

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON \_\_\_\_\_, 1995

Registration No. 33- \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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

ALEXANDER'S, INC.  
(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction of incorporation or organization)

51-01-00517  
(IRS employer identification number)

PARK 80 WEST, PLAZA II, SADDLE BROOK, NEW JERSEY 07663  
(201) 587-8541  
(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

JOSEPH MACNOW  
CHIEF FINANCIAL OFFICER  
ALEXANDER'S, INC.  
PARK 80 WEST, PLAZA II, SADDLE BROOK, NEW JERSEY 07663  
(201) 587-8541  
(Name, address, including zip code, and telephone number, including  
area code, of agent for service)

Copy to:

Douglas P. Bartner, Esq.  
Shearman & Sterling  
599 Lexington Avenue  
New York, New York 10022-6069

Approximate date of commencement of proposed sale to the public: FROM TIME TO  
TIME AFTER THE EFFECTIVE DATE OF THIS REGISTRATION STATEMENT AS DETERMINED BY  
MARKET CONDITIONS.

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum aggregate offering price (1)(2)	Amount of registration fee
Common Stock (par value \$1.00 per share)(3) . . . . .			N/A
Preferred Stock (par value \$1.00 per share)(4) . . . . .			N/A
Depository Shares representing Preferred Stock (5) . . . . .			N/A
Debt Securities(6) . . . . .			N/A
Debt Warrants(7) . . . . .			N/A
Total . . . . .	\$ (8)	\$250,000,000(8)(9)	\$86,207(10)

- (1) In U.S. Dollars or the equivalent thereof denominated in one or more foreign currencies or units of two or more foreign currencies or composite currencies (such as European Currency Units).
- (2) Estimated for the sole purpose of computing the registration fee.
- (3) There are being registered hereunder an indeterminate number of shares of Common Stock of the Registrant as may be sold, from time to time, by the Registrant. There are also being registered hereunder an indeterminate number of shares of Common Stock of the Registrant as may be issuable upon conversion of convertible Debt Securities or Preferred Stock registered hereby.
- (4) There are being registered hereunder an indeterminate number of shares of Preferred Stock of the Registrant as may be sold, from time to time, by the Registrant. There are also being registered hereunder an indeterminate number of shares of Preferred Stock of the Registrant as may be issuable upon conversion of convertible Debt Securities registered hereby.
- (5) There are being registered hereunder an indeterminate number of Depository Shares to be evidenced by Depository Receipts issued pursuant to a Deposit Agreement. In the event the Registrant elects to offer to the public fractional interests in Preferred Stock registered hereunder, Depository Receipts will be distributed to those persons purchasing such fractional interests and shares of Preferred Stock will be issued to the Depository under the Deposit Agreement. No separate consideration will be received for the Depository Shares.
- (6) There are being registered hereunder an indeterminate amount of Debt Securities.
- (7) Debt Warrants may be sold separately or with Debt Securities.
- (8) Such amount represents the aggregate offering price of the Debt Securities, Common Stock, Preferred Stock, Depository Shares and Debt Warrants as follows: the principal amount of any Debt Securities issued at their principal amount, the issue price rather than the principal amount of any Debt Securities issued at an original issue discount, the liquidation preference of any Preferred Stock, the amount computed pursuant to Rule 457(c) for any Common Stock, the issue price of any Debt Warrants and the exercise price of any Debt Securities issuable upon the exercise of Debt Warrants.
- (9) No separate consideration will be received for the Debt Securities, Preferred Stock, Common Stock or Depository Shares issuable upon conversion of or in exchange for Debt Securities or Preferred Stock.
- (10) Calculated pursuant to Rule 457(o) of the rules and regulations under the Securities Act of 1933, as amended (the "Securities Act").

-----

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

=====

INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE.

SUBJECT TO COMPLETION, DATED \_\_\_\_\_, 1995

[Alexander's, Inc. Logo]

Prospectus

Debt Securities, Preferred Stock, Depositary Shares, Common  
Stock and Debt Warrants

Alexander's, Inc. (the "Company") may offer from time to time, together or separately, in one or more series (i) debt securities ("Debt Securities"), which may be either senior debt securities (the "Senior Debt Securities") or subordinated debt securities (the "Subordinated Debt Securities"), (ii) shares of preferred stock, \$1.00 par value per share, of the Company ("Preferred Stock"), which may be issued in the form of depositary shares (the "Depositary Shares") evidenced by depositary receipts, (iii) shares of common stock, \$1.00 par value per share, of the Company ("Common Stock") and (iv) warrants to purchase debt securities of the Company as shall be designated by the Company at the time of the offering (the "Debt Warrants") (the Debt Securities, Preferred Stock, Common Stock and Debt Warrants are collectively referred to as the "Securities"), at an aggregate initial offering price not to exceed U.S. \$250,000,000, in amounts, at prices and on terms to be determined at the time of sale. The Debt Securities, Preferred Stock, Common Stock and Debt Warrants may be offered separately or together, in separate series in amounts, at prices and on terms to be set forth in a supplement to this Prospectus (a "Prospectus Supplement").

The accompanying Prospectus Supplement will set forth with regard to the particular Securities in respect of which this Prospectus is being delivered (i) in the case of Debt Securities, the title, aggregate principal amount, denominations (which may be in United States dollars, or in any other currency, currencies or currency unit, including the European Currency Unit), maturity, rate, if any (which may be fixed or variable), or method of calculation thereof, time of payment of any interest, any terms for redemption at the option of the Company or the Holder, any terms for sinking fund payments, rank, any conversion or exchange rights, any listing on a securities exchange, and the initial public offering price and any other terms in connection with the offering and sale of such Debt Securities, (ii) in the case of Preferred Stock, the specific title, the aggregate amount and the stated value, any dividend (including the method of calculating the payment of dividend), liquidation, redemption, conversion, voting or other rights and the initial public offering price, (iii) in the case of Common Stock, the number of shares of Common Stock, the initial offering price and the terms of the offering thereof and (iv) in the case of Debt Warrants, the duration, purchase price, exercise price and detachability of such Debt Warrants. The Prospectus Supplement will also contain information, as applicable, about certain United States federal income tax considerations relating to the Securities in respect of which this Prospectus is being delivered.

The shares of Common Stock of the Company are listed on the New York Stock Exchange ("NYSE") under the symbol "ALX".

The Company intends to qualify as a real estate investment trust ("REIT") for federal income tax purposes for the year ending December 31, 1995.

SEE "RISK FACTORS" BEGINNING ON PAGE 5 HEREIN FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CAREFULLY CONSIDERED BY PROSPECTIVE INVESTORS IN THE SECURITIES.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

The Company may sell Securities to or through underwriters, and also may sell Securities directly to other purchasers or through agents. The accompanying Prospectus Supplement will set forth the names of any underwriters or agents involved in the sale of the Securities in respect of which this Prospectus is being delivered, the amounts of Securities, if any, to be

purchased by underwriters and the compensation, if any, of such underwriters or agents. See "Plan of Distribution" herein.

The date of this Prospectus is \_\_\_\_\_, 1995.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS OR THE ACCOMPANYING PROSPECTUS SUPPLEMENT IN CONNECTION WITH THE OFFER CONTAINED IN THIS PROSPECTUS AND THE ACCOMPANYING PROSPECTUS SUPPLEMENT AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY OR ANY UNDERWRITERS, AGENTS OR DEALERS. THIS PROSPECTUS AND THE ACCOMPANYING PROSPECTUS SUPPLEMENT DO NOT CONSTITUTE AN OFFER TO SELL OR SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION. NEITHER THE DELIVERY OF THIS PROSPECTUS AND THE ACCOMPANYING PROSPECTUS SUPPLEMENT NOR ANY SALE OF OR OFFER TO SELL THE SECURITIES OFFERED HEREBY SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY AND ITS SUBSIDIARIES SINCE THE RESPECTIVE DATES OF THIS PROSPECTUS AND THE ACCOMPANYING PROSPECTUS SUPPLEMENT OR THAT THE INFORMATION CONTAINED IN THIS PROSPECTUS OR THE ACCOMPANYING PROSPECTUS SUPPLEMENT IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE RESPECTIVE DATES OF THIS PROSPECTUS AND THE ACCOMPANYING PROSPECTUS SUPPLEMENT.

#### AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The reports, proxy statements and other information filed by the Company with the Commission can be inspected and copied at the Commission at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the following regional offices of the Commission: 7 World Trade Center, 13th Floor, New York, New York 10048 and Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. Copies of such information can be obtained from the Public Reference Section of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. The Company's Common Stock is listed on the New York Stock Exchange ("NYSE") and similar information can be inspected and copied at the NYSE, 20 Broad Street, 17th Floor, New York, New York 10005.

This Prospectus constitutes a part of a registration statement on Form S-3 (the "Registration Statement") filed by the Company with the Commission under the Securities Act of 1933, as amended (the "Securities Act"). As permitted by the rules and regulations of the Commission, this Prospectus omits certain of the information contained in the Registration Statement and reference is hereby made to the Registration Statement and related exhibits for further information with respect to the Company and the Securities offered hereby. Statements contained herein concerning the provisions of any documents filed as an exhibit to the Registration Statement or otherwise filed with the Commission are not necessarily complete, and in each instance reference is made to the copy of such document so filed. Each such statement is qualified in its entirety by such reference.

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The Company's Annual Report on Form 10-K and its Form 10-K/A for the fiscal year ended December 31, 1994, Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 1995 and June 30, 1995 and Current Reports on Form 8-K dated January 4, 1995 and February 6, 1995 have been filed by the Company with the Commission and are hereby incorporated by reference into this Prospectus. All other documents and reports filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act from the date of this Prospectus and prior to the termination of the offering of the Securities shall be deemed to be incorporated by reference herein and shall be deemed to be a part hereof from the date of the filing of such reports and documents (provided, however, that the information referred to in item 402(a)(8) of Regulation S-K of the Commission shall not be deemed specifically incorporated by reference herein).

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement

contained herein or in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Company will provide without charge to each person to whom a copy of this Prospectus is delivered, on written or oral request of such person, a copy of any or all documents which are incorporated herein by reference (not including the exhibits to such documents, unless such exhibits are specifically incorporated by reference in the document which this Prospectus incorporates). Requests should be directed to the Secretary of the Company, Park 80 West, Plaza II, Saddle Brook, New Jersey 07663, telephone number (201) 587-8541.

#### TABLE OF CONTENTS

Available Information . . . . .	2
Incorporation of Certain Documents by Reference . . . . .	2
The Company . . . . .	4
Risk Factors . . . . .	5
Recent Developments . . . . .	11
Use of Proceeds . . . . .	12
Consolidated Ratio of Earnings to Fixed Charges . . . . .	12
Description of Debt Securities . . . . .	12
Description of Capital Stock . . . . .	20
Description of Debt Warrants . . . . .	31
Certain Federal Income Tax Considerations . . . . .	32
Plan of Distribution . . . . .	43
Experts . . . . .	44
Validity of the Securities . . . . .	44

## THE COMPANY

The Company is a real estate company engaged in leasing, managing, developing and redeveloping properties, focusing primarily on the properties where its department stores were formerly located. These department stores ceased operating in 1992 and are on properties located in New York City and Bergen County, New Jersey (the "New York Area"). The Company believes that its properties offer advantageous retail opportunities, principally because of their size and location in areas where comparable store sites are not readily available.

The Company seeks to increase its income and property values by strategically renovating, expanding and developing its properties. The Company's general strategy is to lease each of its properties to large-space users, typically national or large regional retailers, under long-term leases (generally 20 years or longer) which provide the Company with fixed rents and also with periodic rent increases (generally every five years). These leases also generally require the tenant to pay, or reimburse the Company, for common area charges (including roof and structure costs), real estate taxes, insurance costs and certain capital expenditures.

The Company's real estate portfolio consists of the following nine properties, four of which are currently operating (the "Operating Properties") and five of which are currently being or will be redeveloped (the "Redevelopment Properties"):

Property -----	Location -----	Leasable Building Square Footage -----
Operating Properties:		
Fordham Road	Bronx, NY	303,000
Flushing	Queens, NY	177,000
Third Avenue	Bronx, NY	173,000
Kings Plaza Mall (1)	Brooklyn, NY	427,000
Redevelopment Properties:		
Rego Park I	Queens, NY	359,000
Rego Park II	Queens, NY	---(2)---
Kings Plaza Store	Brooklyn, NY	320,000
Paramus	Paramus, NJ	---(3)---
Lexington Avenue (4)	New York, NY	418,000

- 
- (1) The Company owns a 50% interest in this property.
  - (2) This property consists of 287,500 square feet of vacant land in approximately one and one-half square blocks adjacent to the Rego Park I Property.
  - (3) This property consists of approximately 39 acres. A portion of this property is subject to condemnation. See "Risk Factors -- Real Estate Investment Risks."
  - (4) The Company owns the general partnership interest and 92% of the limited partnership interests in this property.

The Fordham Road Property and the Flushing Property are 100% leased to The Caldor Corporation ("Caldor") and the Third Avenue Property is 100% leased to a subsidiary of Conway Stores, Inc. The Kings Plaza Mall is 88% leased to over 100 tenants. The Rego Park I Property has been entirely pre-leased to Sears, Roebuck & Company, Marshalls, Inc. and Caldor and the commencement of such tenants' leases is conditioned upon the completion of certain improvements which are under construction and are expected to be completed by March 1996. The Company is in discussions with prospective tenants for the remaining Redevelopment Properties. See "Risk Factors -- Real Estate Investment Risks -- Dependence on Rental Income and Concentration of Rental Income with Certain Lessees; Bankruptcy of Major Tenant."

Vornado Realty Trust ("Vornado"), a NYSE-listed REIT and major stockholder of the Company, manages the properties and business affairs of the Company and acts as the Company's exclusive leasing agent pursuant to agreements with the Company. Steven Roth, Chief Executive Officer and a director of the Company, is also the Chairman and Chief Executive Officer of Vornado. See "Risk Factors -- Control-Related Risks; Possible Conflicts of Interest."

In May 1992, at a time when the Company's business consisted of retail store operations, the Company and its subsidiaries filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). In September 1993, the Bankruptcy Court confirmed the Joint Plan of Reorganization (the "Plan"), pursuant to which the Company and its subsidiaries reorganized their business as a real estate company. The Company has consummated the Plan and has complied with all of its obligations thereunder. Pursuant to the Plan, (i) all holders of allowed general unsecured claims were paid in full, together with accrued interest in respect of their claims and (ii) all holders of allowed secured claims received one hundred percent of their claims through the issuance of new secured debt instruments or by payment in cash or a combination thereof. The Bankruptcy Court has retained jurisdiction to resolve the remaining disputed claims and for other limited purposes.

The Company is a Delaware corporation whose earliest predecessor corporation was organized in 1928. The Company intends to file, with its federal income tax return for 1995, an election to be treated as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"), effective for 1995.

The Company's principal executive offices are located at Park 80 West, Plaza II, Saddle Brook, New Jersey 07663; telephone (201) 587-8541.

#### RISK FACTORS

Prospective purchasers of the Securities should consider carefully the factors set forth below, as well as any other applicable risk factors that may be set forth in the accompanying Prospectus Supplement, before purchasing the Securities offered hereby.

#### HIGH LEVERAGE; DEFICIENCY OF EARNINGS TO FIXED CHARGES; EFFECT OF ENCUMBRANCES; COVENANT RESTRICTIONS

The Company has significant debt service obligations. The Company borrowed \$126,611,000 during the six months ended June 30, 1995 (the "1995 Financings") and at June 30, 1995, the Company's long-term debt was \$161,893,000. For the six months ended June 30, 1995, the Company's deficiency of earnings to cover fixed charges was \$9,210,000. The Company also had a deficiency in net assets of \$26,277,000 at June 30, 1995. The Company's ability to operate as a viable real estate company will depend on the successful and timely completion of the development and leasing of the Redevelopment Properties, which will materially affect the Company's ability to meet its debt service requirements.

Under the 1995 Financings, the Company granted certain lenders mortgages on all of the Company's assets and/or pledges of the stock of the Company's subsidiaries owning assets and/or guarantees of such subsidiaries and the Company. If the Company becomes insolvent or is liquidated, or if its indebtedness is accelerated, the lenders under the 1995 Financings will be entitled to payment in full from the proceeds of their security prior to the payment to Holders of Securities. In such event, it is possible that there would be no assets remaining from which claims of Holders of Securities could be satisfied or, if any assets remain, such assets may be insufficient to satisfy fully such claims.

The 1995 Financing documents contain certain restrictive covenants. Such restrictions affect, and in many respects significantly limit or prohibit, among other things, the ability of the Company and certain of its subsidiaries to incur indebtedness, make prepayments of certain indebtedness, pay dividends, make investments, engage in transactions with affiliates, issue or sell capital stock of subsidiaries, create liens, sell assets, acquire or transfer property and engage in mergers and consolidations. The covenants may significantly limit the Company's (and such subsidiaries') operating and financial flexibility and there can be no assurance that such restrictions will not adversely affect the Company's (and such subsidiaries') ability to finance future operations or capital needs or to engage in other business activities which may be beneficial to the Company. Additional restrictive covenants may be created with respect to a particular series of Securities and will be set forth in the applicable Prospectus Supplement.



The Company believes that it and its subsidiaries will be able to comply with such covenants and other restrictions; however, there can be no assurance of such compliance. In the event of a default under the terms of any indebtedness of the Company, the obligees thereunder would be permitted to accelerate the maturity of such obligations, which may cause defaults under other obligations of the Company, including Securities issued pursuant to this Registration Statement. In such circumstances, Holders of such Securities may be forced to accelerate the maturity of such Securities to protect their interests at a time when it would not otherwise be in their interest to do so. Further, such defaults could be expected to delay or preclude payment of principal of and/or interest on such Debt Securities.

#### NEED FOR ADDITIONAL FINANCING

The Company's current Operating Properties do not generate sufficient cash flow to pay all of its operating expenses and satisfy debt service obligations. The Company estimates that the net proceeds from the 1995 Financings will be adequate to fund the Company's business operations and debt service obligations into the first quarter of 1996 and the cost to redevelop the Rego Park I Property. The Company will require significant additional financing to meet its development plans for its other properties and to pay its debt obligations. There can be no assurance that the Company will be able to secure such financing on satisfactory terms, or at all, to fund its financing needs.

#### HOLDING COMPANY STRUCTURE

Since substantially all of the Company's operations are conducted, and substantially all of the Company's assets are owned, by its subsidiaries, the Securities will effectively be subordinated to all existing and future liabilities of the Company's subsidiaries, including the subsidiaries' guarantees of indebtedness incurred under the 1995 Financings. Any right of the Company to participate in any distribution of the assets of any of the Company's subsidiaries upon the liquidation, reorganization or insolvency of such subsidiary (and any consequent right of the Holders of the Securities to participate in those assets) will be subject to the claims of the creditors (including trade creditors) and preferred stockholders, if any, of such subsidiary, except to the extent the Company has a claim against such subsidiary as a creditor of such subsidiary. The Company has expressly subordinated certain of its claims against its subsidiaries to the subsidiaries' guarantees of indebtedness incurred under the 1995 Financings. In addition, in the event that claims of the Company as a creditor of a subsidiary are recognized, such claims would be subordinate to any security interest in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by the Company.

The Company's ability to make required principal and interest payments with respect to its indebtedness, including any Debt Securities, depends on the earnings of its subsidiaries and on its ability to receive funds from such subsidiaries through dividends or other payments. Since the Securities are obligations of the Company only, the Company's subsidiaries are not obligated or required to pay any amounts due pursuant to the Securities or to make funds available therefor in the form of dividends or advances to the Company.

#### REAL ESTATE INVESTMENT RISKS

##### General

Real property investments are subject to varying degrees of risk. The Company's success will be affected by, among other factors, the trends of the national and local economies, the financial condition and operating results of current and prospective tenants, the availability and cost of capital, interest rate levels, construction and renovation costs, income tax laws, governmental regulations and legislation, population trends, the market for real estate properties in the New York Area, competition from other available space, zoning laws, potential liability under environmental and other laws and the ability of the Company to lease or sublease its properties at profitable levels.

#### Dependence on Rental Income and Concentration of Rental Income with Certain Lessees; Bankruptcy of Major Tenant

As substantially all of the Company's income is derived from rentals of real property, the Company's results of operations will depend on its ability to lease space in its real estate properties on economically favorable terms.

