dividend periods and the then current dividend period; or

if the series or class of preferred stock does not have a cumulative dividend, full dividends for the then current dividend period have been or contemporaneously are declared and paid or authorized and a sum sufficient for the payment thereof is set apart for the payment on the preferred stock of such series or class.

When dividends are not paid in full (or a sum sufficient for the full payment is not set apart) upon the shares of preferred stock of any series or class and the shares of any other series or class of preferred stock ranking on a parity as to dividends with the preferred stock of that series or class, then all dividends declared on shares of preferred stock of that series or class and any other series or class of preferred stock ranking on a parity as to dividends with that preferred stock shall be declared pro rata so that the amount of dividends declared per share on the preferred stock of that series or class and such other series or class of preferred stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of preferred stock of such series or class (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) and such other series or class of preferred stock (which, in the case of such other series or class of preferred stock, shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other series or class of preferred stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on preferred stock of such series or class that may be in arrears.

Except as provided in the immediately preceding paragraph, unless: if that series or class of preferred stock has a cumulative dividend, full cumulative dividends on the preferred stock of such series or class have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period; or if that series or class of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of such series or class have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for the then current dividend period, then no dividends (other than in the common stock or other stock of ours ranking junior to the preferred stock of that series or class as to dividends and as to the distribution of assets upon liquidation, dissolution or winding up of us) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made on the common stock or any other class or series of stock of ours ranking junior to or on a parity with the preferred stock of that series or class as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up of us, nor shall any shares of the common stock or any other stock of ours ranking junior to or on a parity with the preferred stock of that series or class as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up of us be redeemed, purchased or otherwise acquired for any consideration (or any amounts be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by us (except by conversion into or exchange for other stock of ours ranking junior to the preferred stock of that series or class as to dividends and as to the distribution of assets upon liquidation, dissolution or winding up of us); provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of our stock to preserve our status as a REIT for federal and/or state income tax purposes.



Any dividend payment made on shares of a series or class of preferred stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of that series or class that remains payable.

### **Redemption**

If the applicable prospectus supplement so states, the shares of preferred stock will be subject to mandatory redemption or redemption at our option, as a whole or in part, in each case on the terms, at the times and at the redemption prices set forth in that prospectus supplement.

The prospectus supplement relating to a series or class of preferred stock that is subject to mandatory redemption will specify the number of shares of that preferred stock that shall be redeemed by us in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to all accumulated and unpaid dividends thereon (which shall not, if such preferred stock does not have a cumulative dividend, include any accumulation in respect of unpaid dividends for prior dividend periods) to the date of redemption. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series or class is payable only from the net proceeds of the issuance of our stock, the terms of that preferred stock may provide that, if no such stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, that preferred stock shall automatically and mandatorily be converted into shares of our applicable stock pursuant to conversion provisions specified in the applicable prospectus supplement.

Notwithstanding the foregoing, unless:

if the series or class of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of such series or class of preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period; and

if the series or class of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of that series or class have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for the then current dividend period,

then no shares of that series or class of preferred stock shall be redeemed unless all outstanding shares of preferred stock of that series or class are simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of preferred stock of that series or class to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of that series or class. In addition:

if the series or class of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of that series or class of preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period; and

if that series or class of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of that series or class have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for the then current dividend period,

we shall not purchase or otherwise acquire directly or indirectly any shares of preferred stock of such series or class (except by conversion into or exchange for stock of ours ranking junior to the preferred stock of that series or class as to dividends and upon liquidation, dissolution and winding up of us);

provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of preferred stock of such series or class to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of that series or class.

If fewer than all the outstanding shares of preferred stock of any series or class are to be redeemed, the number of shares to be redeemed will be determined by us and those shares to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by us, but that will not result in the automatic transfer of any shares of preferred stock of such series or class to a trust in order to avoid adversely affecting our REIT status.

Notice of redemption will be mailed at least 30, but not more than 60, days before the redemption date to each holder of record of a share of preferred stock of any series or class to be redeemed at the address shown on our stock transfer books. Each notice shall state:

The redemption date;

The number of shares and series or class of the preferred stock to be redeemed;

The redemption price;

The place or places (which shall include a place in the Borough of Manhattan, The City of New York) where certificates for the preferred stock are to be surrendered for payment of the redemption price;

That dividends on the shares to be redeemed will cease to accumulate on the redemption date; and

The date on which the holder's conversion rights, if any, as to those shares shall terminate.

If fewer than all the shares of preferred stock of any series or class are to be redeemed, the notice mailed to each holder thereof shall also specify the number of shares of preferred stock to be redeemed from such holder and, upon redemption, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof. If notice of redemption of any shares of preferred stock has been given and if the funds necessary for the redemption have been irrevocably set aside by us in trust for the benefit of the holders of the shares of preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of preferred stock, such shares of preferred stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price plus accrued and unpaid dividends, if any.

Notwithstanding the foregoing and except as otherwise may be required by law, the persons who were holders of record of shares of any class or series of preferred stock at the close of business on a record date for the payment of dividends will be entitled to receive the dividend payable on the corresponding dividend payment date notwithstanding the redemption of those shares after the record date and on or prior to the dividend payment date or our default in the payment of the dividend due on that dividend payment date. In that case, the amount payable on the redemption of those shares of preferred stock will not include that dividend. Except as provided in the preceding sentence and except to the extent that accrued and unpaid dividends are payable as part of the redemption price, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on shares of preferred stock called for redemption.

Subject to applicable law and the limitation on purchases when dividends on a series or class of preferred stock are in arrears, we may, at any time and from time to time, purchase any shares of such series or class of preferred stock in the open market, by tender or by private agreement.

### **Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of us, the holders of each series or class of our preferred stock shall be entitled to receive, out of our assets legally available for distribution to our shareholders, a liquidating distribution in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement) applicable to that class or series, plus an amount equal to any accrued and unpaid dividends to the date of payment (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock of such class or series does not have a cumulative dividend), before any distribution or payment will be made to the holders of common stock or any other series or class of stock ranking junior to that series or class of preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of us, but subject to the preferential rights of the holders of shares of any class or series of our stock ranking senior to such series or class of preferred stock with respect to the distribution of assets upon liquidation, dissolution or winding up. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of that series or class of preferred stock, as such, will have no right or claim to any of our remaining assets. If, upon any such voluntary or involuntary liquidation, dissolution or winding up, the assets legally available therefor are insufficient to pay the full amount of the liquidating distributions payable on all outstanding shares of any series or class of preferred stock and the full amount of the liquidating distributions payable on all shares of any other classes or series of our stock ranking on a parity with that series or class of preferred stock in the distribution of assets upon liquidation, dissolution or winding up, then the holders of that series or class of preferred stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions shall have been made in full to all holders of any series or class of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of stock ranking junior to that series or class of preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For those purposes, neither the consolidation or merger of us with or into any other entity, nor the sale, lease, transfer or conveyance of all or substantially all of our property or business, shall be deemed to constitute a liquidation, dissolution or winding up of us.