Although none of the Company's leases are cancelable by the lessee in the event of default by such lessee, the Company may experience delays in enforcing its rights as lessor or sublessor and may incur substantial costs in protecting its investment if the lessee defaults under its lease. In addition, certain significant expenditures associated with real estate investments (such as mortgage payments, real estate taxes and maintenance costs) are generally not reduced when circumstances (such as vacancies or the inability of tenants to meet their obligations) cause a reduction in income from the investment. Should such events occur, the Company's income and cash flows would be adversely affected. The Company's properties are mortgaged to secure payment of indebtedness, and if the Company were unable to meet its mortgage payments, a loss could be sustained as a result of a foreclosure on its property by the mortgagee.

The Company's income and cash flows would be adversely affected if a significant number of the Company's lessees (or a lessee accounting for a significant portion of the Company's rental income) were unable to meet their obligations to the Company. Property rentals from leases with Caldor and the Conway affiliate represented approximately 63% and 13%, respectively, of the Company's consolidated revenues for the year ended December 31, 1994 and approximately 65% and 13%, respectively, of the Company's consolidated revenues for the six months ended June 30, 1995. The Company believes that the loss of either of these tenants would have a material adverse effect on the Company. Caldor's filing of petitions for relief under Chapter 11 of the United States Bankruptcy Code on September 18, 1995 may lead to the termination of, or default under, such leases with Caldor. See "Recent Developments."

#### Limited Number of Properties; Geographic Concentration

The Company concentrates on the development and leasing of its nine real estate properties, which are located in the New York Area and are subject to fluctuations in the real estate market of, and economic conditions particular to, the New York Area. As a result, the Company's results of operations are dependent upon the success of a limited number of properties and upon the demand for retail space in its market area. There can be no assurance that local economic conditions will be favorable to the Company's operations. An adverse development effecting any one of the Company's properties could have a material adverse effect on the Company's financial condition or results of operations.

#### Condemnation

The State of New Jersey has notified the Company of its intention to condemn approximately ten acres or 25% of the Paramus Property in connection with the redesign of a highway intersection. The New Jersey Department of Transportation ("DOT") has recently made an offer to the Company to purchase the land which is the subject of the condemnation proceeding for \$15,400,000 based on an appraisal performed on the DOT's behalf. The Company expects to continue negotiations with the DOT to attempt to reach agreement on the value. In the event that the Company and the DOT do not reach agreement on the value, a formal process will be initiated by the DOT, pursuant to which, among other things, a group of independent commissioners will be appointed by a court to determine fair market value. If the condemnation occurs, the Company will be required to change its development plans and the time and cost to develop the Paramus Property may materially increase.

In addition, the Company believes that a portion of the Lexington Avenue Property is being considered, along with a number of other locations, by the Port Authority of New York and New Jersey (the "Port Authority") for the site of the terminus for a rail link from midtown Manhattan to LaGuardia and Kennedy Airports. If the

project proceeds and the Port Authority selects a portion of the Lexington Avenue Property for such use and can establish that it is needed to serve a public use, benefit or purpose, the Port Authority, after conducting the requisite public hearings, may acquire such portion of the Lexington Avenue Property pursuant to its powers of eminent domain. Since the nature and scope of any plans being considered by the Port Authority, and whether any such plans would ultimately affect the Lexington Avenue Property, cannot be fully assessed by the Company at this time, it is impossible to determine the ultimate effect that a taking, or any uncertainty with respect thereto, would have on the Company's use or development of the Lexington Avenue Property.

#### Environmental Matters

Under various federal, state and local laws, ordinances and regulations, an owner or operator of real property may be liable for the costs of removal or remediation of hazardous substances located on, under or in such property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances and the liability may continue after the sale or other disposition of the contaminated property. Other federal and state laws require the removal or encapsulation of asbestos-containing material in the event of remodeling, renovation or demolition. Other statutes may require the removal of underground storage tanks that are out of service or out of compliance. Although compliance with applicable provisions of federal, state and local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment has not had a material effect on the Company's financial condition or results of operations, there can be no assurance that such compliance will not have such an effect in the future.

In September 1993, the Company had Phase I environmental assessments (which generally involve site and records inspection without soil or groundwater sampling) performed by an environmental engineering firm on each of its properties. The results of the assessments at the Kings Plaza property show that certain adjacent properties owned by third parties have experienced petroleum hydrocarbon contamination. Based on this assessment and additional investigation of the Kings Plaza property and historical operations at the site, the Company believes there is a potential for hydrocarbon contamination on the Kings Plaza property. However, no contamination has been found on the property to date. If contamination is found on the property, the Company may be required to engage in remediation activities.

In addition, there can be no assurance that the identification of new areas of contamination, changes in the known scope of contamination, the discovery of additional sites, or changes in cleanup requirements would not result in material costs to the Company. The process of investigating and remediating environmental contamination is lengthy and subject to the uncertainties of changing legal requirements, developing technology and the allocation of liability among potentially liable parties. The presence of contamination, or the failure to properly remediate contamination, may also adversely affect the Company's ability to borrow money using such real property as collateral or to sell such property.

#### Uninsured Loss

The Company carries commercial liability, fire, flood, extended coverage and rental loss insurance with respect to its properties and with policy specifications and insured limits and deductibles customarily carried for similar properties. There are, however, certain types of losses that are generally not insured either because they are uninsurable or not economically insurable. Should an uninsured loss occur, the Company could lose both its invested capital in and anticipated profits from the property and would continue to be obligated to repay any mortgage indebtedness on the property. Any such loss could adversely affect the profitability and cash flow of the Company. The Company believes its properties are adequately insured in accordance with industry standards.

## LIMITED FINANCIAL AND OPERATING HISTORY; NONCOMPARABILITY OF FINANCIAL INFORMATION

Prior to May 1992, the Company operated a retail department store business. Accordingly, the Company has a limited operating history as a real estate company upon which prospective investors may evaluate its performance. Information reflecting the results of operations and financial condition of the Company for periods subsequent to May 1992 are not comparable to information for the periods prior to such date due to (i) the termination of the Company's retail operations, including the sale of the Company's retail inventory, and the Company's transition to real estate operations and (ii) the Company's bankruptcy case, including the costs and expenses relating to the administration thereof, and the payment of the Company's liabilities as a result thereof. In addition, because the Company is in the development phase of its real estate business, the results of operations since May 1992 may not be indicative of the Company's future performance.

## CONTROL-RELATED RISKS; POSSIBLE CONFLICTS OF INTEREST

Vornado owns 29.3% of the outstanding Common Stock of the Company, including 27.1% purchased in March 1995. Interstate Properties, a New Jersey general partnership ("Interstate"), which owns an additional 27.1% of the outstanding Common Stock of the Company, owns 27.7% of the outstanding common shares of beneficial interest of Vornado. Steven Roth, Chief Executive Officer and a Director of the Company, is also Chairman of the Board and Chief Executive Officer of Vornado, and the Managing General Partner of Interstate. Mr. Roth, David Mandelbaum, Richard R. West and Russell B. Wight, members of the Company's Board of Directors, are also Trustees of Vornado. Messrs. Roth, Mandelbaum and Wight are the three partners of Interstate. Messrs. Roth, Mandelbaum and Wight and Interstate own, in the aggregate, 32.6% of the outstanding Common Shares of beneficial interest of Vornado. Further, Vornado has provided the Company with a loan to finance its operations in the principal amount of \$45,000,000 (the subordinate portion of a \$75,000,000 facility, the balance of which was provided by an unaffiliated bank). The loan is secured by liens on substantially all of the Company's properties.

Based on the foregoing, Mr. Roth, Interstate Properties and Vornado (collectively, the "Principal Stockholders") may have substantial influence on the Company and on the outcome of any matters submitted to the Company's stockholders for approval. In addition, certain decisions concerning the operations or financial structure of the Company may present conflicts of interest between the Principal Stockholders and the Holders of the Securities. For example, if the Company encounters financial difficulties, or is unable to pay its debts as they mature, the interests of the Principal Stockholders might conflict with those of the Holders of the Securities. In addition, the Principal Stockholders may have an interest in pursuing acquisitions, divestitures, financings or other transactions that, in their judgment, could enhance their equity investment, even though such transactions might involve risk to the Holders of the Securities. Interstate Properties, Vornado and Mr. Roth engage in a wide variety of activities in the real estate business which may result in conflicts of interest with respect to certain matters affecting the Company, such as potential business opportunities, business dealings between the Company, Interstate Properties and Vornado and their affiliates, demands on the time of Mr. Roth and certain of the executive officers of Vornado, changes of existing arrangements between Mr. Roth, the Company and Vornado (such as the Management and Development Agreement, dated February 6, 1995 (the "Management and Development Agreement") and the Retention Agreement, dated July 20, 1992 (the "Retention Agreement")), potential competition between business activities conducted, or sought to be conducted, by the Company, Vornado and Interstate Properties (including competition for properties and tenants), possible corporate transactions, and other strategic decisions affecting the Company in the future. Neither Mr. Roth nor Vornado is obligated to present to the Company any particular investment opportunity which comes to their attention, even if such opportunity is of a character which might be suitable for investment by the Company.

## RELIANCE ON KEY PERSONNEL AND AGREEMENTS WITH VORNADO

The Company believes that the continued services of Steven Roth, the Company's Chief Executive Officer, are important to the Company's future success. Although Mr. Roth has a significant ownership interest in the Company, there is no assurance that he will remain with the Company. In addition, the Company has retained Vornado pursuant to the Management and Development Agreement, to manage all of the Company's business affairs and to manage and develop the Company's properties, and pursuant to the Retention Agreement, to act as the Company's exclusive leasing agent with respect to all of the Company's properties. If, for any reason, Mr. Roth and Vornado do not continue to be active in the Company's management, the Company's operations could be adversely affected.

## CHANGES IN OPERATING OR INVESTMENT STRATEGY

The Company's operating and investment strategy and its policies with respect to certain other activities, including growth, capitalization, distributions and REIT status, will be determined by the Board of Directors of the Company. The Board of Directors may amend or revise these policies from time to time at their discretion without a vote of the stockholders of the Company.

## POSSIBILITY OF THE FAILURE TO QUALIFY OR REMAIN QUALIFIED AS A REIT

The Board of Directors of the Company has determined that the Company should take the necessary actions to qualify as a REIT for federal income tax purposes under the Code. Although management believes that the Company will be organized and will operate in such a manner as to so qualify, no assurance can be given that it will qualify or remain so qualified. Future economic, market, legal, tax or other considerations may cause management to determine that it is in the best interest of the Company and its stockholders to revoke the REIT election. Qualification as a REIT for federal income tax purposes involves the application of highly technical and complex Code provisions for which there are only limited judicial or administrative interpretations, and the determination of various factual matters and circumstances not entirely within the control of the Company may affect its ability to qualify as a REIT. In addition, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not significantly change the tax laws with respect to the requirements for qualification as a REIT or the federal income tax consequences of such qualification. The Company, however, is not aware of any proposal to amend the tax laws that would significantly and adversely affect its ability to operate in such a manner as to qualify as a REIT.

In order to qualify and maintain its qualification as a REIT for federal income tax purpose, the Company is required, among other distribution requirements, to distribute as dividends on shares of Common Stock and/or Preferred Stock at least 95% of its "real estate investment trust taxable income." As of December 31, 1994, the Company had reported net operating loss ("NOL") carryovers of approximately \$110 million, which generally would be available to offset the amount of real estate investment trust taxable income that the Company otherwise would be required to distribute. However, the NOLs reported on the Company's tax returns are not binding on the Internal Revenue Service (the "IRS") and are subject to adjustment as a result of future IRS audits. In addition, under Section 382 of the Code, the Company's ability to use its NOL carryovers could be limited if, generally, there were significant changes in the ownership of its outstanding stock. Since its reorganization as a REIT, the Company has not paid regular dividends and, unless otherwise provided in an applicable Prospectus Supplement, does not believe that it will be required to and may not pay regular dividends until its NOL carryovers have been fully utilized on any Common Stock or Preferred Stock issued pursuant to this Prospectus except for dividends on Preferred Stock as described in any applicable Prospectus Supplement.

## ANTI-TAKEOVER EFFECTS OF PROVISIONS OF THE CERTIFICATE OF INCORPORATION AND BY-LAWS

Certain provisions of the Certificate of Incorporation and the By-laws of the Company may be deemed to have anti-takeover effects and may discourage or make more difficult a takeover attempt that a stockholder might consider in its best interest. The Certificate of Incorporation provides that the Board of Directors of the Company be divided into three classes serving staggered three-year terms and that the number of directors will be no greater

than seventeen or less than three. The classes of directors are as nearly equal in number as possible. Accordingly, approximately one-third of the Company's Board of Directors will be elected each year. The By-laws provide that any vacancies on the Board of Directors may only be filled by the remaining directors and not by the stockholders. This precludes stockholders from removing incumbent directors without cause and filling the resulting vacancies with their own nominees. These provisions, among other things, limit the ability of the stockholders to amend or repeal the By-laws or certain provisions of the Certificate of Incorporation.

Additionally, for the Company to qualify as a REIT under the Code, not more than 50% of the value of the outstanding stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year and the stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (or during a proportionate part of a shorter taxable year). Accordingly, the Certificate of Incorporation contains provisions that restrict the ownership and transfer of shares of capital stock. The Certificate of Incorporation also contains provisions that restrict the ownership and transfer of shares of capital stock to reduce the risk that the Company's ability to use its NOLs would be limited.

#### RECENT DEVELOPMENTS

On September 18, 1995, Caldor filed for relief under Chapter 11 of the United States Bankruptcy Code. Caldor leases from the Company its Fordham Road and Flushing Properties. Property rentals from these two leases represented approximately 63% of the Company's consolidated revenues for the year ended December 31, 1994 and approximately 65% of the Company's consolidated revenues for the six months ended June 30, 1995. Caldor is also the lessee of a portion of the Rego Park I Property under a lease expected to commence upon the completion of the redevelopment of this property planned for March 1996. The loss of property rental payments under any of these leases with Caldor could have a material adverse effect on the financial condition and results of operations of the Company.

Caldor has reported to the Company store sales of \$48,658,000 and \$42,047,000 for the Fordham Road Property and the Flushing Property, respectively, for the lease years ending March 31, 1995. Management of the Company believes that each of these stores is among the 10 highest volume stores of Caldor. Caldor leased these properties "as is" and expended the entire cost of refurbishing these stores.

Under the terms of a \$25,000,000 loan to the Company, secured by a mortgage on the Fordham Road Property (the "Fordham Loan"), the failure of Caldor to meet certain financial tests may result in the Company being required to escrow net cash flow of approximately \$500,000 per annum from the Fordham Road Property into an account of the lender as a reserve against future payments under the loan.

## USE OF PROCEEDS

Except as otherwise provided in the applicable Prospectus Supplement, the Company anticipates that the net proceeds of the sales of the Securities will be used for general corporate purposes which may include, without limitation, development of the Company's Redevelopment Properties and repayment of outstanding indebtedness.

## CONSOLIDATED RATIO OF EARNINGS TO FIXED CHARGES

For purposes of calculating the following ratios, (i) earnings represent income from continuing operations before income taxes, plus fixed charges, and (ii) fixed charges represent interest expense on all indebtedness from continuing operations (including the Company's 50% share of interest expense in the Kings Plaza Mall and amortization of deferred debt issuance costs) and the portion of operating lease rental expense that is representative of the interest factor (deemed to be one-third of operating lease rentals). There were no shares of Preferred Stock outstanding during any of the periods below indicated and therefore the ratio of earnings to combined fixed charges and preferred share dividend requirements would have been the same as the ratio of earnings to fixed charges for each period indicated.

	Six Months Ended	Year Ended		Five Months Ended (1)		Fiscal Year Ended		
	June 30, 1995	Dec. 31, 1994	Dec. 31, 1993	Dec. 31, 1993	July 31, 1993 (2)	July 25, 1992	July 27, 1991	July 28, 1990
Ratio of earnings to fixed charges:	--	1.39	4.68	2.49	21.89(3)	--	--	2.35
Deficiency in earnings available to cover fixed charges:	9,210,000	--	--	--	--	14,630,000	300,000	--

(1) In November 1993, the Company changed to a calendar year from a fiscal year ending on the last Saturday in July.

(2) Includes 53 weeks.

(3) This amount includes a gain on the sale of leases of \$28,779,000, without which the Company would have had a deficiency in earnings to cover fixed charges of \$1,628,000.

## DESCRIPTION OF DEBT SECURITIES

The Debt Securities may be issued from time to time in one or more series. The particular terms of each series of Debt Securities offered by any Prospectus Supplement or Prospectus Supplements will be described therein. The Senior Debt Securities are to be issued under an Indenture (the "Senior Indenture") between the Company and State Street Bank & Trust Company, N.A., as trustee (the "Senior Trustee"). The Subordinated Debt Securities are to be issued under a separate Indenture (the "Subordinated Indenture") between the Company and State Street Bank & Trust Company, N.A., as trustee (the "Subordinated Trustee"). The Senior Indenture and the Subordinated Indenture are sometimes referred to collectively as the "Indentures" and the Senior Trustee and Subordinated Trustee are sometimes referred to collectively as the "Trustees."

The following summaries of certain provisions of the Senior Debt Securities, the Subordinated Debt Securities, the Senior Indenture and the Subordinated Indenture, as modified or superseded by any applicable Prospectus Supplement, are brief summaries of certain provisions thereof, do not purport to be complete and are subject, and are qualified in their entirety by reference, to all the provisions of the Indenture applicable to a particular series of Debt Securities. Wherever particular Sections, Articles or defined terms of the Indentures are referred to herein or in a Prospectus Supplement, such Sections, Articles or defined terms are incorporated herein or therein by reference.

Unless otherwise specified in the applicable Prospectus Supplement, the Debt Securities will be general unsecured obligations of the Company. The Indentures do not limit the aggregate amount of Debt Securities which may be issued thereunder, and Debt Securities may be issued thereunder from time to time in separate series up to the aggregate amount from time to time authorized by the Company for each series. Unless otherwise specified in the Prospectus Supplement, the Senior Debt Securities when issued will be unsubordinated obligations of the Company and will rank equally and ratably with all other unsecured and unsubordinated indebtedness of the Company. The Subordinated Debt Securities when issued will be subordinated in right of payment to the prior payment in full of all Senior Debt (as defined in the Subordinated Indenture) of the Company as described below under "-- Subordination of Subordinated Debt Securities" and in the Prospectus Supplement applicable to an offering of Subordinated Debt Securities.

The applicable Prospectus Supplement or Prospectus Supplements will describe the following terms of the series of Debt Securities in respect of which this Prospectus is being delivered: (1) the title of such Debt Securities; (2) any limit on the aggregate principal amount of such Debt Securities; (3) the person to whom any interest on any Debt Security of the series shall be payable if other than the person in whose name the Debt Security is registered on the regular record date; (4) the date or dates on which such Debt Securities will mature; (5) the rate or rates of interest, if any, or the method of calculation thereof, which such Debt Securities will bear, the date or dates from which any such interest will accrue, the interest payment dates on which any such interest on such Debt Securities will be payable and the regular record date for any interest payable on any interest payment date; (6) the place or places where the principal of, premium, if any, and interest on such Debt Securities will be payable; (7) the period or periods within which, the events upon the occurrence of which, and the price or prices at which, such Debt Securities may, pursuant to any optional or mandatory provisions, be redeemed or purchased, in whole or in part, by the Company and any terms and conditions relevant thereto; (8) the obligations of the Company, if any, to redeem or repurchase such Debt Securities pursuant to any sinking fund provision or analogous provision or at the option of the Holders and the period or periods within which, and the other terms and conditions upon which, such Debt Securities shall be redeemed, repaid or repurchased, in whole or in part, pursuant to such obligations; (9) the denominations in which any such Debt Securities will be issuable, if other than denominations of \$1,000 and any integral multiple thereof; (10) any index or formula used to determine the amount of payments of principal of and any premium and interest on such Debt Securities; (11) the currency, currencies or currency unit or units of payment of principal of and any premium and interest on such Debt Securities if other than U.S. dollars; (12) if the principal of, or premium, if any, or interest on such Debt Securities is to be payable, at the election of the Company or a Holder thereof, in one or more currencies or currency units other than that or those in which such Debt Securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of and any premium and interest on Debt Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made; (13) if other than the principal amount thereof, the portion of the principal amount of such Debt Securities of the series which will be payable upon acceleration of the maturity thereof; (14) if the principal amount of any Debt Securities which will be payable at the maturity thereof will not be determinable as of any date prior to such maturity, the amount which will be deemed to be the outstanding principal amount of such Debt Securities; (15) the applicability of any provisions described below under "Defeasance"; (16) whether any of such Debt Securities are to be issuable in permanent global form ("Global Security") and, if so, the terms and conditions, if any, upon which interests in such Securities in global form may be exchanged, in whole or in part, for the individual Debt Securities represented thereby; (17) the applicability of any covenant with respect to such Debt Securities and the applicability of any provisions described below under "Events of Default" and any additional Events of Default applicable thereto; (18) any covenants applicable to such Debt Securities; (19) the terms and conditions, if any, pursuant to which the Debt Securities are convertible or exchangeable into shares of Common Stock or other securities; and (20) any other terms of such Debt Securities not inconsistent with the provisions of the Indentures. (Section 301) Debt Securities may also be issued under the Indentures upon the exercise of Debt Warrants. See "Description of Debt Warrants."



Debt Securities may be issued at a discount from their principal amount. United States federal income tax considerations and other special considerations applicable to any such original issue discount Securities will be described in the applicable Prospectus Supplement.

If the purchase price of any of the Debt Securities is denominated in a foreign currency or currencies or a foreign currency unit or units or if the principal of and any premium and interest on any series of Debt Securities is payable in a foreign currency or currencies or a foreign currency unit or units, the restrictions, elections, general tax considerations, specific terms and other information with respect to such issue of Debt Securities will be set forth in the applicable Prospectus Supplement.

Since the Company is a holding company, the rights of the Company, and hence the right of creditors of the Company (including the Holders of Debt Securities), to participate in any distribution of the assets of any subsidiary upon its liquidation or reorganization or otherwise is necessarily subject to the prior claims of creditors of any such subsidiary, except to the extent that claims of the Company itself as a creditor of the subsidiary may be recognized.

The Indentures do not contain any provisions that limit the Company's ability to incur indebtedness. Holders of Debt Securities will not have the benefit of any specific covenants or provisions in the applicable Indenture or Debt Securities that would protect them in the event the Company engages in or becomes the subject of a highly leveraged transaction, other than any covenants described in any Prospectus Supplement, and the limitations on mergers, consolidations and transfers of substantially all of the Company's properties and assets as an entirety to any person as described below under "-- Consolidation, Merger and Sale of Assets." Such covenants may not be waived or modified by the Company or its Board of Directors, although Holders of Debt Securities could waive or modify such covenants as more fully described below under "-- Modification and Waiver."

#### CONVERSION OR EXCHANGE OF DEBT SECURITIES

If so indicated in the applicable Prospectus Supplement with respect to a particular series of Debt Securities, such series will be convertible or exchangeable into shares of Common Stock or other securities on the terms and conditions set forth therein. Such terms shall include provisions as to whether conversion is mandatory, at the option of the Holder or at the option of the Company, and may include provisions pursuant to which the number of shares of Common Stock or other securities of the Company to be received by the Holders of Debt Securities would be calculated according to the market price of the Common Stock or other securities of the Company as of a time stated in the Prospectus Supplement. The applicable Prospectus Supplement will indicate certain restrictions on ownership which may apply in the event of a conversion or exchange. See "Description of Preferred Stock -- Restrictions on Ownership" and "Description of Common Stock -- Restrictions on Ownership."

#### FORM, EXCHANGE, REGISTRATION, CONVERSION, TRANSFER AND PAYMENT

Unless otherwise indicated in the applicable Prospectus Supplement, the Debt Securities will be issued only in fully registered form in denominations of \$1,000 or integral multiples thereof. (Section 302) Unless otherwise indicated in the applicable Prospectus Supplement, payment of principal, premium, if any, and interest on the Debt Securities will be payable, and the exchange, conversion and transfer of Debt Securities will be registerable, at the office or agency of the Company maintained for such purposes and at any other office or agency maintained for such purpose. (Sections 301, 305 and 1002) No service charge will be made for any registration of transfer or exchange of the Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge imposed in connection therewith. (Section 305)

All monies paid by the Company to a Paying Agent for the payment of principal of and any premium or interest on any Debt Security which remain unclaimed for two years after such principal, premium or interest has become due and payable may be repaid to the Company and thereafter the Holder of such Debt Security may look only to the Company for payment thereof. (Section 1003)

The Debt Securities of a series may be issued in whole or in part in the form of one or more Global Securities that will be deposited with, or on behalf of, a depository (the "Global Depository") or its nominee identified in the applicable Prospectus Supplement. In such a case, one or more Global Securities will be issued in a denomination or aggregate denomination equal to the portion of the aggregate principal amount of Outstanding Debt Securities of the series to be represented by such Global Security or Securities. Unless and until it is exchanged in whole or in part for Debt Securities in registered form, a Global Security may not be registered for transfer or exchange except as a whole by the Global Depository for such Global Security to a nominee of such Global Depository or by a nominee of such Global Depository to such Global Depository or another nominee of such Global Depository or by such Global Depository or any nominee to a successor Global Depository or a nominee of such successor Global Depository and except in the circumstances described in the applicable Prospectus Supplement. (Sections 204 and 305)

The specific terms of the depository arrangement with respect to any portion of a series of Debt Securities to be represented by a Global Security will be described in the applicable Prospectus Supplement. The Company expects that the following provisions will apply to depository arrangements, although no assurance can be given that such will be the case.

Unless otherwise specified in the applicable Prospectus Supplement, Debt Securities which are to be represented by a Global Security to be deposited with or on behalf of a Global Depository will be represented by a Global Security registered in the name of such Global Depository or its nominee. Upon the issuance of such Global Security, and the deposit of such Global Security with or on behalf of the Global Depository for such Global Security, the Global Depository will credit, on its book-entry registration and transfer system, the respective principal amounts of the Debt Securities represented by such Global Security to the accounts of institutions that have accounts with such Global Depository or its nominee ("participants"). The accounts to be credited will be designated by the underwriters or agents for the sale of such Debt Securities or by the Company, if such Debt Securities are offered and sold directly by the Company. Ownership of beneficial interest in such Global Security will be limited to participants or Persons that may hold interests through participants. Ownership of beneficial interests by participants in such Global Security will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by the Global Depository or its nominee for such Global Security. Ownership of beneficial interests in such Global Security by Persons that hold through participants will be shown on, and the transfer of such ownership interests within such participant will be effected only through, records maintained by such participant. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in certificated form. The foregoing limitations and such laws may impair the ability to transfer beneficial interests in such Global Securities.

So long as the Global Depository for a Global Security, or its nominee, is the registered owner of such Global Security, such Global Depository or such nominee, as the case may be, will be considered the sole owner or Holder of the Securities represented by such Global Security for all purposes under the applicable Indenture. Except as set forth below, unless otherwise specified in the applicable Prospectus Supplement, owners of beneficial interests in such Global Security will not be entitled to have Debt Securities of the series represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of Debt Securities of such series in certificated form and will not be considered the Holders thereof for any purposes under the applicable Indenture. (Sections 204 and 305) Accordingly, each Person owning a beneficial interest in such Global Security must rely on the procedures of the Global Depository and, if such Person is not a participant, on the procedures of the participant through which such Person owns its interest, to exercise any rights of a Holder under the applicable Indenture. The Company understands that under existing industry practices, if the Company requests any action of Holders or an owner of a beneficial interest in such Global Security desires to give any notice or take any action a Holder is entitled to give or take under the applicable Indenture, the Global Depository would authorize the participants to give such notice or take such action, and participants would authorize beneficial owners owning

through such participants to give such notice or take such action or would otherwise act upon the instructions of beneficial owners owning through them.

If the Global Depository for Debt Securities of a series is at any time unwilling, unable or ineligible to continue as Global Depository and a successor Global Depository is not appointed by the Company within 90 days or an Event of Default under the applicable Indenture has occurred and is continuing, the Company will issue Debt Securities of such series in definitive form in exchange for the Global Security or Securities representing the Debt Securities of such series. In addition, the Company may at any time and in its sole discretion, subject to any limitations described in the applicable Prospectus Supplement, determine not to have any Debt Securities of a series represented by one or more Global Securities and, in such event, will issue Debt Securities of such series in definitive form in exchange for the Global Security or Securities representing such Debt Securities. Further, if the Company so specifies with respect to the Debt Securities of a series, an owner of a beneficial interest in a Global Security representing Debt Securities of such series may, on terms acceptable to the Company and the Global Depository for such Global Security, receive Debt Securities of such series in definitive form in exchange for such beneficial interests, subject to any limitations described in the applicable Prospectus Supplement relating to such Debt Securities. In any such instance, an owner of a beneficial interest in a Global Security will be entitled to physical delivery in definitive form of Debt Securities of the series represented by such Global Security equal in principal amount to such beneficial interest and to have such Debt Securities registered in its name (if the Debt Securities of such series are issuable as registered securities).

Principal of and any premium and interest on a Global Security will be payable in the manner described in the applicable Prospectus Supplement.

#### CERTAIN COVENANTS OF THE COMPANY

If so indicated in the applicable Prospectus Supplement with respect to a particular series of Debt Securities, the Company will be subject to the covenants described therein.

#### EVENTS OF DEFAULT

The following are Events of Default under the Indentures with respect to Debt Securities of any series: (a) failure to pay principal of or premium, if any, on any Debt Security of that series when due; (b) failure to pay any interest on any Debt Security of that series when due, continued for 30 days; (c) failure in the deposit of any sinking fund payment in respect of any Debt Security of that series; (d) failure to perform any other covenant of the Company in the Indentures (other than a covenant included in the applicable Indenture solely for the benefit of a series of Debt Securities other than that series), continued for 60 days after written notice to the Company as provided in the applicable Indenture; (e) the acceleration of, or failure to pay at maturity (including any applicable grace period), any indebtedness for money borrowed by the Company with at least \$50,000,000 in principal amount outstanding, which acceleration or failure to pay is not rescinded or annulled or such indebtedness paid, in each case within 10 days after the date on which written notice thereof shall have first been given to the Company as provided in the applicable Indenture; (f) certain events of bankruptcy, insolvency or reorganization; and (g) any other Event of Default provided with respect to Debt Securities of that series. (Section 501)

If an Event of Default with respect to Outstanding Debt Securities of any series shall occur and be continuing, either the applicable Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debt Securities of that series by notice as provided in the Indentures may declare the principal amount (or, if the Debt Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all Debt Securities of that series to be due and payable immediately. However, at any time after a declaration of acceleration with respect to Debt Securities of any series has been made, but before a judgment or decree based on such acceleration has been obtained, the Holders of a majority in principal

amount of the Outstanding Debt Securities of that series may, under certain circumstances, rescind and annul such acceleration. (Section 502) For information as to waiver or defaults, see "-- Modification and Waiver" below.

The Indentures provide that, subject to the duty of the applicable Trustee thereunder during an Event of Default to act with the required standard of care, such Trustee will be under no obligation to exercise any of its rights or powers under the applicable Indenture at the request or direction of any of the Holders, unless such Holders shall have offered to such Trustee reasonable security or indemnity. (Sections 601 and 603) Subject to certain provisions, including those requiring security or indemnification of the Trustees, the Holders of a majority in principal amount of the Outstanding Debt Securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustees, or exercising any trust or power conferred on such Trustees, with respect to the Debt Securities of that series. (Section 512)

No Holder of a Debt Security of any series will have any right to institute any proceeding with respect to the Indentures or for any remedy thereunder, unless (i) such Holder shall have previously given to the applicable Trustee written notice of a continuing Event of Default (as defined) with respect to Debt Securities of that series; (ii) the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of the same series shall have made written request, and offered reasonable indemnity, to the applicable Trustee to institute proceedings in respect of such Event of Default in its own name as trustee under the applicable Indenture; (iii) the Trustee shall have failed to institute such proceedings within 60 days; and (iv) the Trustee shall not have received from the Holders of a majority in aggregate principal amount of the outstanding Debt Securities of the same series a direction inconsistent with such request (Section 507); provided, however, that such limitations do not apply to a suit instituted by a Holder of a Debt Security for enforcement of payment of the principal of and any premium and interest on such Debt Security on or after the respective due dates expressed in such Debt Security, or in the case of convertible Debt Securities, for enforcement of a right of conversion. (Section 508)

The Company will be required to furnish to the Trustees annually a statement as to the performance by the Company of its obligations under the Indentures and as to any default in such performance. (Section 1004)

#### MODIFICATION AND WAIVER

Without the consent of any Holder of Outstanding Debt Securities, the Company and the applicable Trustee may amend or supplement the applicable Indenture or Debt Securities to cure any ambiguity, defect or inconsistency, or to make any change that does not materially adversely affect the rights of any Holder of Debt Securities. (Section 901) Other modifications and amendments of the Indentures may be made by the Company and the applicable Trustee only with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Debt Securities of each series affected thereby; provided, however, that no such modification or amendment may, without the consent of the Holder of each Outstanding Debt Security affected thereby: (a) change the Stated Maturity of the principal of, or any installment of principal of, or interest on, any Debt Security; (b) reduce the principal amount of, the rate of interest on, or the premium, if any, payable upon the redemption or repurchase of, any Debt Security; (c) reduce the amount of principal of an Original Issue Discount Security payable upon acceleration of the Maturity thereof; (d) change the place or currency of payment of principal of, or premium, if any, or interest on any Debt Security; (e) impair the right to institute suit for the enforcement of any payment on or with respect to any Debt Security on or after the Stated Maturity or Redemption Date thereof; (f) modify the conversion provisions applicable to convertible Debt Securities in a manner adverse to the Holders thereof; (g) modify the subordination provisions applicable to any series of Debt Securities in a manner adverse to the Holders thereof; or (h) reduce the percentage in principal amount of Outstanding Debt Securities of any series, the consent of the Holders of which is required for modification or amendment of the Indentures or for waiver of compliance with certain provisions of the applicable Indenture or for waiver of certain defaults. (Section 902)

The Holders of at least a majority in aggregate principal amount of the Outstanding Debt Securities of any series may on behalf of the Holders of all Debt Securities of that series waive, insofar as that series is concerned,

compliance by the Company with certain covenants of the Indentures. (Section 1008) The Holders of not less than a majority in principal amount of the Outstanding Debt Securities of any series may, on behalf of the Holders of all Debt Securities of that series, waive any past default under the applicable Indenture 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 respect of a provision which under such applicable Indenture cannot be modified or amended without the consent of the Holder of each Outstanding Debt Security of that series affected. (Section 513)

#### CONSOLIDATION, MERGER AND SALE OF ASSETS

The Company, without the consent of any Holders of outstanding Debt Securities, may consolidate with or merge into, or transfer or lease its assets substantially as an entirety to, any Person, and any other Person may consolidate with or merge into, or transfer or lease its assets substantially as an entirety to, the Company, provided that (a) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or which acquires or leases the assets of the Company substantially as an entirety assumes the Company's obligations on the Debt Securities and under the Indenture relating thereto and (b) after giving effect to such transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing. (Article Eight) A Prospectus Supplement may set forth any additional provisions regarding a consolidation with, merger into, or transfer or lease of its assets substantially as an entirety to, any Person (or of such Person with, into or to the Company).

#### DEFEASANCE

If so indicated in the applicable Prospectus Supplement with respect to the Debt Securities of a series, the Company, at its option (i) will be discharged from any and all obligations in respect of the Debt Securities of such series (except for certain obligations to register the transfer or exchange of Debt Securities of such series, to replace destroyed, stolen, lost or mutilated Debt Securities of such series, and to maintain an office or agency in respect of the Debt Securities and hold moneys for payment in trust) or (ii) will be released from its obligations to comply with any covenants that may be specified in the applicable Prospectus Supplement with respect to the Debt Securities of such series, and the occurrence of an event described in clause (d) under "Events of Default" above with respect to any defeased covenants shall no longer be an Event of Default, if in either case the Company irrevocably deposits with the applicable Trustee, in trust, money or U.S. Government Obligations that through the payment of interest thereon and principal thereof in accordance with their terms will provide money in an amount sufficient to pay all of the principal of and premium, if any, and any interest on the Debt Securities of such series on the dates such payments are due (which may include one or more redemption dates designated by the Company) in accordance with the terms of such Debt Securities. Such a trust may only be established if, among other things, (a) no Event of Default or event which with the giving of notice or lapse of time, or both, would become an Event of Default under the applicable Indenture shall have occurred and be continuing on the date of such deposit, (b) no Event of Default described under clause (e) under "Events of Default" above or event which with the giving of notice or lapse of time, or both, would become an Event of Default described under such clause (e) shall have occurred and be continuing at any time during the period ending on the 91st day following such date of deposit, and (c) the Company shall have delivered an Opinion of Counsel to the effect that the Holders of the Debt Securities will not recognize gain or loss for United States federal income tax purposes as a result of such deposit or defeasance and will be subject to United States federal income tax in the same manner as if such deposit and defeasance had not occurred, which Opinion of Counsel, in the case of a deposit and defeasance of such Indenture with respect to the Debt Securities of any series as described under clause (i) above, shall be based on either (A) a ruling to such effect that the Company has received from, or that has been published by, the Internal Revenue Service or (B) a change in the applicable federal income tax law, occurring after the date of the applicable Indenture, to such effect. In the event the Company omits to comply with its remaining obligations under such Indenture after a defeasance of such Indenture with respect to the Debt Securities of any series as described under clause (ii) above and the Debt Securities of such series are declared due and payable because of the occurrence of any undefeased Event of Default, the amount of money and U.S. Government Obligations on deposit with the applicable Trustee may be insufficient

to pay amounts due on the Debt Securities of such series at the time of the acceleration resulting from such Event of Default. However, the Company will remain liable for such payments. (Article Thirteen)

#### SUBORDINATION OF SUBORDINATED DEBT SECURITIES

Unless otherwise indicated in the Prospectus Supplement, the following provisions will apply to the Subordinated Debt Securities.

The Subordinated Debt Securities will, to the extent set forth in the Subordinated Indenture, be subordinate in right of payment to the prior payment in full of all Senior Debt, including the Senior Debt Securities. Upon any payment or distribution of assets to creditors upon any liquidation, dissolution, winding up, reorganization, assignment for the benefit of creditors, marshalling of assets or any bankruptcy, insolvency, debt restructuring or similar proceedings in connection with any insolvency or bankruptcy proceeding of the Company, the holders of Senior Debt will first be entitled to receive payment in full of principal of (and premium, if any) and interest, if any, on such Senior Debt before the holders of the Subordinated Debt Securities will be entitled to receive or retain any payment in respect of the principal of (and premium, if any) or interest, if any, on the Subordinated Debt Securities. (Article Fifteen of the Subordinated Indenture)

By reason of such subordination, in the event of liquidation or insolvency, creditors of the Company who are not holders of Senior Debt or Subordinated Debt Securities may recover less, ratably, than holders of Senior Debt and may recover more, ratably, than the holders of the Subordinated Debt Securities.

In the event of the acceleration of the maturity of any Subordinated Debt Securities, the holders of all Senior Debt outstanding at the time of such acceleration will first be entitled to receive payment in full of all amounts due thereon before the holders of the Subordinated Debt Securities will be entitled to receive any payment upon the principal of (or premium, if any) or interest, if any, on the Subordinated Debt Securities.

No payments on account of principal (or premium, if any) or interest, if any, in respect of the Subordinated Debt Securities may be made if there shall have occurred and be continuing a default in any payment with respect to Senior Debt, or an event of default with respect to any Senior Debt resulting in the acceleration of the maturity thereof, or if any judicial proceeding shall be pending with respect to any such default. For purposes of the subordination provisions, the payment, issuance and delivery of cash, property or securities (other than stock and certain subordinated securities of the Company) upon conversion of a Subordinated Debt Security will be deemed to constitute payment on account of the principal of such Subordinated Debt Security.

"Senior Debt" is defined to mean the principal of (and premium, if any) and interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company to the extent such claim for post-petition interest is allowed in such proceeding) on all indebtedness of the Company (including indebtedness of others guaranteed by the Company), other than the Subordinated Debt Securities whether outstanding on the date of the Subordinated Indenture or thereafter created, incurred or assumed, which is: (i) for money borrowed, (ii) evidenced by a note or similar instrument given in connection with the acquisition of any businesses, properties or assets of any kind or (iii) obligations of the Company as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles or leases of property or assets made as part of any sale and lease-back transaction to which the Company is a party, including amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligation, unless in any case in the instrument creating or evidencing any such indebtedness or obligation or pursuant to which the same is outstanding it is provided that such indebtedness or obligation is not superior in right of payment to the Subordinated Debt Securities.

The Subordinated Indenture does not limit or prohibit the incurrence of additional Senior Debt, which may include indebtedness that is senior to the Subordinated Debt Securities, but subordinate to other obligations of the Company. The Senior Debt Securities, when issued, will constitute Senior Debt.

The Prospectus Supplement may further describe the provisions, if any, applicable to the subordination of the Subordinated Debt Securities of a particular series.

#### GOVERNING LAW

The Indentures and the Debt Securities will be governed by, and construed in accordance with, the laws of the State of New York. (Section 112)

#### REGARDING THE TRUSTEES

The Company and certain of its subsidiaries in the ordinary course of business maintain general banking relations with State Street Bank & Trust Company, N.A. Pursuant to the provisions of the Trust Indenture Act of 1939, upon a default under either the Senior Indenture or the Subordinated Indenture, State Street Bank & Trust Company, N.A. may be deemed to have a conflicting interest by virtue of its acting as both the Senior Trustee and the Subordinated Trustee requiring it to resign and be replaced by a successor trustee in one of such positions.