### **Voting Rights**

Except as may be set forth in the applicable prospectus supplement, whenever dividends on any shares of preferred stock of any series or class shall be in arrears for six or more quarterly dividend periods, whether or not consecutive, the number of directors constituting our Board of Directors will be automatically increased by two (if not already increased by two by reason of the election of directors by the holders of any other class or series of preferred stock upon which like voting rights have been conferred and are exercisable and with which the preferred stock of such class or series is entitled to vote as a class with respect to the election of such two directors) and the holders of such series or class of preferred stock (voting separately as a class with all other classes or series of preferred stock upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with such class or series of preferred stock in the election of such two directors) will be entitled to vote for the election of such two additional directors to our Board of Directors at a special meeting called by Realty Income at the request of the holders of record of at least 10% of the outstanding shares of such class or series of preferred stock or by the holders of any other class or series of preferred stock upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with such class or series of preferred stock in the election of such two directors (unless the request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders, in which case the vote will be held at the earlier of the next annual or special meeting of stockholders), and at each subsequent annual meeting until all dividends

accumulated on shares of preferred stock of that class or series for all past dividend periods and the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In that case, the right of the preferred stock of that class or series to elect those two directors will cease and (unless there are one or more other classes or series of preferred stock upon which like voting rights have been conferred and remain exercisable) the term of office of the two directors will automatically terminate and the number of directors constituting the Board of Directors will be reduced accordingly.

If a special meeting is not called by us within 30 days after a request from the holders of preferred stock as described above, then the holders of record of at least 10% of the outstanding shares of any class or series of preferred stock upon which such voting rights have been conferred and are exercisable may designate a holder to call the meeting at our expense.

So long as any shares of any class or series of preferred stock remain outstanding, we shall not, without the consent or the affirmative vote of the holders of at least two-thirds of the shares of such class or series of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (with such series or class of preferred stock voting separately as a class):

Authorize, create or issue, or increase the authorized or issued amount of, any class or series of stock ranking senior to that series or class of preferred stock with respect to payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or reclassify any of our authorized stock into any such shares, or create, authorize or issue any obligation or security convertible into, exchangeable or exercisable for, or evidencing the right to purchase, any such shares;

Amend, alter or repeal any of the provisions of our charter, including the articles supplementary for such series or class of preferred stock, so as to materially and adversely affect any right, preference, privilege or voting power of such series or class of preferred stock or the holders thereof; or

Enter into any share exchange that affects such series or class of preferred stock or consolidate with or merge into any other entity, or permit any other entity to consolidate with or merge into us, unless in each such case described in this bullet point each share of such series or class of preferred stock remains outstanding without a material adverse change to its terms and rights or is converted into or exchanged for preferred stock of the surviving or resulting entity having preferences, rights, dividends, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption identical to those of such series or class of preferred stock;

provided that any amendment to our charter to authorize any increase in the amount of the authorized preferred stock or common stock or the creation or issuance of any other class or series of preferred stock or any increase in the amount of authorized or outstanding shares of such series or class or any other series or class of preferred stock, in each case ranking on a parity with or junior to the preferred stock of such series or class with respect to payment of dividends and the distribution of assets upon liquidation, dissolution and winding up, shall not be deemed to materially and adversely affect any right, preference, privilege or voting power of that series or class of preferred stock or the holders thereof.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required shall be effected, all outstanding shares of such series or class of preferred stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust to effect the redemption.

### **Conversion Rights**

The terms and conditions, if any, upon which shares of any series or class of preferred stock are convertible into shares of common stock will be set forth in the applicable prospectus supplement. The terms will include the number of shares of common stock into which the preferred stock is convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders of the preferred stock or us, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of the preferred stock.

### **Restrictions on Ownership**

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital stock may be owned, actually or constructively, by five or fewer individuals (defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement and certain other requirements relating to our tax status as a REIT, the articles supplementary establishing any class or series of preferred stock will contain provisions, which will be described in the applicable prospectus supplement, intended to limit the actual, beneficial or constructive ownership by a single person or entity of our outstanding equity securities.

### **Transfer Agent**

The transfer agent and registrar for any series or class of preferred stock will be set forth in the applicable prospectus supplement.

## **RESTRICTIONS ON OWNERSHIP AND TRANSFERS OF STOCK**

### **Internal Revenue Code Requirements**

To maintain our REIT status under the Code, no more than 50% in value of our outstanding shares of stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. In addition, if we, or an owner of 10% or more of us, actually or constructively owns 10% or more of a tenant of ours (or a tenant of any partnership in which we are a partner), the rent received by us (either directly or through any such partnership) from that tenant will not be qualifying income for purposes of the REIT gross income tests of the Code. A REIT's stock must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year.

### **Transfer Restrictions in Charter**

Because we expect to continue to qualify as a REIT, our charter contains restrictions on the ownership and transfer of common stock which are intended to assist us in complying with applicable Code requirements. Our charter provides that, subject to certain specified exceptions, no person or entity may own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (by number or value, whichever is more restrictive) of the outstanding shares of common stock, appropriately referred to as the ownership limit. The constructive ownership rules of the Code are complex, and may cause shares of common stock owned actually or constructively by a group of related individuals and/or entities to be constructively owned by one individual or entity. As a result, the acquisition of less than 9.8% of the shares of common stock (or the acquisition of an interest in an entity that owns, actually or constructively, common stock) by an individual or entity, could nevertheless cause that individual or entity, or another individual or entity, to constructively own more than 9.8% of our outstanding common stock and thus violate the ownership limit, or any other limit as provided in our charter or as otherwise permitted by our board of directors. Our board of

directors may, but in no event is required to, exempt from the ownership limit a particular stockholder if it determines that such ownership will not jeopardize our status as a REIT. As a condition of such exemption, the board of directors may require a ruling from the Internal Revenue Service or an opinion of counsel satisfactory to it and/or undertakings or representations from the applicant with respect to preserving the our REIT status.