#### DESCRIPTION OF CAPITAL STOCK

The following descriptions and the descriptions contained in "-- Description of Preferred Stock" and "-- Description of Common Stock" do not purport to be complete and are subject to, and qualified in their entirety by reference to, the more complete descriptions thereof set forth in the following documents: (i) the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), which is filed as an exhibit to the Registration Statement of which this Prospectus is a part and (ii) its By-laws, which is incorporated by reference to the Registration Statement of which this Prospectus is a part.

For the Company to qualify as a REIT under the Code, not more than 50% of the value of the outstanding stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year and the stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (or during a proportionate part of a shorter taxable year). Accordingly, the Certificate of Incorporation contains provisions that restrict the ownership and transfer of shares of capital stock. The Certificate of Incorporation also contains provisions that restrict the ownership and transfer of shares of capital stock to reduce the risk that the Company's ability to use its NOLs would be limited.

The Certificate of Incorporation authorizes the issuance of up to 26,000,000 shares of capital stock, consisting of 10,000,000 shares of Common Stock, \$1.00 par value per share (the "Common Stock"), 3,000,000 shares of preferred stock, \$1.00 par value per share (the "Preferred Stock"), and 13,000,000 shares of excess stock, \$1.00 par value per share (the "Excess Stock"). As of August 4, 1995, 5,000,850 shares of Common Stock were issued and outstanding. No shares of Preferred Stock or shares of Excess Stock are issued and outstanding.

#### DESCRIPTION OF PREFERRED STOCK

The following is a description of certain general terms and provisions of the Preferred Stock. The particular terms of any series of Preferred Stock will be described in the applicable Prospectus Supplement. If so indicated in a Prospectus Supplement, the terms of any such series may differ from the terms set forth below.

The summary of terms of the Company's Preferred Stock contained in this Prospectus does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of the Certificate of Incorporation and the certificate of designations relating to each series of the Preferred Stock (the "Certificate of Designation"), which will be filed as an exhibit to or incorporated by reference in the Registration Statement of which this Prospectus is a part at or prior to the time of issuance of such series of the Preferred Stock.

The Certificate of Incorporation authorizes the issuance of 3,000,000 shares of Preferred Stock. No shares of Preferred Stock are outstanding as of the date of this Prospectus. The Preferred Stock authorized by the Certificate of Incorporation may be issued from time to time in one or more series in such amounts and with such designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption as may be fixed by the Board of Directors. Under certain circumstances, the issuance of Preferred Stock could have the effect of delaying, deferring or preventing a change of control of the Company and may adversely affect the voting and other rights of the Holders of Common Stock. See "Risk Factors--Anti-takeover Effects of Provisions of the Certificate of Incorporation and By-laws." The Certificate of Incorporation authorizes the Board of Directors to classify or reclassify any unissued shares of Preferred Stock by setting or changing the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption of such Preferred Stock.

The Preferred Stock shall have the dividend, liquidation, redemption and voting rights set forth below unless otherwise described in a Prospectus Supplement relating to a particular series of the Preferred Stock. The applicable Prospectus Supplement will describe the following terms of the series of Preferred Stock in respect of which this Prospectus is being delivered: (1) the title of such Preferred Stock and the number of shares offered; (2) the amount of liquidation preference per share; (3) the initial public offering price at which shares of such Preferred Stock will be issued; (4) the dividend rate (or method of calculation), the dates on which dividends shall be payable and the dates from which dividends shall commence to cumulate, if any; (5) any redemption or sinking fund provisions; (6) any conversion or exchange rights; (7) any additional voting, dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions; (8) any listing of such Preferred Stock on any securities exchange; (9) a discussion of federal income tax considerations applicable to such Preferred Stock; (10) the relative ranking and preferences of such Preferred Stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company; (11) any limitations on issuance of any series of Preferred Stock ranking senior to or on a parity with such series of Preferred Stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company; (12) any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve the status of the Company as a REIT; and (13) any other specific terms, preferences or rights of, or limitations or restrictions on, such Preferred Stock.

#### General

The shares of Preferred Stock offered hereby will be issued in one or more series. Shares of Preferred Stock, upon issuance against full payment of the purchase price therefor, will be fully paid and nonassessable. The liquidation preference is not indicative of the price at which the shares of Preferred Stock will actually trade on or after the date of issuance.

#### Rank

The Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution and winding up of the Company, rank prior to the Common Stock and Excess Stock (other than certain Excess Stock resulting from the conversion of Preferred Stock) and to all other classes and series of equity securities of the Company now or hereafter authorized, issued or outstanding (the Common Stock and such other classes and series of equity securities collectively may be referred to herein as the "Junior Stock"), other than any classes or series



of equity securities of the Company which by their terms specifically provide for a ranking on a parity with (the "Parity Stock") or senior to (the "Senior Stock") the Preferred Stock as to dividend rights and rights upon liquidation, dissolution or winding up of the Company. The Preferred Stock shall be junior to all outstanding debt of the Company. The Preferred Stock shall be subject to creation of Senior Stock, Parity Stock and Junior Stock to the extent not expressly prohibited by the Certificate of Incorporation.

#### Dividends

Holders of shares of Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of assets of the Company legally available for payment, dividends, or distributions in cash, property or other assets of the Company or in Securities of the Company or from any other source as the Board of Directors in their discretion shall determine and at such dates and at such rates per share per annum as described in the applicable Prospectus Supplement. Such rate may be fixed or variable or both. Each declared dividend shall be payable to Holders of record as they appear at the close of business on the books of the Company on such record dates, not more than 90 calendar days preceding the payment dates therefor, as are determined by the Board of Directors (each of such dates, a "Record Date").

Such dividends may be cumulative or noncumulative, as described in the applicable Prospectus Supplement. If dividends on a series of Preferred Stock are noncumulative and if the Board of Directors fails to declare a dividend in respect of a dividend period with respect to such series, then Holders of shares of such Preferred Stock will have no right to receive a dividend in respect of such dividend period, and the Company will have no obligation to pay the dividend for such period, whether or not dividends are declared payable on any future dividend payment dates. If dividends of a series of Preferred Stock are cumulative, the dividends on such shares will accrue from and after the date set forth in the applicable Prospectus Supplement.

No full dividends shall be declared or paid or set apart for payment on Preferred Stock of any series ranking, as to dividends, on a parity with or junior to the series of Preferred Stock offered by the applicable Prospectus Supplement for any period unless full dividends for the immediately preceding dividend period on such Preferred Stock (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on such Preferred Stock are cumulative) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment. When dividends are not so paid in full (or a sum sufficient for such full payment is not so set apart) upon such shares of Preferred Stock and any other Preferred Stock of the Company ranking on a parity as to dividends with the Preferred Stock, dividends upon such Preferred Stock and dividends on such other Preferred Stock ranking on a parity with the Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on such Preferred Stock and such other Preferred Stock ranking on a parity with the Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends for the then-current dividend period per share on such Preferred Stock (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on such Preferred Stock are cumulative) and accrued dividends, including required or permitted accumulations, if any, on shares of such other Preferred Stock, bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment(s) on Preferred Stock which may be in arrears. Unless full dividends on the series of Preferred Stock offered by the applicable Prospectus Supplement have been declared and paid or set apart for payment for the immediately preceding dividend period (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on such Preferred Stock are cumulative), (a) no cash dividend or distribution (other than in shares of Junior Stock) may be declared, set aside or paid on the Junior Stock, (b) the Company may not, directly or indirectly, repurchase, redeem or otherwise acquire any shares of its Junior Stock (or pay any monies into a sinking fund for the redemption of any shares) except by conversion into or exchange for Junior Stock, and (c) the Company may not, directly or indirectly, repurchase, redeem or otherwise acquire any Preferred Stock or Parity Stock (or pay any monies into a sinking fund for the redemption of any shares of any such stock) otherwise than pursuant to pro rata offers to purchase or a concurrent redemption of all, or a pro rata portion, of the shares of outstanding Preferred Stock and shares of Parity Stock (except by conversion into or exchange for Junior Stock).

Any dividend payment made on a series of Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of such series.

#### Redemption

The terms, if any, on which shares of Preferred Stock of any series may be redeemed will be set forth in the applicable Prospectus Supplement.

#### Liquidation

In the event of a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, the Holders of a series of Preferred Stock will be entitled, subject to the rights of creditors, but before any distribution or payment to the Holders of Common Stock, Excess Stock (other than certain Excess Stock resulting from the conversion of Preferred Stock) or any Junior Stock on liquidation, dissolution or winding up of the Company, to receive a liquidating distribution in the amount of the liquidation preference per share as set forth in the applicable Prospectus Supplement plus accrued and unpaid dividends for the then-current dividend period (including any accumulation in respect of unpaid dividends for prior dividend periods, if dividends on such series of Preferred Stock are cumulative). If the amounts available for distribution with respect to the Preferred Stock and all other outstanding Parity Stock are not sufficient to satisfy the full liquidation rights of all the outstanding shares of Preferred Stock and Parity Stock, then the Holders of each series of such stock will share ratably in any such distribution of assets in proportion to the full respective preferential amount (which in the case of Preferred Stock may include accumulated dividends) to which they are entitled. After payment of the full amount of the liquidation distribution, the Holders of Preferred Stock will not be entitled to any further participation in any distribution of assets by the Company.

#### Voting

Except as set forth in the Prospectus Supplement relating to a particular series of Preferred Stock or except as expressly required by applicable law, Holders of shares of Preferred Stock will have no voting rights.

#### No Other Rights

The shares of a series of Preferred Stock will not have any preferences, voting powers or relative, participating, optional or other special rights except as set forth above or in the applicable Prospectus Supplement, the Certificate of Incorporation and in the applicable Certificate of Designation or as otherwise required by law.

#### Transfer Agent and Registrar

The transfer agent for each series of Preferred Stock will be described in the related Prospectus Supplement.

#### Restrictions on Ownership

As discussed below, for the Company to qualify as a REIT under the Code, not more than 50% in value of its outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year, and the shares of capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (or during a proportionate part of a shorter taxable year). Therefore, the Certificate of Incorporation contains, and the Certificate of Designation for each series of Preferred Stock may contain, provisions restricting the ownership and transfer of the Preferred Stock.

In order to prevent any Company stockholder from owning shares in an amount which would cause more than 50% of the value of the outstanding shares of the Company to be held by five or fewer individuals, the Certificate of Incorporation contains a limitation that restricts stockholders from owning, under the applicable attribution rules of the Code, more than that percentage (which generally should not exceed 9.9%) of the outstanding shares of Preferred Stock of any series as is established by the Board of Directors at the time it authorizes the issuance of such series (the "Preferred Stock Beneficial Ownership Limit"). The attribution rules which apply for purposes of the Common Stock Beneficial Ownership Limit (as defined below) also apply for purposes of the Preferred Stock Beneficial Ownership Limit. See "Description of Common Stock -- Restrictions on Ownership." Stockholders should be aware that events other than a purchase or other transfer of Preferred Stock may result in ownership, under the applicable attribution rules of the Code, of Preferred Stock in excess of the Preferred Stock Beneficial Ownership Limit. Stockholders should consult their own tax advisors concerning the application of the attribution rules of the Code in their particular circumstances.

Holders of Preferred Stock are also subject to the Constructive Ownership Limit (as defined below in "Description of Common Stock -- Restrictions on Ownership"), which restricts them from owning, under the applicable attribution rules of the Code, more than 9.9% of the outstanding shares of Preferred Stock of any series. The attribution rules which apply for purposes of the Constructive Ownership Limit differ from those that apply for purposes of the Preferred Stock Beneficial Ownership Limit. See "Description of Common Stock -- Restrictions on Ownership." Stockholders should be aware that events other than a purchase or other transfer of Preferred Stock may result in ownership, under the applicable attribution rules of the Code, of Preferred Stock in excess of the Constructive Ownership Limit. Stockholders should consult their own tax advisors concerning the application of the attribution rules of the Code in their particular circumstances.

The Certificate of Incorporation provides that a transfer of shares of Preferred Stock that would otherwise result in ownership, under the applicable attribution rules of the Code, of Preferred Stock in excess of the Preferred Stock Beneficial Ownership Limit or the Constructive Ownership Limit, or which would cause the shares of capital stock of the Company to be beneficially owned by fewer than 100 persons, will be null and void and the purported transferee will acquire no rights or economic interest in such Preferred Stock. In addition, Preferred Stock that would otherwise be owned, under the applicable attribution rules of the Code, in excess of the Preferred Stock Beneficial Ownership Limit or the Constructive Ownership Limit will be automatically exchanged for shares of Excess Stock that will be transferred, by operation of law, to the Company as trustee of a trust for the exclusive benefit of a beneficiary designated by the purported transferee or purported Holder. While so held in trust, the trustee shall vote the shares of Excess Stock in the same proportion as the Holders of the Common Stock and Preferred Stock, respectively, shall vote and such shares of Excess Stock are not entitled to participate in any dividends or distributions made by the Company. Any dividends or distributions received by the purported transferee or other purported Holder of such Excess Stock prior to the discovery by the Company of the automatic exchange for shares of Excess Stock shall be repaid to the Company upon demand.

If the purported transferee or purported Holder elects to designate a beneficiary of an interest in the trust with respect to such Excess Stock, only a person whose ownership of the shares will not violate the Preferred Stock Beneficial Ownership Limit or the Constructive Ownership Limit may be designated, at which time the shares of Excess Stock will be automatically exchanged for shares of Preferred Stock of the same class as the Preferred Stock which were originally exchanged for such Excess Stock. The Certificate of Incorporation contains provisions designed to ensure that the purported transferee or other purported Holder of the Excess Stock may not receive in return for such a transfer an amount that reflects any appreciation in the shares of Preferred Stock for which such shares of Excess Stock were exchanged during the period that such shares of Excess Stock were outstanding but will bear the burden of any decline in value during such period. Any amount received by a purported transferee or other purported Holder for designating a beneficiary in excess of the amount permitted to be received must be turned over to the Company. The Certificate of Incorporation provides that the Company may purchase any shares of Excess Stock that have been automatically exchanged for shares of Preferred Stock as a result of a purported transfer or other event. The price at which the Company may purchase such Excess Stock shall be equal to the lesser of (i) in

the case of shares of Excess Stock resulting from a purported transfer for value, the price per share in the purported transfer that resulted in the automatic exchange for shares of Excess Stock or, in the case of Excess Stock resulting from some other event, the market price of the shares of Preferred Stock exchanged on the date of the automatic exchange for shares of Excess Stock and (ii) the market price of the shares of Preferred Stock exchanged for such shares of Excess Stock on the date that the Company accepts the deemed offer to sell such Excess Stock. The Company's purchase right with respect to Excess Stock shall exist for 90 days, beginning on the date that the automatic exchange for shares of Excess Stock occurred or, if the Company did not receive a notice concerning the purported transfer that resulted in the automatic exchange for shares of Excess Stocks, the date that the Board of Directors determines in good faith that an exchange for Excess Stock has occurred.

The Board of Directors may in its discretion exempt certain persons from the Preferred Stock Beneficial Ownership Limit or the Constructive Ownership Limit if evidence satisfactory to the Board of Directors is presented showing that such exemption will not jeopardize the Company's status as a REIT under the Code. As a condition of such exemption, the Board of Directors may require a ruling from the Internal Revenue Service and/or an opinion of counsel satisfactory to it and/or representations and undertakings from the applicant with respect to preserving the REIT status of the Company.

The Board of Directors may, at any time, determine that the foregoing restrictions on ownership and transfer shall no longer apply.

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, impose limitations upon the utilization of a corporation's net operating loss and credit carryforwards and certain other tax attributes, following significant changes in the corporation's stock ownership. In order to preserve the Company's ability to use its net operating loss carryforwards to reduce its taxable income, the Certificate of Incorporation also contains, and the Certificate of Designation for each series of Preferred Stock may contain, additional provisions restricting the ownership of Preferred Stock (the "Section 382 Ownership Restrictions"). The Section 382 Ownership Restrictions merely reduce the risk of certain occurrences that could cause such a limitation to arise. It is still possible that, due to transfers (either directly or indirectly) of the Company's outstanding shares, the Company could become subject to a limitation under Sections 382 and 383.

The Certificate of Incorporation provides, in general, that subject to the exceptions described in the next paragraph, no person may acquire shares of the Company (or options or warrants to acquire such shares) if as a result such person (or another person to which such shares were attributed under certain complex attribution rules, which differ in certain respects from those that apply for purposes of the Preferred Stock Beneficial Ownership Limit or the Constructive Ownership Limit) would own, directly or under such attribution rules, 5% or more of the class of such outstanding shares (hereinafter, such person's "Ownership Interest Percentage"). In addition, subject to the exceptions described in the next paragraph, no person whose Ownership Interest Percentage of a class of shares exceeds 5% can acquire or transfer such shares (or options or warrants to acquire such shares). The foregoing restrictions apply independently to each class of the Company's outstanding stock.

The foregoing restrictions do not apply to (i) acquisitions and transfers of Common Stock by certain persons (or affiliates of persons), whose Ownership Interest Percentage of Common Stock on September 21, 1993 was 5% or more, (ii) transfers of shares pursuant to an offering by the Company, to the extent determined by the Board of Directors, and (iii) other transfers of shares specifically approved by the Company's Board of Directors.

Transfers of shares, options or warrants in violation of the Section 382 Ownership Restrictions would be void, and the transferee would acquire no rights in such shares, options or warrants. Thus, a purported acquiror would have no right to vote such shares or to receive dividends. Moreover, upon demand by the Company, a purported acquiror of shares, options or warrants would be required to transfer them to an agent designated by the Company. The agent, generally, would sell such shares, options or warrants, remit the proceeds thereof to the purported acquiror to the extent of such person's purchase price for such shares and, to the extent possible, remit

the balance of the proceeds to such person's transferor. A similar procedure would be applied to any dividends paid to, and to the proceeds of any resale of shares, options or warrants by, the purported acquiror.

The Board of Directors has the authority to designate a date as of which the Section 382 Ownership Restrictions will no longer apply.

All certificates representing shares of Preferred Stock will bear a legend referring to the restrictions described above.

All persons who own, directly or by virtue of the applicable attribution rules of the Code, more than 2% of the outstanding Preferred Stock of any series must give a written notice to the Company containing the information specified in the Certificate of Incorporation by January 30 of each year. In addition, each stockholder shall upon demand be required to disclose to the Company such information as the Company may request, in good faith, in order to determine the Company's status as a REIT or to comply with Treasury Regulations promulgated under the REIT provisions of the Code.

#### DEPOSITARY SHARES

The description set forth below and in any Prospectus Supplement of certain provisions of the Deposit Agreement and of the Depositary Shares and Depositary Receipts (each as defined below) does not purport to be complete and is subject to and qualified in its entirety by reference to the forms of Deposit Agreement and Depositary Receipts relating to each series of the Preferred Stock which have been or will be filed with the Commission at or prior to the time of the offering of such series of the Preferred Stock. If so indicated in a Prospectus Supplement, the terms of any series of Depositary Shares may differ from the terms set forth herein.

##### General

The Company may, at its option, elect to offer receipts for fractional interests ("Depositary Shares") in shares of Preferred Stock, rather than full shares of Preferred Stock. In such event, receipts ("Depositary Receipts") for Depositary Shares, each of which will represent a fraction (to be set forth in the Prospectus Supplement relating to a particular series of Preferred Stock) of a share of a particular series of Preferred Stock, will be issued as described below.

The shares of any series of Preferred Stock represented by Depositary Shares will be deposited under a Deposit Agreement (the "Deposit Agreement") between the Company and the depositary (the "Depositary"). Subject to the terms of the Deposit Agreement, each owner of a Depositary Share will be entitled, in proportion to the applicable fraction of a share of Preferred Stock represented by such Depositary Share, to all the rights and preferences of the Preferred Stock represented thereby (including dividend, voting, redemption, subscription and liquidation rights).

##### Dividends and Other Distributions

The Depositary will distribute all cash dividends or other cash distributions received in respect of the Preferred Stock to the record Holders of Depositary Shares relating to such shares of Preferred Stock in proportion to the numbers of such Depositary Shares owned by such Holders.

In the event of a distribution other than in cash, the Depositary will distribute property received by it to the record Holders of Depositary Shares in an equitable manner, unless the Depositary determines that it is not feasible to make such distribution, in which case the Depositary may sell such property and distribute the net proceeds from such sale to such Holders.

### Redemption of Depositary Shares

If a series of Preferred Stock represented by Depositary Shares is subject to redemption, the Depositary Shares will be redeemed from the proceeds received by the Depositary resulting from the redemption, in whole or in part, of such series of Preferred Stock held by the Depositary. The redemption price per Depositary Share will be equal to the applicable fraction of the redemption price per share payable with respect to such series of the Preferred Stock. Whenever the Company redeems shares of Preferred Stock held by the Depositary, the Depositary will redeem as of the same redemption date the number of Depositary Shares representing the shares of Preferred Stock so redeemed. If fewer than all the Depositary Shares are to be redeemed, the Depositary Shares to be redeemed will be selected by lot, pro rata or by any other equitable method as may be determined by the Depositary.

### Voting the Preferred Stock

Upon receipt of notice of any meeting at which the Holders of the Preferred Stock are entitled to vote, the Depositary will mail the information contained in such notices of meeting to the record Holders of the Depositary Shares relating to such Preferred Stock. Each record Holder of such Depositary Shares on the record date (which will be the same date as the record date for the Preferred Stock) will be entitled to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of the Preferred Stock represented by such Holder's Depositary Shares. The Depositary will endeavor, insofar as practicable, to vote the amount of the Preferred Stock represented by such Depositary Shares in accordance with such instructions, and the Company will agree to take all reasonable action which may be deemed necessary by the Depositary in order to enable the Depositary to do so. The Depositary will abstain from voting the Preferred Stock to the extent it does not receive specific instructions from the Holder of Depositary Shares representing such Preferred Stock.

### Amendment and Termination of the Deposit Agreement

The form of Depositary Receipt evidencing the Depositary Shares and any provision of the Deposit Agreement may at any time be amended by agreement between the Company and the Depositary. However, any amendment which materially and adversely alters the rights of the Holders of Depositary Shares will not be effective unless such amendment has been approved by the Holders of at least a majority of the Depositary Shares then outstanding. The Deposit Agreement will only terminate if (i) all outstanding Depositary Shares have been redeemed or (ii) there has been a final distribution in respect of the Preferred Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution has been distributed to the Holders of the related Depositary Shares.

### Charges of Depositary

The Company will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company will pay charges of the Depositary in connection with the initial deposit of the Preferred Stock and issuance of Depositary Receipts, all withdrawals of Preferred Stock by owners of Depositary Shares and any redemption of the Preferred Stock. Holders of Depositary Receipts will pay other transfer and other taxes and governmental charges and such other charges as are expressly provided in the Deposit Agreement to be for their accounts.

### Resignation and Removal of Depositary

The Depositary may resign at any time by delivering to the Company notice of its election to do so, and the Company may at any time remove the Depositary, any such resignation or removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment. Such successor Depositary must be

appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

#### Restrictions on Ownership

In order to safeguard the Company against an inadvertent loss of REIT status, the Deposit Agreement will contain provisions similar to those in the Certificate of Incorporation restricting the ownership and transfer of Depositary Shares. Such restrictions will be described in the applicable Prospectus Supplement.

#### Miscellaneous

The Depositary will forward all reports and communications from the Company which are delivered to the Depositary and which the Company is required or otherwise determines to furnish to the Holders of the Preferred Stock.

Neither the Depositary nor the Company will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the Deposit Agreement. The obligations of the Company and the Depositary under the Deposit Agreement will be limited to performance in good faith of their duties thereunder and they will not be obligated to prosecute or defend any legal proceeding in respect of any Depositary Shares or Preferred Stock unless satisfactory indemnity is furnished. They may rely upon written advice of counsel or accountants, or information provided by persons presenting Preferred Stock for deposit, Holders of Depositary Shares or other persons believed to be competent and on documents believed to be genuine.

#### DESCRIPTION OF COMMON STOCK

As of August 4, 1995, 5,000,850 shares of Common Stock were issued and outstanding. The Common Stock of the Company is listed on the NYSE under the symbol "ALX".

The Holders of Common Stock are entitled to receive dividends when, if and as declared by the Board of Directors of the Company out of assets legally available therefor, provided that if any shares of Preferred Stock are at the time outstanding, the payment of dividends on Common Stock or other distributions (including purchases of Common Stock) may be subject to the declaration and payment of full cumulative dividends, and the absence of arrearages in any mandatory sinking fund, on outstanding Preferred Stock.

The Holders of Common Stock are entitled to one vote for each share on all matters voted on by stockholders, including elections of directors. There is no cumulative voting in the election of directors, which means that the Holders of a majority of the outstanding Common Stock can elect all of the directors then standing for election. The Holders of Common Stock do not have any conversion, redemption or preemptive rights to subscribe to any securities of the Company. In the event of the dissolution, liquidation or winding up, Holders of Common Stock are entitled to share ratably in any assets remaining after the satisfaction in full of the prior rights of creditors, including holders of the Company's indebtedness, and the aggregate liquidation preference of any Preferred Stock then outstanding.

The Common Stock has equal dividend, distribution, liquidation and other rights, and shall have no preference, appraisal or exchange rights. All outstanding shares of Common Stock are, and any shares of Common Stock offered by a Prospectus Supplement, upon issuance, will be, fully paid and non-assessable.

The transfer agent for the Common Stock is Chemical Bank, New York, New York.

## Restrictions on Ownership

The Certificate of Incorporation contains a number of provisions which restrict the ownership and transfer of shares and which are designed to safeguard the Company against an inadvertent loss of REIT status. In order to prevent any Company stockholder from owning shares in an amount which would cause more than 50% in value of the outstanding shares of the Company to be owned by five or fewer individuals, the Certificate of Incorporation contains a limitation that restricts, with certain exceptions, stockholders from owning, under the applicable attribution rules of the Code, more than 4.9% of the outstanding shares of Common Stock (the "Common Stock Beneficial Ownership Limit"). In certain circumstances, the Board of Directors may reduce the Common Stock Beneficial Ownership Limit to as low as 2%, but only if any person who would own shares in excess of such new limit could continue to do so. The Board of Directors has, subject to certain conditions and limitations, exempted Vornado and certain of its affiliates from the Common Stock Beneficial Ownership Limitation.

Stockholders should be aware that events other than a purchase or other transfer of Common Stock can result in ownership, under the applicable attribution rules of the Code, of Common Stock in excess of the Common Stock Beneficial Ownership Limit. For instance, if two stockholders, each of whom owns, under the applicable attribution rules of the Code 3% of the outstanding Common Stock, were to marry, then after their marriage both stockholders would own, under the applicable attribution rules of the Code, 6% of the outstanding shares of Common Stock, which is in excess of the Common Stock Beneficial Ownership Limit. Similarly, if a stockholder who owns, under the applicable attribution rules of the Code, 4% of the outstanding Common Stock were to purchase a 50% interest in a corporation which owns 3% of the outstanding Common Stock, then the stockholder would own, under the applicable attribution rules of the Code, 5.5% of the outstanding shares of Common Stock. Stockholders should consult their own tax advisers concerning the application of the attribution rules of the Code in their particular circumstances.

Under the Code, rental income received by a REIT from persons in which the REIT is treated, under the applicable attribution rules of the Code, as owning a 10% or greater interest does not constitute qualifying income for purposes of the income requirements that REITs must satisfy. For these purposes, a REIT is treated as owning any stock owned, under the applicable attribution rules of the Code, by a person that owns 10% or more of the value of the outstanding shares of the REIT. Therefore, in order to ensure that rental income of the Company will not be treated as nonqualifying income under the rule described above, and thus to ensure that there will not be an inadvertent loss of REIT status as a result of the ownership of shares of a tenant, or a person that holds an interest in a tenant, the Certificate of Incorporation also contains an ownership limit that restricts, with certain exceptions, stockholders from owning, under the applicable attribution rules of the Code (which are different from those applicable with respect to the Common Stock Beneficial Ownership Limit), more than 9.9% of the outstanding shares of any class (the "Constructive Ownership Limit").

Stockholders should be aware that events other than a purchase or other transfer of shares can result in ownership, under the applicable attribution rules of the Code, of shares in excess of the Constructive Ownership Limit. As the attribution rules that apply with respect to the Constructive Ownership Limit differ from those that apply with respect to the Common Stock Beneficial Ownership Limit, the events other than a purchase or other transfer of shares which can result in share ownership in excess of the Constructive Ownership Limit can differ from those which can result in share ownership in excess of the Common Stock Beneficial Ownership Limit. Stockholders should consult their own tax advisers concerning the application of the attribution rules of the Code in their particular circumstances.

The Certificate of Incorporation provides that a transfer of shares of Common Stock that would otherwise result in ownership, under the applicable attribution rules of the Code, of Common Stock in excess of the Common Stock Beneficial Ownership Limit or the Constructive Ownership Limit, or which would cause the shares of beneficial interest of the Company to be beneficially owned by fewer than 100 persons, will be null and void and the purported transferee will acquire no rights or economic interest in such Common Stock. In addition, Common



Stock that would otherwise be owned, under the applicable attribution rules of the Code, in excess of the Common Stock Beneficial Ownership Limit or the Constructive Ownership Limit will be automatically exchanged for shares of Excess Stock that will be transferred, by operation of law, to the Company as trustee of a trust for the exclusive benefit of a beneficiary designated by the purported transferee or purported Holder. While so held in trust, the trustee shall vote the shares of Excess Stock in the same proportion as the Holders of the Common Stock and Preferred Stock, respectively, shall vote and such shares of Excess Stock are not entitled to participate in any dividends or distributions made by the Company. Any dividends or distributions received by the purported transferee or other purported Holder of such Excess Stock prior to the discovery by the Company of the automatic exchange for Excess Stock shall be repaid to the Company upon demand.

If the purported transferee or purported Holder elects to designate a beneficiary of an interest in the trust with respect to such Excess Stock, only a person whose ownership of the shares will not violate the Common Stock Beneficial Ownership Limit or the Constructive Ownership Limit may be designated, at which time the shares of Excess Stock will be automatically exchanged for shares of Common Stock. The Certificate of Incorporation contains provisions designed to ensure that the purported transferee or other purported Holder of shares of Excess Stock may not receive in return for such a transfer an amount that reflects any appreciation in the shares of Common Stock for which such shares of Excess Stock were exchanged during the period that such shares of Excess Stock were outstanding but will bear the burden of any decline in value during such period. Any amount received by a purported transferee or other purported Holder for designating a beneficiary in excess of the amount permitted to be received must be turned over to the Company. The Certificate of Incorporation provides that the Company may purchase any shares of Excess Stock that have been automatically exchanged for shares of Common Stock as a result of a purported transfer or other event. The price at which the Company may purchase such Excess Stock shall be equal to the lesser of (i) in the case of Excess Stock resulting from a purported transfer for value, the price per share in the purported transfer that resulted in the automatic exchange for Excess Stock or, in the case of Excess Stock resulting from some other event, the market price of the Common Stock exchanged on the date of the automatic exchange for Excess Stock and (ii) the market price of the Common Stock exchanged for such Excess Stock on the date that the Company accepts the deemed offer to sell such Excess Stock. The Company's purchase right with respect to Excess Stock shall exist for 90 days, beginning on the date that the automatic exchange for shares of Excess Stock occurred or, if the Company did not receive a notice concerning the purported transfer that resulted in the automatic exchange for shares of Excess Stock, the date that the Board of Directors determines in good faith that an exchange for Excess Stock has occurred.

The Board of Directors of the Company may in its discretion exempt certain persons from the Common Stock Beneficial Ownership Limit or the Constructive Ownership Limit, if evidence satisfactory to the Board of Directors is presented showing that such exemption will not jeopardize the Company's status as a REIT under the Code. As a condition of such exemption, the Board of Directors may require a ruling from the Internal Revenue Service and/or an opinion of counsel satisfactory to it and/or representations and undertakings from the applicant with respect to preserving the REIT status of the Company.

The Board of Directors has, subject to certain conditions and limitations, exempted Vornado and certain of its affiliates from the Common Stock Beneficial Ownership Limitation. As a result, it is unlikely as a practical matter that another Holder of Common Stock could obtain an exemption.

The Board of Directors may, at any time, determine that the foregoing restrictions on ownership and transfer shall no longer apply.

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, impose limitations upon the utilization of a corporation's net operating loss and credit carryforwards and certain other tax attributes, following significant changes in the corporation's stock ownership. In order to preserve the Company's ability to use its net operating loss carryforwards to reduce its taxable income, the Certificate of Incorporation also contains additional provisions restricting the ownership of the Company's outstanding shares (the "Section 382 Ownership

Restrictions"). The Section 382 Ownership Restrictions merely reduce the risk of certain occurrences that could cause such a limitation to arise. It is still possible that, due to transfers (either directly or indirectly) of the Company's outstanding shares, the Company could become subject to a limitation under Sections 382 and 383.

The Certificate of Incorporation provides, in general, that subject to the exceptions described in the next paragraph, no person may acquire shares of the Company (or options or warrants to acquire such shares) if as a result such person (or another person to which such shares were attributed under certain complex attribution rules, which differ in certain respects from those that apply for purposes of the Common Stock Beneficial Ownership Limit or the Constructive Ownership Limit) would own, directly or under such attribution rules, 5% or more of the class of such outstanding shares (hereinafter, such person's "Ownership Interest Percentage"). In addition, subject to the exceptions described in the next paragraph, no person whose Ownership Interest Percentage of a class of shares exceeds 5% can acquire or transfer such shares (or options or warrants to acquire such shares). The foregoing restrictions apply independently to each class of the Company's outstanding stock.

The foregoing restrictions do not apply to (i) acquisitions and transfers of shares of Common Stock by certain persons (or affiliates of persons), whose Ownership Interest Percentage of Common Stock on September 21, 1993 was 5% or more, (ii) transfers of shares pursuant to an offering by the Company, to the extent determined by the Board of Directors, and (iii) other transfers of shares specifically approved by the Company's Board of Directors.

Transfers of shares, options or warrants in violation of the Section 382 Ownership Restrictions would be void, and the transferee would acquire no rights in such shares, options or warrants. Thus, a purported acquiror would have no right to vote such shares or to receive dividends. Moreover, upon demand by the Company, a purported acquiror of shares, options or warrants would be required to transfer them to an agent designated by the Company. The agent, generally, would sell such shares, options or warrants, remit the proceeds thereof to the purported acquiror to the extent of such person's purchase price for such shares and, to the extent possible, remit the balance of the proceeds to such person's transferor. A similar procedure would be applied to any dividends paid to, and to the proceeds of any resale of shares, options or warrants by, the purported acquiror.

The Board of Directors has the authority to designate a date as of which the Section 382 Ownership Restrictions will no longer apply.

All persons who own, directly or by virtue of the applicable attribution rules of the Code, more than 2% of the shares of outstanding Common Stock must give a written notice to the Company containing the information specified in the Certificate of Incorporation by January 31 of each year. In addition, each stockholder shall upon demand be required to disclose to the Company such information as the Company may request, in good faith, in order to determine the Company's status as a REIT or to comply with Treasury Regulations promulgated under the REIT provisions of the Code.

The ownership restrictions described above may have the effect of precluding acquisition of control of the Company.

#### DESCRIPTION OF DEBT WARRANTS

The Company may issue Debt Warrants to purchase Debt Securities ("Debt Warrants"). Debt Warrants may be issued independently or together with any Debt Securities and may be attached to or separate from such Debt Securities. The Debt Warrants are to be issued under warrant agreements (each a "Warrant Agreement") to be entered into between the Company and a bank or trust company, as warrant agent (the "Warrant Agent"), all as shall be set forth in the Prospectus Supplement relating to Debt Warrants being offered pursuant thereto. If so indicated in a Prospectus Supplement, the terms of any Debt Warrants may differ from the terms set forth below.

The applicable Prospectus Supplement will describe the terms of Debt Warrants offered thereby, the Warrant Agreement relating to such Debt Warrants and the debt warrant certificates representing such Debt Warrants, including the following: (1) the title of such Debt Warrants; (2) the aggregate number of such Debt Warrants; (3) the price or prices at which such Debt Warrants will be issued and the procedures for adjusting such price; (4) the currency or currencies, including composite currencies or currency units, in which the price of such Debt Warrants may be payable; (5) the designation, aggregate principal amount and terms of the Debt Securities purchasable upon exercise of such Debt Warrants, and the procedures and conditions relating to the exercise of such Debt Warrants; (6) the designation and terms of any related Debt Securities with which such Debt Warrants are issued, and the number of such Debt Warrants issued with each such Debt Security; (7) the currency or currencies, including composite currencies or currency units, in which the principal of (or premium, if any), or interest, if any, on the Debt Securities purchasable upon exercise of such Debt Warrants will be payable; (8) the date, if any, on and after which such Debt Warrants and the related Debt Securities will be separately transferable; (9) the principal amount of Debt Securities purchasable upon exercise of each Debt Warrant, and the price at which and the currency, including composite currency or currency unit, in which such principal amount of Debt Securities may be purchased upon such exercise; (10) the date on which the right to exercise such Debt Warrants shall commence, and the date on which such right shall expire; (11) the maximum or minimum number of such Debt Warrants which may be exercised at any time; (12) a discussion of material federal income tax considerations, if any; and (13) any other terms of such Debt Warrants and terms, procedures and limitations relating to the exercise of such Debt Warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations and Debt Warrants may be exercised at the corporate trust office of the Warrant Agent or any other office indicated in the Prospectus Supplement. Prior to the exercise of their Debt Warrants, Holders of Debt Warrants will not have any of the rights of Holders of the Debt Securities purchasable upon such exercise and will not be entitled to payments of principal of (or premium, if any) or interest, if any, on the Debt Securities purchasable upon such exercise.

#### EXERCISE OF DEBT WARRANTS

Each Debt Warrant will entitle the Holder of such Debt Warrant to purchase for cash such principal amount of Debt Securities at such exercise price as shall in each case be set forth in, or be determinable as set forth in, the Prospectus Supplement relating to the Debt Warrants offered thereby. Debt Warrants may be exercised at any time up to the close of business on the expiration date set forth in the Prospectus Supplement relating to the Debt Warrants offered thereby. After the close of business on the expiration date, unexercised Debt Warrants will become void.

Debt Warrants may be exercised as set forth in the Prospectus Supplement relating to the Debt Warrants offered thereby. Upon receipt of payment and the warrant certificate properly completed and duly executed at the corporate trust office of the Warrant Agent or any other office indicated in the Prospectus Supplement, the Company will, as soon as practicable, forward the Debt Securities purchasable upon such exercise. If less than all of the Debt Warrants represented by such warrant certificate are exercised, a new warrant certificate will be issued for the remaining Debt Warrants.

#### CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

The following summary of the taxation of the Company and certain federal income tax consequences to Holders of the Securities is for general information only, and is not tax advice. The summary of certain federal income tax consequences to Holders of the Securities is based upon the opinion of Shearman & Sterling, counsel to the Company. The tax treatment of a Holder of Securities will vary depending upon the Holder's particular situation, and this discussion addresses only Holders that hold Securities as capital assets and does not purport to deal with all aspects of taxation that may be relevant to particular Holders in light of their personal investment or

tax circumstances, or to certain types of Holders (including dealers in securities or currencies, banks, tax-exempt organizations, life insurance companies, persons that hold Securities that are a hedge or that are hedged against currency risks or that are part of a straddle or conversion transaction) subject to special treatment under the federal income tax laws. This summary is based on the Code, its legislative history, existing and proposed regulations thereunder, published rulings and court decisions, all as currently in effect and all subject to change at any time, perhaps with retroactive effect.

INVESTORS ARE ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM OF THE ACQUISITION, OWNERSHIP AND SALE OF SECURITIES, INCLUDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF SUCH ACQUISITION, OWNERSHIP AND SALE IN THEIR PARTICULAR CIRCUMSTANCES AND POTENTIAL CHANGES IN APPLICABLE LAWS.

#### TAXATION OF THE COMPANY AS A REIT

##### General

The Company believes that, commencing with its taxable year ending December 31, 1995, it has been organized and has operated in such a manner as to qualify for taxation as a REIT under Sections 856 through 860 of the Code. The Company intends to continue to qualify to be taxed as a REIT, but no assurance of continued qualification can be given.

The sections of the Code applicable to REITs are highly technical and complex. The material aspects thereof are summarized below.