Our charter further prohibits (1) any person from actually or constructively owning shares of our stock that would result in our being "closely held" under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT, and (2) any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts to acquire actual or constructive ownership of shares of our stock that would violate any of the foregoing restrictions on transferability and ownership is required to give notice to us immediately and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing restrictions on transferability and ownership will not apply if our Board of Directors determines that it is no longer in our best interest to attempt to qualify, or to continue to qualify, as a REIT and such determination is approved by the holders of two-thirds of all shares entitled to vote on the matter, as required by our charter. Except as otherwise described above, any change in the ownership limit would require an amendment to the charter.

Our outstanding preferred stock is subject to transfer restrictions similar to those described in this section, and we anticipate that any class or series of preferred stock that we issue in the future will also be subject to similar restrictions.

#### **Effect of Violation of Transfer Provisions**

According to our charter, if any purported transfer of common stock or any other event would otherwise result in any person violating the ownership limit or such other limit as provided in the charter or as otherwise permitted by our board of directors, or result in our being "closely held" under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT, then the number of shares that would otherwise cause such violation or result will be transferred automatically to a trust, the beneficiary of which will be a qualified charitable organization selected by us. Such automatic transfer shall be deemed to be effective as of the close of business on the business day prior to the date of such violative transfer.

Within 20 days of receiving notice from us of the transfer of shares to the trust, the trustee of the trust (who shall be designated by us and be unaffiliated with us and any prohibited transferee or prohibited owner) will be required to sell such shares to a person or entity who could own the shares without violating the ownership limit, or any other limit as provided in our charter or as otherwise permitted by our board of directors, and distribute to the prohibited transferee or prohibited owner, as applicable, an amount equal to the lesser of the price paid by the prohibited transferee or prohibited owner for such shares or the net sales proceeds received by the trust for such shares. In the case of any event other than a transfer, or in the case of a transfer for no consideration (such as a gift), the trustee will be required to sell such shares to a qualified person or entity and distribute to the prohibited owner an amount equal to the lesser of the market price (described in our charter) of such shares as of the date of the event resulting in the transfer or the net sales proceeds received by the trust for such shares. In either case, any proceeds in excess of the amount distributable to the prohibited transferee or prohibited owner, as applicable, will be distributed to the beneficiary. Prior to a sale of any such shares by the trust, the trustee will be entitled to receive, in trust for the beneficiary, all dividends and other distributions paid by us with respect to such excess shares, and also will be entitled to exercise all voting rights with respect to such shares.

Subject to Maryland law, effective as of the date that such shares have been transferred to the trust, the trustee shall have the authority (at the trustee's sole discretion) (1) to rescind as void any vote cast by a prohibited transferee or prohibited owner, as applicable, prior to the discovery by us that such shares have been transferred to the trust and (2) to recast such vote in accordance with the desires of the trustee acting for the benefit of the beneficiary. However, if we have already taken irreversible corporate action, then the trustee shall not have the authority to rescind and recast that vote. Any dividend or other distribution paid to the prohibited transferee or prohibited owner (prior to the discovery by us that such shares had been automatically transferred to a trust as described above) will be required to be repaid to the trustee upon demand for distribution to the beneficiary. In the event that the transfer to the trust as described above is not automatically effective (for any reason) to prevent violation of the ownership limit or any other limit as provided in our charter or as otherwise permitted by our board of directors, then our charter provides that the transfer of the excess shares will be void.

In addition, shares of our stock held in the trust shall be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in such transfer to the trust (or, in the case of a devise or gift, the market price at the time of such devise or gift) and (2) the market price on the date we or our designee, accepts such offer. We shall have the right to accept such offer until the trustee has sold the shares of stock held in the trust. Upon such a sale to us, the interest of the beneficiary in the shares sold shall terminate and the trustee shall distribute the net proceeds of the sale to the prohibited transferee or prohibited owner.

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

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

As set forth in the Treasury Regulations, every owner of a specified percentage (or more) of the outstanding shares of our stock (including both common stock and preferred stock) must file a completed questionnaire with us containing information regarding their ownership of such shares. Under current Treasury Regulations, the percentage will be set between 0.5% and 5.0%, depending upon the number of record holders of our shares of stock. Under our charter, each stockholder shall upon demand be required to disclose to us in writing such information as we may request in order to determine the effect, if any, of such stockholder's actual and constructive ownership of stock on our status as a REIT and to ensure compliance with the ownership limit, or any other limit as provided in our charter or as otherwise permitted by our board of directors.

**UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS  
RELATED TO OUR REIT ELECTION**

The following is a summary of the federal income tax considerations related to our REIT election which are anticipated to be material to purchasers of the securities offered by this prospectus. Your tax treatment will vary depending upon the terms of the specific securities that you acquire, as well as your particular situation. This discussion does not attempt to address any aspects of federal income taxation relevant to your ownership of the securities offered by this prospectus. Instead, the material federal income tax considerations relevant to your ownership of the securities offered by this prospectus will be provided in the applicable prospectus supplement that relates to those securities.

The information in this section is based on:

the Internal Revenue Code;

current, temporary and proposed Treasury Regulations promulgated under the Internal Revenue Code;

the legislative history of the Internal Revenue Code;

current administrative interpretations and practices of the Internal Revenue Service; and

court decisions

in each case, as of the date of this prospectus. In addition, the administrative interpretations and practices of the Internal Revenue Service include its practices and policies as expressed in private letter rulings which are not binding on the Internal Revenue Service, except with respect to the particular taxpayers who requested and received these rulings. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any change could apply retroactively to transactions preceding the date of the change. We have not requested, and do not plan to request, any rulings from the Internal Revenue Service concerning our tax treatment, and the statements in this prospectus are not binding on the Internal Revenue Service or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the Internal Revenue Service or if challenged, will be sustained by a court.

**You are urged to consult the applicable prospectus supplement, as well as your tax advisors, regarding the tax consequences to you of:**

**the acquisition, ownership and sale or other disposition of the securities offered under this prospectus, including the federal, state, local, foreign and other tax consequences;**

**our election to be taxed as a REIT for federal income tax purposes; and**

**potential changes in the tax laws.**

**Taxation of the Company**

*General.* We elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code, commencing with our taxable year ended December 31, 1994. We believe we have been organized and have operated in a manner which allows us to qualify for taxation as a REIT under the Internal Revenue Code commencing with our taxable year ended December 31, 1994. We currently intend to continue to operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Internal Revenue Code, including through actual annual operating results, asset diversification, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have operated or will continue to





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operate in a manner so as to qualify or remain qualified as a REIT. See the section below entitled " Failure to Qualify."