As a REIT, the Company generally will not be subject to federal corporate income taxes on its net income that is currently distributed to stockholders. This treatment substantially eliminates the "double taxation" (at the corporate and stockholder levels) that generally results from investment in a regular corporation. However, the Company will be subject to federal income tax as follows. First, the Company will be taxed at regular corporate rates on any undistributed real estate investment trust taxable income, including undistributed net capital gains. Second, under certain circumstances, the Company may be subject to the "alternative minimum tax" on its items of tax preference. Third, if the Company has (i) 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 (ii) other non-qualifying income from foreclosure property, it will be subject to tax at the highest corporate rate on such income. Fourth, if the Company has net income from "prohibited transactions" (which are, in general, certain sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business), such income will be subject to a 100% tax. Fifth, if the Company should fail to satisfy the 75% gross income test or the 95% gross income test (as discussed below), but has nonetheless maintained its qualification as a REIT because certain other requirements have been met, it will be subject to a 100% tax on an amount equal to (a) the gross income attributable to the greater of the amount by which the Company fails the 75% or 95% test, multiplied by (b) a fraction intended to reflect the Company's profitability. Sixth, if the Company should fail to distribute during each calendar year at least the sum of (i) 85% of its real estate investment trust ordinary income for such year, (ii) 95% of its real estate investment trust capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, the Company would be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed. Seventh, if during the 10-year period (the "Recognition Period") beginning on the first day of the first taxable year for which the Company qualified as a REIT, the Company recognizes gain on the disposition of any asset held by the Company as of the beginning of the Recognition Period, then, to the extent of the excess of (a) fair market value of such asset as of the beginning of the Recognition Period over (b) the Company's adjusted basis in such asset as of the beginning of the Recognition Period (the "Built-in Gain"), such gain will be subject to tax at the highest regular corporate rate pursuant to Treasury regulations that have not been promulgated; provided, however, that the Company shall not be subject to

tax on recognized Built-in Gain with respect to assets held as of the first day of the Recognition Period to the extent that the aggregate amount of such recognized Built-in Gain exceeds the net aggregate amount of the Company's unrealized Built-in Gain as of the first day of the Recognition Period. Eighth, if the Company acquires any asset from a C corporation (i.e., generally a corporation subject to full corporate-level tax) in certain transactions in which the basis of the asset in the hands of the Company is determined by reference to the basis of the asset (or any other property) in the hands of the C corporation, and the Company recognizes gain on the disposition of such asset during the Recognition Period beginning on the date on which such asset was acquired by the Company, then, pursuant to the Treasury regulations that have not yet been issued and to the extent of the Built-in Gain, such gain will be subject to tax at the highest regular corporate rate.

#### Requirements for Qualification

The Code defines a REIT as a corporation, trust or association (1) which is managed by one or more trustees or directors, (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest, (3) which would otherwise be taxable as a domestic corporation, but for Sections 856 through 859 of the Code, (4) which is neither a financial institution nor an insurance company subject to certain provisions of the Code, (5) the beneficial ownership of which is held by 100 or more persons, (6) during the last half of each taxable year, not more than 50% in value of the outstanding stock of which is owned, directly or constructively, by five or fewer individuals (as defined in the Code to include certain entities) and (7) which meets certain other tests, described below, regarding the nature of its income and assets. The Code provides that 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 12 months, or during a proportionate part of a taxable year of less than 12 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.

The Company has satisfied condition (5) and believes that it has also satisfied condition (6). In addition, the Company's Certificate of Incorporation provides for restrictions regarding the ownership and transfer of the Company's shares, which restrictions are intended to assist the Company in continuing to satisfy the share ownership requirements described in (5) and (6) above. The ownership and transfer restrictions pertaining to the Common Stock are described above under the headings "Description of Capital Stock--Description of Preferred Stock--Restrictions on Ownership" and "Description of Capital Stock--Description of Common Stock--Restrictions on Ownership."

The Company owns and operates a number of properties through wholly-owned subsidiaries. Code Section 856(i) provides that a corporation which is a "qualified REIT subsidiary" shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a "qualified REIT subsidiary" shall be treated as assets, liabilities and such items (as the case may be) of the REIT. Thus, in applying the requirements described herein, the Company's "qualified REIT subsidiaries" will be ignored, and all assets, liabilities and items of income, deduction, and credit of such subsidiaries will be treated as assets, liabilities and such items (as the case may be) of the Company. The Company believes that all of its wholly-owned subsidiaries are "qualified REIT subsidiaries."

In the case of a REIT that is a partner in a partnership, Treasury regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. In addition, the character of the assets and gross income of the partnership will retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, the Company's proportionate share of the assets, liabilities and items of income of any partnership in which the Company is a partner will be treated as assets, liabilities and items of income of the Company for purposes of applying the requirements described herein.

**Income Tests.** In order to maintain qualification as a REIT, the Company annually must satisfy three gross income requirements. First, at least 75% of the Company's gross income (excluding gross income from prohibited

transactions) for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property (including "rents from real property"--which term generally includes expenses of the Company that are paid or reimbursed by tenants--and, in certain circumstances, interest) or from certain types of temporary investments. Second, at least 95% of the Company's gross income (excluding gross income from prohibited transactions) for each taxable year must be derived from such real property investments, dividends, interest and gain from the sale or disposition of stock or securities (or from any combination of the foregoing). Third, short-term gain from the sale or other disposition of stock or securities, gain from prohibited transactions and gain on the sale or other disposition of real property held for less than four years (apart from involuntary conversions and sales of foreclosure property) must represent less than 30% of the Company's gross income (including gross income from prohibited transactions) for each taxable year.

Rents received by the Company will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if several conditions are met. First, 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 terms "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales. Second, the Code provides that rents received from a tenant will not qualify as "rents from real property" in satisfying the gross income tests if the REIT, directly or under the applicable attribution rules, owns a 10% or greater interest in such tenant (a "Related Party Tenant"). Third, if rent attributable to personal property leased in connection with a lease of real property is greater than 15% of the total rent received under the lease, then the portion of rent attributable to such personal property will not qualify as "rents from real property". Finally, for rents received to qualify as "rents from real property," the REIT generally must not operate or manage the property or furnish or render services to the tenants of such property, other than through an independent contractor from whom the REIT derives no revenue; provided, however, that the Company is not required to use an independent contractor to 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. The Company does not and will not charge rent for any property to a Related Party Tenant, and the Company does not and will not derive rental income attributable to personal property (other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease). The Company does not believe that any of the services that are performed for its tenants will cause its gross income attributable to such tenants to fail to be treated as "rents from real property."

The term "interest" generally does not include any amount received or accrued (directly or indirectly) if the determination of such amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

If the Company fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, it may nevertheless qualify as a REIT for such year if it is entitled to relief under certain provisions of the Code. These relief provisions will generally be available if the Company's failure to meet such tests was due to reasonable cause and not due to willful neglect, the Company attaches a schedule of the sources of its income to its 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 the Company would be entitled to the benefit of these relief provisions. As discussed above under "-- General," even if these relief provisions apply, a tax would be imposed with respect to the excess net income.

**Asset Tests.** The Company, at the close of each quarter of its taxable year, must also satisfy three tests relating to the nature of its assets. First, at least 75% of the value of the Company's total assets must be represented by real estate assets (including (i) real estate assets held by the Company's qualified REIT subsidiaries and the Company's allocable share of real estate assets held by partnerships in which the Company owns an interest, (ii) stock or debt instruments held for not more than one year purchased with the proceeds of a stock offering or long-term (at least five years) debt offering of the Company and (iii) stock issued by another REIT), cash, cash

items and government securities. Second, not more than 25% of the Company's total assets may be represented by securities other than those in the 75% asset class. Third, of the investments included in the 25% asset class, the value of any one issuer's securities (other than securities issued by another REIT) owned by the Company may not exceed 5% of the value of the Company's total assets and the Company may not own more than 10% of any one issuer's outstanding voting securities.

**Annual Distribution Requirements.** The Company, in order to qualify as a REIT, is required to distribute dividends (other than capital gain dividends) to its stockholders in an amount at least equal to (A) the sum of (i) 95% of the Company's "real estate investment trust taxable income" (computed without regard to the dividends paid deduction and the Company's net capital gain) and (ii) 95% of the net income (after tax), if any, from foreclosure property minus (B) the sum of certain items of non-cash income. In addition, if the Company disposes of any asset during its Recognition Period, the Company will be required, pursuant to Treasury regulations which have not yet been promulgated, to distribute at least 95% of the Built-in Gain (after tax), if any, recognized on the disposition of such asset. Such distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before the Company timely files its tax return for such year and if paid on or before the first regular dividend payment after such declaration. To the extent that the Company does not distribute all of its net capital gain or distributes at least 95%, but less than 100%, of its "real estate investment trust taxable income," as adjusted, it will be subject to tax thereon at regular ordinary and capital gain corporate tax rates. Furthermore, if the Company should fail to distribute during each calendar year at least the sum of (i) 85% of its ordinary income for such year, (ii) 95% of its capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, the Company would be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed. The Company intends to satisfy the annual distribution requirements.

As of December 31, 1994, the Company had reported net operating loss ("NOL") carryovers aggregating approximately \$110 million. These NOL carryovers expire in 2005, 2006, 2007, 2008 and 2009. Under the Code, the Company's NOL carryovers generally would be available to offset the amount of the Company's "real estate investment trust taxable income" that otherwise would be required to be distributed to its stockholders. As a result, until the NOL carryovers are utilized, the Company does not expect to be required to pay dividends (except with respect to any recognized Built-In Gain) in order to continue to qualify as a REIT. However, the NOLs reported on the Company's tax returns are not binding on the Internal Revenue Service (the "IRS") and are subject to adjustment as a result of future IRS audits of the Company's tax returns. In addition, under Section 382 of the Code, the Company's ability to use its NOL carryovers could be limited if, generally, there were significant changes in the ownership of its outstanding stock.

If the Company is required to make a distribution to its stockholders, it is possible that the Company may not have sufficient cash or other liquid assets to meet the 95% distribution requirements due to various circumstances, including debt amortization requirements or timing differences between (i) the actual receipt of income and actual payment of deductible expenses and (ii) the inclusion of such income and deduction of such expenses in arriving at taxable income of the Company. In the event that such insufficiency occurs, in order to meet the 95% distribution requirements, the Company may find it necessary to arrange for short-term, or possibly long-term, borrowings or to pay dividends in the form of taxable stock dividends or subordinated notes.

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

## Failure to Qualify

If the Company fails to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, the Company will be subject to tax (including any applicable alternative minimum tax) on its taxable income at regular corporate rates. Distributions to stockholders in any year in which the Company fails to qualify will not be deductible by the Company nor will they be required to be made. In such event, to the extent of current and accumulated earnings and profits, all distributions to stockholders will be taxable as ordinary income and, subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, the Company will also be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost. It is not possible to state whether in all circumstances the Company would be entitled to such statutory relief.

## TAXATION OF HOLDERS OF DEBT SECURITIES

As used herein, the term "U.S. Holder" means a holder of a Debt Security who (for United States federal income tax purposes) is (i) a citizen or resident of the United States, (ii) a domestic corporation or (iii) otherwise subject to United States federal income taxation on a net income basis in respect of the Debt Security and "U.S. Alien Holder" means a holder of a Debt Security who (for United States federal income tax purposes) is (i) a nonresident alien individual or (ii) a foreign corporation, partnership or estate or trust which is not subject to United States federal income tax on a net income basis in respect of income or gain from the Debt Security.

## U.S. Holders

Payments of Interest. Interest on a Debt Security will be taxable to a U.S. Holder as ordinary income at the time it is received or accrued, depending on the holder's method of accounting for tax purposes.

Purchase, Sale and Retirement of the Debt Securities. A U.S. Holder's tax basis in a Debt Security will generally be its U.S. dollar cost (including, in the case of a Debt Security acquired through the exercise of a Debt Warrant, both the cost of the Debt Warrant and the amount paid on exercise of the Debt Warrant). A U.S. Holder will generally recognize gain or loss on the sale or retirement of a Debt Security equal to the difference between the amount realized on the sale or retirement and the U.S. Holder's tax basis in the Debt Security. Except to the extent attributable to accrued but unpaid interest, gain or loss recognized on the sale or retirement of a Debt Security will be capital gain or loss and will be long-term capital gain or loss if the Debt Security was held for more than one year.

## U.S. Alien Holders

This discussion assumes that the Debt Security is not subject to the rules of Section 871(h)(4)(A) of the Code (relating to interest payments that are determined by reference to the income, profits, changes in the value of property or other attributes of the debtor or a related party).

Under present United States federal income and estate tax law, and subject to the discussion of backup withholding below:

(i) payments of principal, premium (if any) and interest by the Company or any of its paying agents to any holder of a Debt Security that is a U.S. Alien Holder will not be subject to United States federal withholding tax if, in the case of interest (a) the beneficial owner of the Debt Security does not actually or constructively own 10% or more of the total combined voting power of all classes of stock of the Company entitled to vote, (b) the beneficial owner of the Debt Security is not a controlled foreign corporation that is related to the Company through stock ownership, and (c) either (A) the beneficial owner of the Debt Security certifies to the Company or its agent, under penalties of perjury, that it is not a U.S. person and provides its name and address or (B) a securities clearing



organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business (a "financial institution") and holds the Debt Security certifies to the Company or its agent under penalties of perjury that such statement has been received from the beneficial owner by it or by a financial institution between it and the beneficial owner and furnishes the payor with a copy thereof;

(ii) a U.S. Alien Holder of a Debt Security will not be subject to United States federal withholding tax on any gain realized on the sale or exchange of a Debt Security; and

(iii) a Debt Security held by an individual who at death is not a citizen or resident of the United States will not be includible in the individual's gross estate for purposes of the United States federal estate tax as a result of the individual's death if (a) the individual did not actually or constructively own 10% or more of the total combined voting power of all classes of stock of the Company entitled to vote and (b) the income on the Debt Security would not have been effectively connected with a United States trade or business of the individual at the time of the individual's death.

#### Information Reporting and Backup Withholding

**U.S. Holders.** In general, information reporting requirements will apply to payments of principal, any premium and interest on a Debt Security and the proceeds of the sale of a Debt Security before maturity within the United States to non-corporate U.S. Holders, and "backup withholding" at a rate of 31% will apply to such payments if the U.S. Holder fails to provide an accurate taxpayer identification number or to report all interest and dividends required to be shown on its federal income tax returns.

**U.S. Alien Holders.** Information reporting and backup withholding will not apply to payments of principal, premium (if any) and interest made by the Company or a paying agent to a U.S. Alien Holder on a Debt Security if the certification described in clause (i)(c) under "U.S. Alien Holders" above is received, provided that the payor does not have actual knowledge that the holder is a U.S. person.

Payments of the proceeds from the sale by a U.S. Alien Holder of a Debt Security made to or through a foreign office of a broker will not be subject to information reporting or backup withholding, except that if the broker is a U.S. person, a controlled foreign corporation for United States federal income tax purposes or a foreign person 50% or more of whose gross income is effectively connected with a United States trade or business for a specified three-year period, information reporting may apply to such payments. Payments of the proceeds from the sale of a Debt Security to or through the United States office of a broker is subject to information reporting and backup withholding unless the holder or beneficial owner certifies as to its non-United States status or otherwise establishes an exemption from information reporting and backup withholding.

The applicable Prospectus Supplement will contain a discussion of any special United States federal income tax rules with respect to Debt Securities that are issued at a discount or premium or as a unit with other Securities, have a maturity of one year or less, provide for conversion rights, contingent payments, early redemption or payments that are denominated in or determined by reference to a currency other than the U.S. dollar or otherwise subject to special United States federal income tax rules.

#### TAXATION OF HOLDERS OF DEBT WARRANTS

##### Sale or Expiration

Generally, a holder of a Debt Warrant will recognize gain or loss upon the sale or other disposition of a Debt Warrant in an amount equal to the difference between the amount realized on such sale or other disposition and the holder's tax basis in the Debt Warrant. A holder of a Debt Warrant that expires unexercised will generally recognize loss in an amount equal to such holder's tax basis in the Debt Warrant. Gain or loss resulting from the

sale, other disposition or expiration of a Debt Warrant will generally be capital gain or loss and will be long-term if the Debt Warrant was held for more than one year.

#### Exercise

The exercise of a Debt Warrant with cash will not be a taxable event for the exercising holder. Such holder's basis in the Debt Securities received on exercise of the Debt Warrant will equal the sum of such holder's tax basis in the exercised Debt Warrant and the exercise price of the Debt Warrant. The holding period in a Debt Security received on exercise of a Debt Warrant will not include the period during which the Debt Warrant was held.

The applicable Prospectus Supplement will contain a discussion of any special United States federal income tax rules with respect to Debt Warrants that are issued as a unit with other Securities.

#### TAXATION OF HOLDERS OF COMMON STOCK OR PREFERRED STOCK

##### U.S. Stockholders

As used herein, the term "U.S. Stockholder" means a holder of Common Stock or Preferred Stock ("Stock") who (for United States federal income tax purposes) is (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, or (iii) an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

As long as the Company qualifies as a REIT, distributions made by the Company out of its current or accumulated earnings and profits (and not designated as capital gain dividends) will constitute dividends taxable to its taxable U.S. Stockholders as ordinary income. Such distributions will not be eligible for the dividends-received deduction in the case of U.S. Stockholders that are corporations. Distributions made by the Company that are properly designated by the Company as capital gain dividends will be taxable to U.S. Stockholders as long-term capital gains (to the extent that they do not exceed the Company's actual net capital gain for the taxable year) without regard to the period for which a U.S. Stockholder has held his shares. U.S. Stockholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

To the extent that the Company makes distributions (not designated as capital gain dividends) in excess of its current and accumulated earnings and profits, such distributions will be treated first as a tax-free return of capital to each U.S. Stockholder, reducing the adjusted basis which such U.S. Stockholder has in his shares for tax purposes by the amount of such distribution (but not below zero), with distributions in excess of a U.S. Stockholder's adjusted basis in his shares taxable as capital gains (provided that the shares have been held as a capital asset). For purposes of determining the portion of distributions on separate classes of Stock that will be treated as a dividends for federal income tax purposes, current and accumulated earnings and profits will be allocated to distributions resulting from priority rights of Preferred Stock before being allocated to other distributions. Dividends declared by the Company in October, November, or December of any year and payable to a stockholder of record on a specified date in any such month shall be treated as both paid by the Company and received by the stockholder on December 31 of such year, provided that the dividend is actually paid by the Company on or before January 31 of the following calendar year. Stockholders may not include in their own income tax returns any net operating losses or capital losses of the Company.

Distributions made by the Company and gain arising from the sale or exchange by a U.S. Stockholder of shares of Stock will not be treated as passive activity income, and, as a result, U.S. Stockholders generally will not be able to apply any "passive losses" against such income or gain. Distributions made by the Company (to the extent they do not constitute a return of capital or capital gain dividends) generally will be treated as investment income

for purposes of computing the investment interest deduction limitation. Gain arising from the sale or other disposition of shares of Stock, however, will not be treated as investment income unless the U.S. Stockholder elects to reduce the amount of his total net capital gain eligible for the 28% maximum capital gains rate by the amount of such gain with respect to the Stock.

Upon any sale or other disposition of shares of Stock, a U.S. Stockholder will recognize gain or loss for federal income tax purposes in an amount equal to the difference between (i) the amount of cash and the fair market value of any property received on such sale or other disposition, and (ii) the holder's adjusted basis in the shares of Stock for tax purposes. Such gain or loss will be capital gain or loss if the shares have been held by the U.S. Stockholders as a capital asset, and will be long-term gain or loss if such Stock has been held for more than one year. In general, any loss recognized by a U.S. Stockholder upon the sale or other disposition of shares of the Company that have been held for six months or less (after applying certain holding period rules) will be treated as a long-term capital loss, to the extent of distributions received by such U.S. Stockholder from the Company which were required to be treated as long-term capital gains.

**Backup Withholding.** The Company will report to its U.S. Stockholders and the Internal Revenue Service (the "IRS") the amount of dividends paid during each calendar year, and the amount of tax withheld, if any. Under the backup withholdings rules, a stockholder may be subject to backup withholding at the rate of 31% with respect to dividends paid unless such holder (a) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (b) 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 the Company with his correct taxpayer identification number may also be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, the Company may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to the Company.

**Taxation of Tax-Exempt Stockholders.** Generally, a tax-exempt investor that is exempt from tax on its investment income, such as an individual retirement account (IRA) or a 401(k) plan, that holds shares of Stock as an investment will not be subject to tax on dividends paid by the Company. However, if such tax-exempt investor is treated as having purchased its shares with borrowed funds, some or all of its dividends will be subject to tax.

#### Non-U.S. Stockholders

The rules governing United States federal income taxation of the ownership and dispositions of shares of Stock by persons that are, for purposes of such taxation, nonresident alien individuals, foreign corporations, foreign partnerships or foreign estates or trusts (collectively, "Non-U.S. Stockholders") are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of United States federal income taxation and does not address state, local or foreign tax consequences that may be relevant to a Non-U.S. Stockholder in light of its particular circumstances. In addition, this discussion is based on current law, which is subject to change, and assumes that the Company qualifies for taxation as a REIT. Prospective Non-U.S. Stockholders should consult with their own tax advisers to determine the impact of federal, state, local and foreign income tax laws with regard to an investment in stock, including any reporting requirements.