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

Latham & Watkins LLP has acted as our tax counsel in connection with the filing of this prospectus. Latham & Watkins LLP has rendered an opinion to us dated March 11, 2004 to the effect that, commencing with our taxable year ended December 31, 1994, (i) we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Internal Revenue Code, and (ii) our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Internal Revenue Code. It must be emphasized that this opinion was based on various assumptions and representations as to factual matters, including representations made by us in a certificate provided by one of our officers. In addition, this opinion was based upon our factual representations set forth in this prospectus. Moreover, our qualification and taxation as a REIT depends upon our ability to meet, through actual annual operating results, asset diversification, distribution levels and diversity of stock ownership, the various qualification tests imposed under the Internal Revenue Code discussed below, the results of which have not been and will not be reviewed by our tax counsel. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year have satisfied or will satisfy those requirements. Our tax counsel has no obligation to update its opinion subsequent to its date. Further, the anticipated income tax treatment described in this prospectus may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. See " Failure to Qualify".

Provided we qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our net income that is currently distributed to our stockholders. We will be required to pay federal income tax, however, as follows:

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

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

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

Fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held as inventory or primarily for sale to customers in the ordinary course of business.

Fifth, if we fail to satisfy the 75% gross income test or the 95% gross income test discussed below, but have maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (a) the greater of (i) the amount by which 75% of our gross income exceeds the amount qualifying under the 75% gross income test described below and (ii) the amount by which 90% of our gross income exceeds the amount qualifying

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under the 95% gross income test described below, multiplied by (b) a fraction intended to reflect our profitability.

Sixth, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (a) 85% of our REIT ordinary income for the year, (b) 95% of our REIT capital gain net income for the year, and (c) any undistributed taxable income from prior periods.

Seventh, if we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under existing Treasury Regulations on its tax return for the year in which we acquire an asset from the C corporation.

Eighth, we will be subject to a 100% tax on any "redetermined rents," "redetermined deductions" or "excess interest." In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a "taxable REIT subsidiary" of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. See "Penalty Tax" below.

*Requirements for qualification as a REIT.* The Internal Revenue Code defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation but for Sections 856 through 860 of the Internal Revenue Code;
- (4) that is not a financial institution or an insurance company within the meaning of the Internal Revenue Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities, during the last half of each taxable year; and
- (7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Internal Revenue Code provides that all of conditions (1) to (4) must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), pension funds and other specified tax-exempt entities generally are treated as individuals, except that a "look-through" exception applies with respect to pension funds.

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We believe that we have satisfied conditions (1) through (7), inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of shares. These restrictions are intended to assist us in continuing to satisfy the share ownership requirements described in conditions (5) and (6) above. These stock ownership and transfer restrictions are described in "Restrictions on Ownership and Transfers of Stock" in this Prospectus. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in conditions (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in the applicable Treasury Regulations that require us to ascertain the actual ownership of our shares, and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See " Failure to Qualify."

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have and will continue to have a calendar taxable year.

*Ownership of a partnership interest.* We may from time to time own and operate one or more properties through partnerships and limited liability companies. Treasury Regulations provide that if we are a partner in a partnership, then for purposes of applying the assets and income tests, described below, we will be deemed to own our proportionate share of the assets of the partnership and we will be deemed to be entitled to our proportionate share of the income of the partnership, based on our interest in partnership capital. The character of the assets and gross income of the partnership retains the same character in our hands for these purposes. In addition, the assets and items of income of any partnership in which we own a direct or indirect interest include such partnership's share of assets and items of income of any partnership in which it owns an interest. We have included a brief summary of the rules governing the federal income taxation of partnerships and their partners below in " Tax Aspects of the Partnerships." The treatment described above also applies with respect to the ownership of interests in limited liability companies or other entities that are treated as partnerships for tax purposes.

We have direct or indirect control of certain partnerships and limited liability companies and intend to continue to operate them in a manner consistent with the requirements for qualification as a REIT. From time to time we may be a limited partner or non-managing member in certain partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest takes or expects to take actions which could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in that entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a REIT income or asset test, and that we would not become aware of such action in time to dispose of our interest in the applicable entity or take other corrective action on a timely basis. In such a case, we could fail to qualify as a REIT.

*Ownership of Interests in Qualified REIT Subsidiaries.* We currently own and may from time to time own and operate certain properties through wholly-owned subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Internal Revenue Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of its outstanding stock and if we do not elect with the subsidiary to treat it as a "taxable REIT subsidiary," described below. A corporation that is a qualified REIT subsidiary is not treated as a separate corporation, and 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 (as the case may be) of the parent REIT for all purposes under the Internal Revenue Code (including all REIT qualification tests). Thus, in applying the requirements described in this prospectus, our qualified REIT subsidiaries are ignored, and all assets, liabilities and items of income, deduction and credit of such subsidiaries are treated as our assets, liabilities and items of income, deduction and credit. A qualified REIT subsidiary is not required to pay federal income tax,

and our ownership of the stock of a qualified REIT subsidiary does not violate the restrictions on ownership of securities of any one issuer that constitute more than 10% of the voting power or value of such issuer's securities or more than 5% of the value of our total assets, as described below under " Asset Tests."

*Ownership of Interests in Taxable REIT Subsidiaries.* A taxable REIT subsidiary of ours is a corporation other than a REIT in which we directly or indirectly hold stock and that has made a joint election with us to be treated as a taxable REIT subsidiary. A taxable REIT subsidiary also includes any corporation other than a REIT with respect to which a taxable REIT subsidiary owns, directly or indirectly, securities possessing more than 35% of the total voting power or value of the outstanding securities of such corporation. A taxable REIT subsidiary may generally engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT, except that a taxable REIT subsidiary may not directly or indirectly operate or manage a lodging or health care facility or directly or indirectly provide to any other person (under a franchise, license or otherwise) rights to any brand name under which any lodging or health care facility is operated. A taxable REIT subsidiary is required to pay federal income tax, and state and local income tax where applicable, as a regular C corporation. In addition, a taxable REIT subsidiary of ours may be prevented from deducting interest on debt that we directly or indirectly fund if certain tests regarding the taxable REIT subsidiary's debt-to-equity ratio and interest expense are not satisfied. We may from time to time own interests in taxable REIT subsidiaries. Our ownership of securities of our taxable REIT subsidiaries will not be subject to the 10% asset test described below, and their operations will be subject to the provisions described above concerning taxable REIT subsidiaries. See " Asset Tests."

*Income Tests.* We must satisfy two gross income requirements annually to maintain our status as a REIT:

First, in each taxable year, we must derive directly or indirectly at least 75% of our gross income, excluding gross income from prohibited transactions, from (a) certain investments relating to real property or mortgages on real property, including "rents from real property" and, in some circumstances, interest, or (b) some types of temporary investments; and

Second, in each taxable year, we must derive at least 95% of our gross income, excluding gross income from prohibited transactions, from (a) the real property investments described above, and (b) dividends, interest and gain from the sale or disposition of stock or securities.

For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. An amount received or accrued generally will not be excluded from the term "interest," however, solely by reason of being based on a fixed percentage or percentages of receipts or sales.

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

The amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales;

We, or an actual or constructive owner of 10% or more of our stock, must not actually or constructively own 10% or more of the interests in the assets or net profits of the tenant, or, if the tenant is a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant. Rents we receive from a taxable REIT subsidiary of ours, however, will not be excluded from

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the definition of "rents from real property" if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are comparable to rents paid by our other tenants for comparable space;

Rent attributable to personal property leased in connection with a lease of real property must not be greater than 15% of the total rent we receive under the lease. If this requirement is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property;" and

We generally must not operate or manage our property or furnish or render services to the tenants of the property, subject to a 1% *de minimis* exception, other than through an independent contractor from whom we derive no revenue. We may, however, directly perform certain services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of such services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we may employ a taxable REIT subsidiary, which may be wholly or partially owned by us, to provide both customary and non-customary services to our tenants without causing the rent we receive from those tenants to fail to qualify as "rents from real property." Any amounts we receive from a taxable REIT subsidiary with respect to its provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

We generally do not intend to receive rent which fails to satisfy any of the above conditions. Notwithstanding the foregoing, we may have taken and may in the future take actions which fail to satisfy one or more of the above conditions to the extent that we determine, based on the advice of our tax counsel, that those actions will not jeopardize our tax status as a REIT.

We believe that the aggregate amount of our nonqualifying income, from all sources, in any taxable year will not exceed the limit on nonqualifying income under the gross income tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Internal Revenue Code. Generally, we may avail ourselves of the relief provisions if:

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

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

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

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

*Prohibited Transaction Income.* Any gain that we realize on the sale of property held as inventory or other property held primarily for sale to customers in the ordinary course of business will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Our gain would include any gain realized by our qualified REIT subsidiaries and our share of any gain realized by any of the partnerships or limited liability companies in which we own an interest. This prohibited transaction

income may also adversely affect our ability to satisfy the income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. We intend to hold our properties for investment with a view to long-term appreciation and to engage in the business of acquiring, developing and owning our properties. We have made, and may in the future make, occasional sales of the properties as are consistent with our investment objectives. We do not intend to enter into any sales that are prohibited transactions. The Internal Revenue Service may contend, however, that one or more of these sales is subject to the 100% penalty tax.

*Penalty Tax.* Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of services furnished by one of our taxable REIT subsidiaries to any of our tenants, and redetermined deductions and excess interest represent amounts that are deducted by a taxable REIT subsidiary for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. Rents we receive will not constitute redetermined rents if they qualify for the safe harbor provisions contained in the Internal Revenue Code. Safe harbor provisions are provided where generally:

Amounts are received by a REIT for services customarily furnished or rendered by its taxable REIT subsidiary in connection with the rental of real property;

Amounts are excluded from the definition of impermissible tenant service income as a result of satisfying the 1% *de minimis* exception;

The taxable REIT subsidiary renders a significant amount of similar services to unrelated parties, and the charges for such services are substantially comparable;

Rents paid to the REIT by tenants who are not receiving services from the taxable REIT subsidiary are substantially comparable to the rents paid by the REIT's tenants leasing comparable space who are receiving such services from the taxable REIT subsidiary, and the charge for the services is separately stated; and

The taxable REIT subsidiary's gross income from the service is not less than 150% of the subsidiary's direct cost of furnishing or rendering the service.

*Asset Tests.* At the close of each quarter of our taxable year, we also must satisfy four tests relating to the nature and diversification of our assets:

First, at least 75% of the value of our total assets, including assets held by our qualified REIT subsidiaries and our allocable share of the assets held by the partnerships and limited liability companies in which we own an interest, must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public debt offering with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds;

Second, not more than 25% of the value of our total assets may be represented by securities other than those securities included in the 75% asset test;

Third, of the securities included in the 25% asset class and except for investments in other REITs, and our qualified REIT subsidiaries and taxable REIT subsidiaries, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of any one issuer's outstanding securities; and

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Fourth, not more than 20% of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries.

The 10% value limitation and the 20% asset test are effective for taxable years ending after December 31, 2000.

As of the date of this prospectus, we own 100% of the outstanding stock of Crest Net Lease, Inc. Crest Net Lease has elected, together with us, to be treated as a taxable REIT subsidiary. So long as Crest Net Lease qualifies as taxable REIT subsidiary, we will not be subject to the 5% asset test, 10% voting securities limitation or 10% value limitation with respect to our ownership of its securities. We or Crest Net Lease may acquire securities in other taxable REIT subsidiaries in the future. We believe that the aggregate value of our taxable REIT subsidiaries has not and will not exceed 20% of the value of our gross assets. With respect to each issuer in which we own an interest that does not qualify as a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary, we believe that our ownership of the securities of any such issuer has complied with the 10% voting securities limitation, the 10% value limitation and the 5% value limitation. No independent appraisals have been obtained to support these conclusions, and there can be no assurance that the Internal Revenue Service will not disagree with our determinations of value.

The asset tests must be satisfied not only at the end of the quarter during which we (directly or through our partnerships or limited liability companies) acquire securities in the applicable issuer, but also each time we increase our ownership of securities of such issuer, including as a result of increasing our interest in a partnership or limited liability company which owns such securities. For example, our indirect ownership of securities of an issuer may increase as a result of our capital contributions to a partnership or limited liability company. After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy an asset test because we acquire securities or other property during a quarter (including as a result of an increase in our interests in a partnership or limited liability company), we can cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. Although we plan to take steps to ensure that we satisfy the asset tests for any quarter with respect to which retesting is to occur, there can be no assurance that such steps will always be successful or will not require a reduction in our overall interest in an issuer (including in a taxable REIT subsidiary). If we fail to timely cure any noncompliance with the asset tests, we would cease to qualify as a REIT.

*Annual Distribution Requirements.* To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

90% (95% for taxable years beginning before January 1, 2001) of our "REIT taxable income"; and

90% (95% for taxable years beginning before January 1, 2001) of our after tax net income, if any, from foreclosure property; minus

the excess of the sum of specified items of our non-cash income items over 5% of "REIT taxable income" as described below.