**Distributions.** Distributions by the Company to a Non-U.S. Stockholder that are neither attributable to gain from sales or exchanges by the Company of United States real property interests nor designated by the Company as a capital gains dividends will be treated as dividends of ordinary income to the extent that they are made out of current or accumulated earnings and profits of the Company. Such distributions ordinarily will be subject to withholding of United States federal tax on a gross basis (that is, without allowance of deductions) at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the dividends are treated as effectively connected with the conduct by the Non-U.S. Stockholder of a United States trade or business. Dividends that are effectively connected with such a trade or business will be subject to tax on a net basis (that is, after

allowance of deductions) at graduated rates, in the same manner as domestic stockholders are taxed with respect to such dividends and are generally not subject to withholding. Any such dividends received by a Non-U.S. Stockholder that is a corporation may also be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

Pursuant to current Treasury regulations, dividends paid to an address in a country outside the United States are generally presumed to be paid to a resident of such country for purposes of determining the applicability of withholding discussed above and the applicability of a tax treaty rate. Under proposed Treasury regulations, which are not currently in effect, however, a Non-U.S. Stockholder who wished to claim the benefit of an applicable treaty rate would be required to satisfy certain certification and other requirements. Under certain treaties, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT, such as the Company. Certain certification and disclosure requirements must be satisfied to be exempt from withholding under the effectively connected income exemption discussed above.

Distributions in excess of current or accumulated earnings and profits of the Company will not be taxable to a Non-U.S. Stockholder to the extent that they do not exceed the adjusted basis of the stockholder's shares of Stock, but rather will reduce the adjusted basis of such stock. To the extent that such distributions exceed the adjusted basis of a Non-U.S. Stockholder's stock, they will give rise to gain from the sale or exchange of his stock, the tax treatment of which is described below. For withholding purposes, the Company is required to treat all distributions as if made out of current or accumulated earnings and profits. However, amounts thus withheld are generally refundable if it is subsequently determined that such distribution was, in fact, in excess of current or accumulated earnings and profits of the Company.

Distributions to a Non-U.S. Stockholder that are designated by the Company at the time of distribution as capital gains dividends (other than those arising from the disposition of a United States real property interest) generally will not be subject to United States federal income taxation, unless (i) the investment in the shares of Stock is effectively connected with the Non-U.S. Stockholder's United States trade or business, in which case the Non-U.S. Stockholder will be subject to the same treatment as domestic stockholders with respect to such gain (except that a stockholder that is a foreign corporation may also be subject to the 30% branch profits tax, as discussed above), or (ii) the Non-U.S. Stockholder is a nonresident alien individual who is present in the United States for 183 or more days during the taxable year and has a "tax home" in the United States, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

Distributions to a Non-U.S. Stockholder that are attributable to gain from sales or exchanges by the Company of United States real property interests will cause the Non-U.S. Stockholder to be treated as recognizing such gain as income effectively connected with a United States trade or business. Non-U.S. Stockholders would thus generally be taxed at the same rates applicable to domestic stockholders (subject to a special alternative minimum tax in the case of nonresident alien individuals). The Company is required to withhold 35% of any such distribution. That amount is creditable against the Non-U.S. Stockholder's United States federal income tax liability. Also, such distribution may be subject to a 30% branch profits tax in the hands of a Non-U.S. Stockholder that is a corporation, as discussed above.

Sale of Stock. Gain recognized by a Non-U.S. Stockholder upon the sale or exchange of shares of Stock generally will not be subject to United States taxation unless the Stock constitutes a "United States real property interest" within the meaning of the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). The Stock will not constitute a "United States real property interest" so long as the Company is a "domestically controlled REIT." A "domestically controlled REIT" is a REIT in which at all times during a specified testing period less than 50% in value of its stock is held directly or indirectly by Non-U.S. Stockholders. Notwithstanding the foregoing, gain from the sale or exchange of Stock not otherwise subject to FIRPTA will be taxable to a Non-U.S. Stockholder (i) if the investment in the Stock is effectively connected with the Non-U.S. Stockholder's U.S. trade or business, in which case the Non-U.S. Stockholder will be subject to the same treatment as domestic stockholders with respect

to such gain, or (ii) if the Non-U.S. Stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States, in which case, the nonresident alien individual will be subject to a 30% United States withholding tax in the amount of such individual's gain.

If the Company is not or ceases to be a "domestically-controlled REIT," whether gain arising from the sale or exchange by a Non-U.S. Stockholder of shares of Stock would be subject to United States taxation under FIRPTA as a sale of a "United States real property interest" will depend on whether the shares are "regularly traded" (as defined by applicable Treasury regulations) on an established securities market (e.g., the New York Stock Exchange) and on the size of the selling Non-U.S. Stockholder's interest in the Company. If gain on the sale or exchange of shares of Stock was subject to taxation under FIRPTA, the Non-U.S. Stockholder would be subject to regular United States income tax with respect to such gain in the same manner as a U.S. Stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals) and the purchaser of the Stock would be required to withhold and remit to the IRS 10% of the purchase price.

**Backup Withholding and Information Reporting.** Backup withholding tax (which generally is a withholding tax imposed at the rate of 31% on certain payments to persons that fail to furnish certain information under the United States information reporting requirements) and information reporting will generally not apply to distributions paid to Non-U.S. Stockholders outside the United States that are treated as (i) dividends subject to the 30% (or lower treaty rate) withholding tax discussed above, (ii) capital gains dividends or (iii) distributions attributable to gain from the sale or exchange by the Company of United States real property interests. As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of shares of Stock by or through a foreign office of a foreign broker. Information reporting (but not backup withholding) will apply, however, to a payment of the proceeds of a sale of Stock by or through a foreign office of a broker that (a) is a U.S. person, (b) derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States or (c) is a "controlled foreign corporation" (generally, a foreign corporation controlled by United States stockholders) for United States federal income tax purposes, unless the broker has documentary evidence in its records that the holder is a Non-U.S. Stockholder and certain other conditions are met, or the stockholder otherwise establishes an exemption. Payment to or through a United States office of a broker of the proceeds of a sale of shares of Stock is subject to both backup withholding and information reporting unless the stockholder certifies under penalties of perjury that the stockholder is a Non-U.S. Stockholder, or otherwise establishes an exemption. A Non-U.S. Stockholder may obtain a refund of any amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the IRS.

**Estate Tax.** Shares of Stock owned by an individual who is not a citizen or resident of the United States (as determined for purposes of U.S. federal estate tax law) at the time of death will generally be includible in such individual's gross estate for federal estate tax purposes unless an applicable estate tax treaty provides otherwise.

#### OTHER TAX CONSEQUENCES

The Company and its stockholders may be subject to state or local taxation in various state or local jurisdictions, including those in which it or they transact business or reside. The state and local tax treatment of the Company and its stockholders may not conform to the federal income tax consequences discussed above. Consequently, prospective stockholders should consult their own tax advisors regarding the effect of state and local tax laws on an investment in the Company.

## PLAN OF DISTRIBUTION

The Company 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 related Prospectus Supplement. The Company has reserved the right to sell the Securities directly to investors on its own behalf in those jurisdictions where it is authorized to do so.

Underwriters may offer and sell the Securities at a fixed price or prices that may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. The Company also may, from time to time, authorize dealers, acting as the Company's agents, to offer and sell the Securities upon such terms and conditions as set forth in the related Prospectus Supplement. In connection with the sale of the Securities, underwriters may receive compensation from the Company in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the Securities for whom they may act as agent. Underwriters may sell the Securities to or through dealers, and such dealers may receive compensation in the form of discounts, concession or commissions from the underwriters and/or commissions (which may be changed from time to time) from the purchasers for whom they may act as agents.

Any underwriting compensation paid by the Company to underwriters or agents in connection with the offering of the Securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the related Prospectus Supplement. 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. Underwriters, dealers and agents may be entitled, under agreements entered into with the Company, to indemnification against and contribution towards certain civil liabilities, including any liabilities under the Securities Act.

If so indicated in the related Prospectus Supplement, the Company will authorize dealers acting as the Company's agents to solicit agreements by certain institutions to purchase the Securities from the Company at the public offering price set forth in the related Prospectus Supplement pursuant to delayed delivery contracts ("Contracts") providing for payment and delivery on the date or dates stated in a Prospectus Supplement. Each Contract will be for an amount specified in the applicable Prospectus Supplement. Institutions, with whom Contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutions, but will in all cases be subject to the approval of the Company. Contracts will not be subject to any conditions except that (i) the purchase by an institution of the Securities covered by Contracts will not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which such institution is subject and (ii) if the Securities are being sold to underwriters, the Company shall have sold to such underwriters such amount specified in the applicable Prospectus Supplement.

Any Securities issued hereunder (other than Common Stock) will be new issues of securities with no established trading market. Any underwriters or agents to or through whom such Securities are sold by the Company for public offering and sale may make a market in such Securities, but such underwriters or agents will not be obligated to do so and may discontinue any such market making at any time without notice. No assurance can be given as to the liquidity of the trading market for any such Securities.

Certain of the underwriters, dealers or agents and their associates may engage in transactions with, and perform services for, the Company and certain of its affiliates in the ordinary course of business.

## EXPERTS

The consolidated financial statements and the related consolidated financial statement schedules incorporated in this Prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 1994 have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report which expresses an unqualified opinion and includes explanatory paragraphs relating to (i) the Company's adoption of Statement of Financial Accounting Standards No. 106 - Accounting for Postretirement Benefits and (ii) the Company's ability to operate as a viable real estate company which depends on the successful completion of the development and leasing of a substantial portion of its existing properties is incorporated herein by reference, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## VALIDITY OF THE SECURITIES

The validity of the Securities issued hereunder will be passed upon for the Company by Shearman & Sterling, New York, New York, counsel to the Company. The validity of any Securities issued hereunder will be passed upon for any underwriters by the counsel named in the applicable Prospectus Supplement.

## INFORMATION NOT REQUIRED IN PROSPECTUS

## ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The estimated expenses in connection with the issuance and distribution of the securities being registered, other than Underwriting Compensation, are as follows:

SEC registration fee . . . . .	\$86,207
Printing and engraving expenses . . . . .	\$ *
Legal fees and disbursements . . . . .	\$ *
Accounting fees and disbursements . . . . .	\$ *
Transfer Agent's, Depositary's and Trustee's fees and disbursements . .	\$ *
Blue Sky fees and expenses . . . . .	\$ *
Miscellaneous (including listing fees, if applicable, and rating agency fees) . . . . .	\$ *
Total	\$ *
	=

-----  
\* Estimated

## ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law empowers a corporation to indemnify its directors and officers or former directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers under certain circumstances. Such law provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under a corporation's Certificate of Incorporation, By-laws, agreement or otherwise.

The Company's Certificate of Incorporation provides that the Company's officers and directors will be indemnified to the fullest extent permitted by Delaware law. The Company shall be liable to the Company or the stockholders for monetary damages for breach of the director's fiduciary duty. Such provision does not limit a director's liability to the Company or its stockholders resulting from: (i) any breach of the director's duty of loyalty to the Company or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in section 174 of the Delaware General Corporation Law or (iv) any transaction from which the director derived an improper personal benefit.

The Company's Certificate of Incorporation provides that the Company shall pay the expenses incurred by an officer or a director of the Company in defending a civil or criminal action, suit, or proceeding involving such person's acts or omissions as an officer or a director of the Company if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company or its stockholders and, with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. Unless ordered by a court, indemnification of an officer shall be made by the Company only as authorized in a specific case upon the determination that indemnification of the officer or director is proper under the circumstances because he or she has met the applicable standard of conduct. Such determination shall be made (i) by majority vote of the directors of the Company who are not parties to the action, suit or proceeding, (ii) by independent legal counsel in a written opinion, or (iii) by the stockholders of the Company. The



Company's Certificate of Incorporation authorizes the Company to pay the expenses incurred by an officer or a director in defending a civil or criminal action, suit, or proceeding in advance of the final disposition thereof, upon receipt of an undertaking by or on behalf of such person to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the Company.

The Company has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Company or is liable as a director of the Company, or is or was serving, at the request of the Company, as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, regardless of whether the Company would have power to indemnify him against such liability.

The Company has purchased a policy of directors' and officers' insurance that insures both the Company and its officers and directors against expenses and liabilities of the type normally insured against under such policies, including the expense of the indemnifications described above.

Pursuant to the form of Underwriting Agreement, to be filed by amendment hereto or by Form 8-K, the underwriters will agree, subject to certain conditions, to indemnify the Company, its directors, certain of its officers and persons who control the Company within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), against certain liabilities.

ITEM 16. EXHIBITS.

Exhibit Number -----	Description -----
1.1*	Form of Underwriting Agreement (for Common Stock)
1.2*	Form of Underwriting Agreement (for Preferred Stock)
1.3*	Form of Underwriting Agreement (for Debt Securities)
3.1	Amended and Restated Certificate of Incorporation of the Company
3.2	By-laws of the Company (incorporated by reference to Exhibit 3(B) to the Company's Annual Report on Form 10-K, filed on July 27, 1991)
4.1*	Specimen certificate representing Common Stock
4.2*	Form of Indenture for Senior Debt Securities
4.3	Form of Senior Debt Security (included in Exhibit 4.2)
4.4*	Form of Indenture for Subordinated Debt Securities
4.5	Form of Subordinated Debt Security (included in Exhibit 4.4)
4.6*	Form of Deposit Agreement

-----  
\* To be filed by amendment or 8-K.

- 4.7 Form of Depositary Receipt (included in Exhibit 4.6)
- 5.1\* Opinion of Shearman & Sterling
- 12 Statement Regarding Computation of Consolidated Ratios of Earnings to Fixed Charges
- 23.1 Consent of Deloitte & Touche LLP
- 23.2 Consent of Shearman & Sterling (included in its opinion filed as Exhibit 5.1)
- 24.1 Powers of Attorney (included on signature page)
- 25.1\* Statement of Eligibility of Senior Trustee on Form T-1
- 25.2\* Statement of Eligibility of Subordinated Trustee on Form T-1

ITEM 17. UNDERTAKINGS.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment of this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

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

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

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

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

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Alexander's, Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Saddle Brook and State of New Jersey, on September 20, 1995.

ALEXANDER'S, INC.

By /s/ Joseph Macnow

-----  
Joseph Macnow  
Chief Financial Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Joseph Macnow and Brian Kurtz, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission any other regulatory authority, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

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

Signature -----	Title -----	Date ----
/s/ Steven Roth ----- Steven Roth	Chief Executive Officer	1995
/s/ Stephen Mann ----- Stephen Mann	Chairman of the Board of Directors	1995
/s/ David Mandelbaum ----- David Mandelbaum	Director	1995
----- Thomas R. DiBenedetto	Director	1995
----- Richard R. West	Director	1995
/s/ Arthur I. Sonnenblick ----- Arthur I. Sonnenblick	Director	1995
/s/ Russell B. Wight, Jr. ----- Russell B. Wight, Jr.	Director	1995
/s/ Neil Underberg ----- Neil Underberg	Director	1995
/s/ Joseph Macnow ----- Joseph Macnow	Chief Financial Officer and principal accounting officer	1995

## Exhibit Index

Exhibit No. -----	Exhibit -----
1.1*	Form of Underwriting Agreement (for Common Stock)
1.2*	Form of Underwriting Agreement (for Preferred Stock)
1.3*	Form of Underwriting Agreement (for Debt Securities)
3.1	Amended and Restated Certificate of Incorporation of the Company
3.2	By-laws of the Company (incorporated by reference to Exhibit 3(B) to the Company's Annual Report on Form 10-K, filed on July 27, 1991)
4.1*	Specimen certificate representing Common Stock
4.2*	Form of Indenture for Senior Debt Securities
4.3	Form of Senior Debt Security (included in Exhibit 4.2)
4.4*	Form of Indenture for Subordinated Debt Securities
4.5	Form of Subordinated Debt Security (included in Exhibit 4.4)
4.6*	Form of Deposit Agreement
4.7	Form of Depositary Receipt (included in Exhibit 4.6)
5.1*	Opinion of Shearman & Sterling
12	Statement Regarding Computation of Consolidated Ratios of Earnings to Fixed Charges
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of Shearman & Sterling (included in its opinion filed as Exhibit 5.1)
24.1	Powers of Attorney (included on signature page)
25.1*	Statement of Eligibility of Senior Trustee on Form T-1
25.2*	Statement of Eligibility of Subordinated Trustee on Form T-1

-----  
\* To be filed by amendment or 8-K.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ALEXANDER'S, INC.

The undersigned, Robin L. Farkas and Brian M. Kurtz, certify that they are the Chairman and Chief Executive Officer and Senior Vice President and Secretary, respectively, of Alexander's, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), and do hereby further certify as follows:

1. The name of the Corporation is Alexander's, Inc.

2. The name under which the Corporation was originally incorporated was "Farbro Corporation", and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 16, 1955, and was amended, so as to permit the Corporation to adopt its present name, by a Certificate of Amendment filed with the Secretary of State of the State of Delaware on July 10, 1968 and was restated pursuant to a Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on July 6, 1973, and was amended by a Certificate of Amendment filed with the Secretary of State of the State of Delaware on December 10, 1975.

3. Pursuant to Section 303 of the General Corporation Law of the State of Delaware and the order dated September 21, 1993 of the United States Bankruptcy Court for the Southern District of New York, which has jurisdiction over the Corporation in a case under Chapter 11 of Title 11 of the United States Code, this Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby further amended and restated to read in its entirety as follows:

Article I

Name

The name of the corporation is Alexander's, Inc. (the "Corporation").

## Article II

## Registered Office and Registered Agent

The address of the registered office of the Corporation in the State of Delaware is 32 Loockerman Square, Suite L - 100, in the City of Dover, County of Kent. The name of the registered agent of the Corporation at such address is the United States Corporation Company.

## Article III

## Corporate Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

## Article IV

## Capital Stock

(1) Authorized Shares. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is twenty-six million (26,000,000) shares, of which three million (3,000,000) shall be preferred stock, \$1.00 par value per share ("Preferred Stock"), ten million (10,000,000) shares shall be common stock, \$1.00 par value per share ("Common Stock"), and thirteen million (13,000,000) shares shall be excess stock, \$1.00 par value per share ("Excess Stock").

(2) Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series. All shares of any one series of preferred stock shall be identical except as to the dates of issue and the dates from which dividends on shares of the same series issued on different dates shall cumulate (if cumulative). Subject to the Certificate of Incorporation, authority is expressly granted to the Board of Directors to authorize the issue of one or more series of Preferred Stock, and to fix by resolution or resolutions providing for the issue of each such series the voting powers, designations, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions of such series, to the full extent now or hereafter permitted by law, including, but not limited to, the following:

(a) The distinctive designations of such series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;

(b) The dividend rights of such series, the extent, if any, to which such dividends shall be cumulative, the conditions upon which and/or the dates when such dividends shall be payable and the date from which dividends on cumulative series shall accrue and be cumulative; provided that accumulated dividends shall not bear interest;

(c) Whether such series shall be redeemable and, if so, the terms and conditions of such redemption, including the time or times when and price or prices at which the shares of such series shall be redeemed;

(d) The rights of such series in the event of liquidation, dissolution or winding up of the Corporation (consolidation or merger of the Corporation with or into one or more other corporations or a sale, lease or exchange of all or substantially all of the assets of the Corporation shall not be deemed to be a liquidation, dissolution or winding up within the meaning of this Article IV);

(e) The terms and conditions, if any, upon which the shares of such series shall be convertible into or exchangeable for shares of any other series, class or classes, or any other securities, to the full extent now or hereafter permitted by law; and

(f) Whether such series shall have any voting rights in addition to those prescribed by law and, if so, the terms and conditions of exercise of such voting rights.

(3) Common Stock.

(a) Subject to provisions of law and the preferences of the Preferred Stock and of any other stock ranking prior to the Common Stock as to dividends, the holders of shares of Common Stock shall be entitled to receive dividends at such times and in such amounts as may be determined by the Board of Directors.

(b) Except as otherwise provided by law and in the Certificate of Incorporation or except as determined pursuant to authority of the Board of Directors as herein provided (i) all voting rights shall be vested exclusively in the holders of the outstanding shares of Common Stock and each such holder shall be entitled to one



vote per share for all purposes for each share of Common Stock held of record by him and (ii) the holders of the outstanding shares of Preferred Stock shall not be entitled to vote for any purpose nor shall they be entitled to notice of meetings of stockholders.