Our "REIT taxable income" is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount on purchase money debt, cancellation of indebtedness, and any like-kind exchanges that are later determined to be taxable.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of



the asset in the hands of that C corporation, within the ten-year period following our acquisition of such asset, we would be required to distribute at least 90% (95% for taxable years beginning before January 1, 2001) of the after-tax gain, if any, we recognized on the disposition, to the extent that gain does not exceed the excess of (a) the fair market value of the asset on the date we acquired the asset over (b) our adjusted basis in the asset on the date we acquired the asset.

We must pay these distributions in the taxable year to which they relate, or in the following taxable year if they are declared before we timely file our tax return for that year and paid on or before the first regular dividend payment following their declarations. Except as provided below, these distributions are taxable to our stockholders, other than tax-exempt entities in the year in which paid. This is so even though these distributions relate to the prior year for purposes of our 90% distribution requirement. The amount distributed must not be preferential. To avoid being preferential, every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. To the extent that we do not distribute all of our net capital gain, or distribute at least 90% (95% for taxable years beginning before January 1, 2001), but less than 100%, of our "REIT taxable income," as adjusted, we will be required to pay tax on the undistributed amount at regular ordinary and capital gain corporate tax rates. We believe we have made, and intend to continue to make, timely distributions sufficient to satisfy these annual distribution requirements.

We anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy our distribution requirements. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements because of timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. If these timing differences occur, we may need to arrange for short-term, or possibly long-term, borrowings or need to pay dividends in the form of taxable stock dividends in order to meet the distribution requirements.

Under certain circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying "deficiency dividends" to stockholders in a later year, which we may include in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. However, we will be required to pay interest to the Internal Revenue Service based upon the amount of any deduction taken for deficiency dividends.

In addition, we will be required to pay a 4% excise tax to the extent the amount we actually distribute for any calendar year is less than the sum of 85% of our REIT ordinary income for such year, 95% of our REIT capital gain net income for such year and any undistributed taxable income from prior periods. Any REIT ordinary income and capital gain net income on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax.

Distributions with declaration and record dates falling in the last three months of the calendar year, which are paid to our stockholders by the end of January immediately following that year, will be treated for federal income tax purposes as having been paid on December 31 of the prior year.

#### **Failure to Qualify**

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions of the Internal Revenue Code do not apply, we will be required to pay tax, including any alternative minimum tax, on our taxable income at regular corporate tax rates. Distributions to our stockholders in any year in which we fail to qualify as a REIT will not be deductible by us, and we will not be required to distribute any amounts to our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail

to qualify as a REIT, all distributions to our stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In this event, subject to certain limitations under the Internal Revenue Code, corporate distributees may be eligible for the dividends-received deduction. Unless entitled to relief under specific statutory provisions, we will also be disqualified from taxation as a REIT for the four taxable years following the year in which we lose our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

### **Tax Aspects of the Partnerships**

*General.* From time to time, we may own, directly or indirectly, interests in various partnerships and limited liability companies. We expect these will be treated as partnerships (or disregarded entities) for federal income tax purposes. In general, entities that are classified as partnerships (or disregarded entities) for federal income tax purposes are "pass-through" entities which are not required to pay federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the entity, and are potentially required to pay tax thereon, without regard to whether the partners or members receive a distribution of cash from the entity. We include in our income our allocable share of the foregoing items for purposes of computing our REIT taxable income, based on the partnership agreement. For purposes of applying the REIT income and asset tests, we include our pro rata share of the income generated by and the assets held by the partnerships and limited liability companies in which we own an interest, including their shares of the income and assets of any subsidiary partnerships and limited liability companies based on our capital interests. See " Taxation of the Company."

Our ownership interests in such partnerships and limited liability companies involves special tax considerations. These special tax considerations include, for example, the possibility that the Internal Revenue Service might challenge the status of one or more of the partnerships or limited liability companies in which we own an interest as partnerships (or disregarded entities), as opposed to associations taxable as corporations, for federal income tax purposes. If a partnership or limited liability company in which we own an interest, or one or more of its subsidiary partnerships or limited liability companies, were treated as an association, it would be taxable as a corporation and therefore be subject to an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change, and could prevent us from satisfying the REIT asset tests and the REIT income tests (see " Asset Tests" and " Income Tests"). This, in turn, would prevent us from qualifying as a REIT. See " Failure to Qualify" for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of one or more of the partnerships or limited liability companies in which we own an interest might be treated as a taxable event. If so, we might incur a tax liability without any related cash distributions.

Treasury Regulations that apply for tax periods beginning on or after January 1, 1997, provide that a domestic business entity not otherwise organized as a corporation and which has at least two members may elect to be taxed as a partnership for federal income tax purposes. Unless it elects otherwise, an eligible entity in existence prior to January 1, 1997, will have the same classification for federal income tax purposes that it claimed under the entity classification Treasury Regulations in effect prior to this date. In addition, an eligible entity which did not exist or did not claim a classification prior to January 1, 1997, will be classified as a partnership for federal income tax purposes unless it elects otherwise. All of the partnerships in which we own an interest intend to claim classification as partnerships under these Treasury Regulations. As a result, we believe that these partnerships will be classified as partnerships for federal income tax purposes. The treatment described above also applies with respect to our ownership of interests in limited liability companies that are treated as partnerships for tax purposes.

*Allocations of Income, Gain, Loss and Deduction.* A partnership or limited liability company agreement will generally determine the allocation of income and losses among partners or members. These allocations, however, will be disregarded for tax purposes if they do not comply with the provisions of Section 704(b) of the Internal Revenue Code and the related Treasury Regulations. Generally, Section 704(b) of the Internal Revenue Code and the related Treasury Regulations require that partnership and limited liability company allocations respect the economic arrangement of the partners and members. If an allocation is not recognized for federal income tax purposes, the relevant item will be reallocated according to the partners' or members' interests in the partnership or limited liability company, as the case may be. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners or members with respect to such item. The allocations of taxable income and loss in each of the partnerships and limited liability companies in which we own an interest are intended to comply with the requirements of Section 704(b) of the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

*Tax Allocations With Respect to the Properties.* Under Section 704(c) of the Internal Revenue Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership or limited liability company in exchange for an interest in the partnership or limited liability company must be allocated in a manner so that the contributing partner or member is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or loss is generally equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution. These allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners or members. Some of the partnerships and/or limited liability companies in which we own an interest were formed by way of contributions of appreciated property. The relevant partnership and/or limited liability company agreements require that allocations be made in a manner consistent with Section 704(c) of the Internal Revenue Code.

#### **Other Tax Consequences**

We may be required to pay tax in various state or local jurisdictions, including those in which we transact business. Our state and local tax treatment may not conform to the federal income tax consequences discussed above. Consequently, you should consult your tax advisors regarding the effect of state and local tax laws on us.

#### **New Legislation**

The maximum tax rate for non-corporate taxpayers for (i) capital gains, including "capital gain dividends," has generally been reduced from 20% to 15% (for taxable years ending on or after May 6, 2003, although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (ii) "qualified dividend income" has generally been reduced from 38.6% to 15% (for taxable years beginning after December 31, 2002). In general, dividends payable by REITs are not eligible for the reduced tax rate on corporate dividends, except to the extent the REIT's dividends are attributable to dividends received from taxable corporations (such as our taxable REIT subsidiaries), to income that was subject to tax at the corporate/REIT level (for example, if we distribute taxable income that we retained and paid tax on in the prior taxable year) or to dividends properly designated by us as "capital gain dividends." Although these tax rate changes do not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable treatment of regular corporate dividends could cause investors who are individuals to consider stock of other corporations that pay dividends to be more attractive relative to stock of REITs. The currently applicable provisions of the United States federal income tax laws relating to the 15% tax rate are currently scheduled to "sunset" or revert back to the provisions of prior law effective for taxable years beginning after December 31, 2008, at which time the capital gains tax rate will be increased to 20% and the rate applicable to dividends will be increased to the tax rate then applicable to ordinary income.

### PLAN OF DISTRIBUTION

We may sell the securities to one or more underwriters for public offering and sale by them or may sell the securities to investors directly or through agents. Any such underwriter or agent involved in the offer and sale of the Securities will be named in the applicable prospectus supplement.

Underwriters may offer and sell the securities at a fixed price or prices, which may be changed, at prices relating to the prevailing market prices at the time of sale or at negotiated prices. We also may, from time to time, authorize underwriters acting as our agents to offer and sell the securities upon the terms and conditions as are set forth in the applicable prospectus supplement. In connection with the sale of securities, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of securities for whom they may act as agent. Underwriters may sell securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agent. Any underwriting compensation paid by us to underwriters or agents in connection with the offering of securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the applicable prospectus supplement. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions, under the Securities Act. Any such underwriter or agent will be identified, and such compensation received from us will be described, in the applicable prospectus supplement.

Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification against and contribution toward certain civil liabilities, including liabilities under the Securities Act.

Certain of the underwriters, dealers and agents and their affiliates may be customers of, engage in transactions with and perform services for us and our subsidiaries in the ordinary course of business.

Unless otherwise specified in the related prospectus supplement, each series of securities will be a new issue with no established trading market, other than the common stock. Our common stock is currently listed on the NYSE. Unless otherwise specified in the related prospectus supplement, any shares of common stock sold pursuant to a prospectus supplement will be listed on the NYSE, subject to official notice of issuance. We may elect to list any series of debt securities or preferred stock on an exchange or Nasdaq, but are not obligated to do so. It is possible that one or more underwriters may make a market in a series of securities, but will not be obligated to do so and may discontinue any market making at any time without notice. Therefore, there can be no assurance as to the liquidity of, or the trading market for, the securities.

### STOCKHOLDER RIGHTS PLAN

On June 10, 1998, our Board of Directors declared a dividend distribution of one preferred share purchase right, or right, for each outstanding share of our common stock to stockholders of record at the close of business on July 1, 1998. When exercisable, each right entitles the registered holder to purchase from us one one-hundredth ( $1/100^{\text{th}}$ ) of a share of our Class A Junior Participating Preferred Stock, or Class A Preferred Stock, at a price of \$104.50 per one one-hundredth of a Class A Preferred share, subject to adjustment. Initially, the rights will be attached to all outstanding shares of our common stock, and no separate rights certificates will be distributed. Our Board of Directors also authorized the issuance of one right with respect to each share of our common stock that we issue between June 10, 1998 and the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date (all as defined in the Rights Agreement, dated as of June 25, 1998 between us and

The Bank of New York). Each share of our common stock offered hereby will have upon issuance one right attached.

The rights will become exercisable and will detach from our common stock upon the earlier of (1) the tenth day after the public announcement that any person or group has acquired beneficial ownership of 15% or more of our common stock, or (2) the tenth business day after any person or group commences, or announces an intention to commence, a tender or exchange offer which, if consummated, would result in the beneficial ownership by a person or group of 15% or more of our common stock; the earlier of (1) and (2) is referred to as the Distribution Date. If a person or group acquires beneficial ownership of 15% or more of our outstanding common stock (except pursuant to certain cash tender offers for all outstanding common stock approved by our Board of Directors) or if we are the surviving corporation in a merger and our common stock is not changed or exchanged, each right will entitle the holder, subject to exceptions, to purchase, at the right's then current exercise price, that number of shares of our common stock having a market value equal to twice the exercise price. Similarly, if after the rights become exercisable, we merge or consolidate with, or sell 50% or more of our assets or earning power to, another person, each right will then entitle the holder to purchase, at the right's then current exercise price, that number of shares of the stock of the acquiring company which at the time of such transaction would have a market value equal to twice the exercise price.

The rights may be redeemed in whole, but not in part, at a price of \$0.01 per right by our Board of Directors prior to the time that a person or group has acquired beneficial ownership of 15% or more of our outstanding common stock. The Board of Directors may, under certain circumstances, extend the period during which the rights are redeemable or postpone the Distribution Date. The rights will expire on July 1, 2008, unless earlier redeemed.

For a more complete summary of the terms of the rights, the Rights Agreement and the Class A Preferred Stock, you should review the information in our Form 8-A filed with the SEC on June 26, 1998, which is incorporated by reference in this prospectus. The summary of selected provisions of the rights, the Rights Agreement and the Class A Preferred Stock appearing above and in the Form 8-A is not complete, and those summaries are qualified in their entirety by reference to the Rights Agreement and the articles supplementary establishing the Class A Preferred Stock. You should review the Rights Agreement and the articles supplementary for the Class A Preferred Stock, copies of which may be obtained as described below under "Where You Can Find More Information."

#### **EXPERTS**

The consolidated financial statements and financial statement Schedule III of Realty Income Corporation and subsidiaries as of December 31, 2003 and 2002, and for each of the years in the three-year period ended December 31, 2003, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

#### **LEGAL MATTERS**

The validity of the securities will be passed upon for us by Venable LLP and Latham & Watkins LLP.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information that we have filed at the SEC's public reference rooms. You may read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, N.W., Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. Our SEC filings are also available to the public from commercial document retrieval services and at the web site maintained by the SEC at <http://www.sec.gov>. You may inspect information that we file with The New York Stock Exchange at the offices of The New York Stock Exchange at 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933. This prospectus does not contain all of the information set forth in the registration statement.

**INCORPORATION OF INFORMATION WE FILE WITH THE SEC**

The SEC allows us to "incorporate by reference" the information we file with them, which means:

Incorporated documents are considered part of this prospectus;

We can disclose important information to you by referring you to those documents; and

Information that we file with the SEC will automatically update and supersede this prospectus.

We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934 (the "Exchange Act"):

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

Our Definitive Proxy Statement on Schedule 14A filed on March 10, 2004;

The description of our 8<sup>1</sup>/<sub>4</sub>% Monthly Income Senior Notes contained in our Registration Statement on Form 8-A (File No. 001-13374), including any subsequently filed amendments and reports filed for the purpose of updating the description.

The description of our Class A Junior Participating Preferred Stock Purchase Rights contained in our Registration Statement on Form 8-A (File No. 001-13374) filed on June 26, 1998;

The description of our 9<sup>3</sup>/<sub>8</sub>% Class B Cumulative Redeemable Preferred Stock contained in our Registration Statement on Form 8-A (File No. 001-13374), including any subsequently filed amendments and reports filed for the purpose of updating the description; and

The description of our 9<sup>1</sup>/<sub>2</sub>% Class C Cumulative Redeemable Preferred Stock contained in our Registration Statement on Form 8-A (File No. 001-13374), including any subsequently filed amendments and reports filed for the purpose of updating the description.

If any statement in this prospectus is inconsistent with a statement in one of the incorporated documents referred to above, then the statement in the incorporated document will be deemed to have been superseded by the statement in this prospectus.

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We also incorporate by reference each of the following documents that we will file with the SEC after the date of this prospectus but before the end of the offering:

Reports filed under Sections 13(a) and (c) of the Exchange Act; and

Any reports filed under Section 15(d) of the Exchange Act.

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As described above, we incorporate by reference into the prospectus specified documents that we have filed or may file with the SEC under the Exchange Act. However, no document that we have "furnished" or may in the future "furnish" with the SEC pursuant to the Exchange Act shall be incorporated by reference into the prospectus. You may request a copy of any filings referred to above (excluding exhibits), at no cost, by writing or telephoning us at the following address:

Realty Income Corporation  
Attention: Investor Relations  
220 West Crest Street  
Escondido, CA 92025-1707  
(760) 741-2111

### OTHER INFORMATION

During 2003, Realty Income and Crest Net Lease, acquired 86 properties operated as National Tire and Battery stores. TBC Corporation is the lessee of these 86 properties, referred to as the TBC properties. We acquired the TBC properties for \$135.7 million.

During 2003, Realty Income and Crest Net Lease acquired 114 properties operated as Pantry convenience stores. The Pantry, Inc. is the lessee of these 114 properties, referred to as the Pantry properties. We acquired the Pantry properties for \$94.5 million.

The TBC properties and the Pantry properties were acquired through sales leaseback transactions whereby each portfolio of properties was leased on a long-term basis immediately after acquisition to a single tenant (the seller lessee) under net leases that transfer all of the properties' nonfinancial operating and holding costs to the seller lessee. These acquisitions in the aggregate comprised a majority of the dollar amount of total acquisitions made by us during 2003.

Set forth below is certain condensed financial information of TBC Corporation and The Pantry Inc. which is taken from their annual reports on Form 10-K for the years ended December 31, 2002 and September 25, 2003, respectively, as filed with the SEC under the Securities Exchange Act of 1934, as amended, and their quarterly reports on Form 10-Q for the quarters ended September 30, 2003 and December 25, 2003, respectively, as filed with the SEC.

The information and financial data contained herein concerning TBC Corporation and The Pantry, Inc. was obtained and has been condensed from their public filings under the Exchange Act. Their financial data presented includes only the most recent interim and fiscal year end reporting periods. We can make no representation as to the accuracy and completeness of the public filings of TBC Corporation and The Pantry, Inc. It should be noted that TBC Corporation and The Pantry, Inc. have no duty, contractual or otherwise, to advise us of any events which might have occurred subsequent to the date of such publicly available information which could affect the significance or accuracy of such information.

TBC Corporation and The Pantry, Inc. are subject to the information filing requirements of the Exchange Act, and, in accordance herewith, are obligated to file periodic reports, proxy statements and other information with the SEC relating to its business, financial condition and other matters. Such reports, proxy statements and other information may be inspected at the offices of the SEC at 450 Fifth Street, N.W. Washington D.C., and should also be available at the following Regional Offices of the SEC: Room 1400, 75 Park Place, New York, New York 10007 and Suite 1400, Northwestern Atrium Center, 500 West Madison Street, Chicago, Illinois 60661.



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The following table summarizes the current assets, noncurrent assets, current liabilities, noncurrent liabilities, net sales or total revenue, gross profits, income from continuing operations and net income for TBC Corporation and The Pantry, Inc. as of or for the nine months ended September 30, 2003, and as of and for the three months ended December 25, 2003, respectively, and the most recent fiscal year end (dollars in thousands).

As of or for the:	TBC Corporation Nine months ended September 30, 2003	The Pantry, Inc. Three months ended December 25, 2003
Current assets	\$ 407,153	\$ 194,210
Noncurrent assets	231,481	797,760
Current liabilities	217,631	179,397
Noncurrent liabilities	167,961	678,384
Net sales or total revenue	947,789	751,336
Gross profits	299,259	140,363
Income from continuing operations	23,860	4,937
Net income	23,860	4,937

As of or for the fiscal year ended:	TBC Corporation December 31, 2002	The Pantry, Inc. September 25, 2003
Current assets	\$ 317,773	\$ 200,153
Noncurrent assets	156,098	714,012
Current liabilities	151,157	182,699
Noncurrent liabilities	99,594	602,801
Net sales or total revenue	1,109,663	2,776,361
Gross profits	301,843	510,804
Income from continuing operations	27,382	11,504
Net income	27,382	11,504

**4,600,000 Shares**

**Common Stock**

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**PROSPECTUS SUPPLEMENT**

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**Merrill Lynch & Co.  
A.G. Edwards  
Raymond James  
Wachovia Securities  
Banc of America Securities LLC  
BB&T Capital Markets  
Robert W. Baird & Co.  
Wells Fargo Securities**

March , 2006

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