(c) In the event of any liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and the preferential amounts to which the holders of shares of any stock ranking prior to the Common Stock in distribution of assets shall be entitled upon liquidation, the holders of shares of Common Stock and the holders of shares of any other stock ranking on a parity with the Common Stock in the distribution of assets upon liquidation shall be entitled to share in the remaining assets of the Corporation according to their respective interests.

(4) Restrictions on Ownership and Transfer; Excess Stock.

(a) Definitions. The following terms shall have the following meanings:

"Beneficial Ownership" means ownership of Shares either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner", "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Beneficiary" means the beneficiary of the Special Trust as determined pursuant to Section 5(e) of this Article IV.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Common Equity Stock" means outstanding Shares that are either Common Stock or Excess Common Stock.

"Constructive Ownership" means ownership of Shares either directly or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner", "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"Constructive Ownership Limit" means 9.9% of the outstanding Shares of any class.

"Determination Date" shall mean the date on which the United States Bankruptcy Court for the Southern District of New York enters an order confirming the plan of reorganization under Chapter 11 of the United States Bankruptcy Code for the Corporation.

"Direct Ownership" means beneficial ownership of Shares determined without regard to any rules of attribution. The terms "Direct Owner", "Directly Owns" and "Directly Owned" shall have the correlative meanings.

"Equity Stock" means outstanding Shares that are either Common Equity Stock or Preferred Equity Stock. Equity Stock of any particular class means Common or Preferred Stock of that class and Excess Common or Preferred Stock that would, under Section 5(e)(I) of this Article IV, automatically be exchanged for Common or Preferred Stock of that class in the event of a transfer of an interest in the Special Trust in which such Excess Stock is held.

"Excess Common Stock" means Excess Stock that would, under Section 5(e)(I) of this Article IV, automatically be exchanged for Common Stock in the event of a transfer of an interest in the Special Trust in which such Excess Stock is held.

"Excess Preferred Stock" means Excess Stock that would, under Section 5(e)(I), automatically be exchanged for Preferred Stock in the event of a transfer of an interest in the Special Trust in which such Excess Stock is held.

"Existing Constructive Holder" means any Person who (i) is the Constructive Owner of Shares in excess of the Constructive Ownership Limit on the Determination Date, so long as, but only so long as, such Person (w) provides the certification requested by the Board of Directors pursuant to Section 4(k)(II) as to such Person's status as a tenant of the Corporation or an owner, directly or indirectly, of a tenant of the Corporation and such certification is and remains true, (x) Constructively Owns Shares in excess of the Constructive Ownership Limit, (y) is designated by the Board of Directors as an Existing Constructive Holder pursuant to the provisions of Section 4(e)(II) and (z) is not a Disqualified Constructive Holder, or (ii) is designated by the Board of Directors as an Existing Constructive Holder pursuant to the provisions of Section 4(k)(II) or Section 4(k)(III), so long as, but only so long as, such Person (x) complies with any conditions or restrictions associated with such designation, (y) Constructively Owns Shares in excess of the Constructive Ownership Limit and (z) is not a Disqualified Constructive Holder.

"Existing Holder" means (i) any Person who is the Beneficial Owner of Shares of any class in excess of the Ownership Limit on the Determination Date and is designated as an Existing Holder by the Board of Directors pursuant to

Section 4(e)(II), so long as, but only so long as, such Person Beneficially Owns shares of such class in excess of the Ownership Limit with respect to such class; (ii) any Person to whom an Existing Holder Transfers Beneficial Ownership of shares and who is designated as an Existing Holder pursuant to Section 4(i)(I) or Section 4(i)(V); and (iii) any Person who is designated as an Existing Holder pursuant to Section 4(k)(I) or 4(k)(III), so long as, but only so long as, such Person Beneficially Owns Shares in excess of the Ownership Limit (as adjusted pursuant to Section 4(k)(III)).

"Existing Holder Limit" (i) for any Existing Holder who is an Existing Holder by virtue of clause (i) of the definition of "Existing Holder", means, initially, the percentage, determined by the Board of Directors pursuant to Section 4(e)(II), of the outstanding Shares of any class Beneficially Owned by such Existing Holder on the Determination Date (as determined without regard to Section 544(a)(4)(A) of the Code as modified by Section 856(h)(1)(B)(ii) of the Code), that may be Beneficially Owned by such Existing Holder and, after any adjustment pursuant to Section 4(i) or 4(k)(I) of this Article IV, means the percentage of the outstanding Shares of such class as so adjusted; (ii) for any Existing Holder who becomes an Existing Holder pursuant to Section 4(i)(I), Section 4(i)(V) or Section 4(k)(I) shall mean, initially, the percentage of the outstanding shares of the relevant class Beneficially Owned by such Person at the time such Person becomes an Existing Holder and, after any adjustment pursuant to Section 4(i) or 4(k)(I) of this Article IV, means the percentage of the outstanding Shares of such class as so adjusted; and (iii) for any Person who is designated as an Existing Holder by the Board of Directors pursuant to Section 4(k)(III) shall mean, initially, the percentage of the outstanding shares of the relevant class Beneficially Owned by such Person at the time such Person becomes an Existing Holder and, after any adjustment pursuant to Section 4(i) or 4(k)(I) of this Article IV, means the percentage of the outstanding Shares of such class as so adjusted. There shall be a single Existing Holder Limit for each "family", as such term is defined in Section 544 of the Code.

"Mandatory Exchange Date" shall mean a date, fixed by the Board of Directors, for the purpose of any automatic exchange described in Section 4(b)(I). The Mandatory Exchange Date shall be not less than 135 days after the Determination Date.

"Market Price" means the last reported sales price reported on the New York Stock Exchange of Shares of the relevant class on the trading day immediately preceding the relevant date, or if the Shares of the relevant class are not then traded on the New York Stock Exchange, the last reported sales price of Shares of the relevant class on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Shares of the relevant class may

be traded, or if the Shares of the relevant class are not then traded over any exchange or quotation system, then the market price of the Shares of the relevant class on the relevant date as determined in good faith by the Board of Directors of the Corporation.

"Original Owner" means any Person that is an individual within the meaning of section 542(a)(2) of the Code and that Beneficially Owns or Constructively Owns Shares of a class on the Determination Date.

"Ownership Limit" means (i) with respect to Shares of Common Stock, 4.9% of the outstanding Shares of such class; provided, however, that, in the event any Person that is an individual within the meaning of section 542(a)(2) of the Code is designated by the Board of Directors pursuant to Section 4(e)(II) or Section 4(k)(III) as an Existing Holder with respect to Shares of any class, the Ownership Limit with respect to the outstanding Shares of such class shall, if less than 4.9%, be equal to the greater of (A) 2% or (B) (x) 49.9% less the aggregate Existing Holder Limit for all such Existing Holders of Shares of such class divided by (y) (I) five (5) less (II) the number of such Existing Holders of Shares of such class and (ii) with respect to Shares of any other class, such percentage as shall be established by the Board of Directors at the time it authorizes the issuance of Shares of such class. For purposes of computing the Ownership Limit, the Board of Directors in its discretion may treat several Persons as a single Existing Holder, so as to avoid counting the same shares twice.

"Ownership Limitation Termination Date" means the date, determined by the Board of Directors, as of which the provisions of Sections (4), (5) and (6) of this Article IV shall no longer apply.

"Person" means an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity or any government or agency or political subdivision thereof and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, but does not include an underwriter which participates in a public offering of Shares for a period of 25 days following the purchase by such underwriter of those Shares.

"Preferred Equity Stock" means outstanding Shares that are either Preferred Stock or Excess Preferred Stock. Preferred Equity Stock of any particular class shall mean Preferred Stock of that class and Excess Preferred Stock that would, under Section 5(e)(I) of this Article IV, automatically be exchanged for Preferred Stock of

that class in the event of a transfer of an interest in the Special Trust in which such Excess Preferred Stock is held.

"Purported Beneficial Holder" shall mean, with respect to any event, other than a purported Transfer, which results in Excess Stock, the person for whom the Purported Record Holder of the Shares that were, pursuant to Section 4(c) of this Article IV, automatically exchanged for Excess Stock upon the occurrence of such event held such Shares.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, the purported beneficial transferee for whom the Purported Record Transferee would have acquired Shares, if such Transfer had been valid under Section 4(b) of this Article IV.

"Purported Record Holder" shall mean, with respect to any event, other than a purported Transfer, which results in Excess Stock, the record holder of the Shares that were, pursuant to Section 4(c) of this Article IV, automatically exchanged for Excess Stock upon the occurrence of such event.

"Purported Record Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, the Person who would have been the record holder of the Shares if such Transfer had been valid under Section 4(b) of this Article IV.

"REIT" means a Real Estate Investment Trust under Section 856 of the Code.

"Reporting Threshold" means 2% or such other percentage as determined by the Board of Directors.

"Shares" means shares of Common Stock, Preferred Stock or Excess Stock.

"Special Trust" shall mean the trust created pursuant to Section 5(a) of this Article IV.

"Tenant" shall mean any person that leases (or subleases) real property of the Corporation.

"Transfer" means any sale, transfer, gift, assignment, devise or other disposition of Shares (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Shares or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or

exchangeable for Shares), whether voluntary or involuntary, whether of record or beneficial ownership and whether by operation of law or otherwise.

(b) Restrictions on Ownership and Transfer.

(I) Except as provided in Section 4(k) of this Article IV, on and after the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, no Person (other than an Existing Holder) shall Beneficially Own Shares of any class in excess of the Ownership Limit with respect to such class and no Person (other than an Existing Constructive Owner) shall Constructively Own Shares of any class in excess of the Constructive Ownership Limit with respect to such class, and no Existing Holder shall Beneficially Own Shares of any class in excess of the Existing Holder Limit with respect to such class for such Existing Holder. Shares of any class that are Beneficially Owned or Constructively Owned in violation of the foregoing prohibitions on the Mandatory Exchange Date shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the date prior to the Mandatory Exchange Date.

(II) Except as provided in Section 4(k) of this Article IV, from and after the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Transfer that, if effective, would result in any Person (other than an Existing Holder) Beneficially Owning Shares of any class in excess of the Ownership Limit with respect to such class shall be void ab initio as to the Transfer of such Shares which would be otherwise Beneficially Owned by such Person in excess of such Ownership Limit, and the intended transferee shall acquire no rights in such Shares.

(III) Except as provided in Section 4(k) of this Article IV, from and after the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Transfer that, if effective, would result in any Existing Holder Beneficially Owning Shares of any class in excess of the applicable Existing Holder Limit shall be void ab initio as to the Transfer of such Shares which would be otherwise Beneficially Owned by such Existing Holder in excess of the applicable Existing Holder Limit, and such Existing Holder shall acquire no rights in such shares of Common Stock.

(IV) From the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Transfer that, if effective, would result in any Person (other than an Existing Constructive Holder) Constructively Owning Shares in excess of the Constructive Ownership Limit

shall be void ab initio as to the Transfer of such Shares which would be otherwise Constructively Owned by such Person in excess of such amount; and the intended transferee shall acquire no rights in such Shares.

(V) Except as provided in Section 4(k) of this Article IV, from and after the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Transfer that, if effective, would result in the Shares being Directly Owned by fewer than 100 Persons shall be void ab initio as to the Transfer of such Shares which would otherwise be Directly Owned by the transferee, and the intended transferee shall acquire no rights in such Shares.

(VI) From and after the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Transfer that, if effective, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, shall be void ab initio as to the Transfer of the Shares which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code, and the intended transferee shall acquire no rights in such Shares.

(c) Exchange for Excess Stock.

(I) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a purported Transfer such that any Person (other than an Existing Holder) would Beneficially Own Shares of any class in excess of the Ownership Limit with respect to such class, then, except as otherwise provided in Section 4(i) or Section 4(k) of this Article IV, such number of Shares in excess of such Ownership Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(II) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a purported transfer such that an Existing Holder would Beneficially Own Shares of any class in excess of the applicable Existing Holder Limit, then, except as otherwise provided in Section 4(i) or Section 4(k) of this Article IV, such number of Shares in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the

same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(III) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Date, there is a purported Transfer such that any Person (other than an Existing Constructive Holder) would Constructively Own Shares of any class in excess of the applicable Constructive Ownership Limit, then, except as otherwise provided in Section 4(k) of this Article IV, such Shares in excess of such limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(IV) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a purported Transfer which, if effective, would cause the Corporation to become "closely held" within the meaning of Section 856(h) of the Code, then the Shares being Transferred which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(V) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Person other than an Existing Holder with respect to Shares of the relevant class (the "Purchaser") purchases or otherwise acquires an interest in a Person which Beneficially Owns Shares (the "Purchase") and, as a result, the Purchaser would Beneficially Own Shares of any class in excess of the Ownership Limit with respect to such class, then, except as provided in Section 4(k) of this Article IV, such number of Shares in excess of such Ownership Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Purchase. In determining which Shares are exchanged, Shares of the relevant class Beneficially Owned by the Purchaser prior to the Purchase shall be treated as exchanged before any Shares Beneficially Owned by the Person an interest in which is being so purchased or acquired are so treated.



(VI) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, an Existing Holder purchases or otherwise acquires an interest in a Person which Beneficially Owns Shares (the "Purchase") and, as a result, such Existing Holder would Beneficially Own Shares of any class in excess of the applicable Existing Holder Limit, then, except as provided in Section 4(i) or Section 4(k) of this Article IV, such number of Shares of such class in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Purchase. In determining which Shares are exchanged, Shares Beneficially Owned by the purchasing Existing Holder prior to the Purchase shall be treated as exchanged before any Shares Beneficially Owned by the Person an interest in which is being so purchased or acquired are so treated.

(VII) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, any Person, other than an Existing Constructive Holder with respect to Shares of the relevant class (the "Purchaser"), purchases or otherwise acquires an interest in a Person which Constructively Owns Shares (the "Purchase") and, as a result, the Purchaser would Constructively Own Shares in excess of the Constructive Ownership Limit with respect to such class, then, except as otherwise provided in Section 4(k) of this Article IV, such number of Shares in excess of the Constructive Ownership Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the Purchase. In determining which Shares are exchanged, Shares Constructively Owned by the Purchaser prior to the Purchase shall be treated as exchanged before any Shares Constructively Owned by the Person an interest in which is being so purchased or acquired are so treated.

(VIII) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a redemption, repurchase, restructuring or similar transaction with respect to a Person that Beneficially Owns Shares (the "Entity") and, as a result, a Person (other than an Existing Holder with respect to Shares of the relevant class) would Beneficially Own Shares in excess of the Ownership Limit with respect to such class, then, except as provided in Section 4(k) of this Article IV, such number of Shares in

excess of such Ownership Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the redemption, repurchase, restructuring or similar transaction. In determining which Shares are exchanged, Shares of the relevant class Beneficially Owned by the Entity shall be treated as exchanged before any Shares Beneficially Owned by the Person holding an interest in the Entity (independently of such Person's interest in the Entity) are so treated.

(IX) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a redemption, repurchase, restructuring or similar transaction with respect to a Person that Beneficially Owns Shares of any class (the "Entity") and, as a result, an Existing Holder would Beneficially Own Shares of any class in excess of the applicable Existing Holder Limit, then, except as provided in Section 4(i) or Section 4(k), such number of Shares of such class in excess of such Existing Holder Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the redemption, repurchase, restructuring or similar transaction. In determining which Shares are exchanged, Shares Beneficially Owned by the Entity shall be treated as exchanged before any Shares Beneficially Owned by the Existing Holder (independently of such Existing Holder's interest in the Entity) are so treated.

(X) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, there is a redemption, repurchase, restructuring or similar transaction with respect to a Person that Constructively Owns Shares (the "Entity") and, as a result, a Person (other than an Existing Constructive Holder with respect to Shares of the relevant class) would Constructively Own Shares of any class in excess of the Constructive Ownership Limit with respect to such class, then, except as otherwise provided in Section 4(k) of this Article IV, such number of Shares in excess of the Constructive Ownership Limit (rounded up to the nearest whole Share) shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the redemption, repurchase, restructuring or similar transaction. In determining which Shares are exchanged, Shares of the relevant class Constructively Owned by the Entity shall be treated as

exchanged before any Shares Constructively Owned by the Person holding an interest in the Entity (independently of such Person's interest in the Entity) are so treated.

(XI) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, an event, other than an event described in paragraphs (I) through (X) above, occurs which would, if effective, result in any Person (other than an Existing Constructive Holder with respect to Shares of the relevant class) Constructively Owning Shares of any class in excess of the Constructive Ownership Limit with respect to such class, then, except as otherwise provided in Section 4(k) of this Article IV, the smallest number of Shares Constructively Owned by such Person which, if exchanged for Excess Stock of the same type, would result in such Person's Constructive Ownership of Shares of such class not being in excess of such Constructive Ownership Limit, shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the relevant event.

(XII) If, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, an event, other than an event described in paragraphs (I) through (X) above, occurs which would, if effective, result in any Person (other than an Existing Holder) Beneficially Owning Shares of any class in excess of the Ownership Limit with respect to such class, then, except as provided in Section 4(i) or Section 4(k) of this Article IV, the smallest number of Shares Beneficially Owned by such Person which, if exchanged for Excess Stock of the same type, would result in such Person's Beneficial Ownership of Shares of such class not being in excess of such Ownership Limit, shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the relevant event.

(XIII) Subject to the provisions of paragraph (XIV) of this Section 4(c), if, notwithstanding the other provisions contained in this Article IV, at any time from the Mandatory Exchange Date and prior to the Ownership Limitation Termination Date, an event, other than an event described in paragraphs (I) through (X) above, occurs which would, if effective, result in any Existing Holder Beneficially Owning Shares of any class in excess of the applicable Existing Holder Limit, then, except as

provided in Section 4(k) of this Article IV the smallest number of Shares of such class Beneficially Owned by such Existing Holder which, if exchanged for Excess Stock of the same type, would result in such Existing Holder's Beneficial Ownership of Shares of such class not being in excess of the such Existing Holder Limit, shall be automatically exchanged for an equal number of shares of Excess Stock of the same type. Such exchange shall be effective as of the close of business on the business day prior to the date of the relevant event.

(XIV) In addition, if a Person (the "nonreporting Person") who Beneficially Owns more than the Reporting Threshold of the outstanding Shares of any class on the Determination Date does not provide all of the information required by Section 4(e)(I)(i) or (II) of this Article IV and, as a result, five or fewer Persons who are individuals within the meaning of Section 542(a)(2) of the Code would, but for the exchange required by this paragraph, Beneficially Own, in the aggregate, more than 49.9% of the outstanding shares of such class, then, as of the day prior to the date on which such aggregate ownership would have exceeded 49.9%, shares of such class Beneficially Owned by such nonreporting Person in excess of the Reporting Threshold of the outstanding shares of such class, to the extent not described on the written notice, if any, provided by such nonreporting Person pursuant to Section 4(e)(I)(i) or (II) of this Article IV, shall be automatically exchanged for shares of Excess Stock of the same type to the extent necessary to prevent such aggregate ownership from exceeding 49.9%.

(d) Notice of Ownership or Attempted Ownership. Any Person who acquires or attempts to acquire shares in violation of Section 4(b) of this Article IV shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such acquisition or attempted acquisition on the Corporation's status as a REIT.

(e) Owners Required to Provide Information.

(I) From and after the Determination Date and prior to the Ownership Limitation Termination Date:

(i) every Beneficial Owner of more than 2% (or such other percentage as determined by the Board of Directors) of any class of outstanding Equity Stock shall, within 30 days after January 1 of each year, give written notice to the Corporation stating the name and address of such Beneficial Owner, the number of Shares Beneficially

Owned, and a full description of how such Shares are held. Each such Beneficial Owner shall, upon demand by the Corporation, provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as, or eligibility to be taxed as, a REIT;

(ii) each Person who is a Beneficial Owner or Constructive Owner of Shares and any Person (including the stockholder of record) who is holding Shares for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information as the Corporation may request, in good faith, in order to determine the Corporation's status as, or eligibility to be taxed as, a REIT.

(II) Every Beneficial Owner and Constructive Owner of more than the Reporting Threshold of the outstanding Shares of any class of Equity Stock on the Determination Date and every Direct Owner of the Reporting Threshold or more of the outstanding Shares of any class of Equity Stock on the Determination Date shall, within 75 days of the Determination Date, give written notice, a form for which will be made available by the Corporation to those Persons that are shareholders as of the Determination Date, to the Corporation stating the name and address of such owner, the number of Shares Beneficially Owned, Constructively Owned or Directly Owned and a description of how such Shares are held. Within 105 days of the Determination Date, the Board of Directors (i) shall designate any Person that Beneficially Owns more than 4.9% of the outstanding shares of a class (or the Ownership Limit with respect to such class, if lower) on the Determination Date and that properly so notifies the Board of Directors within 75 days of the Determination Date as an Existing Holder with respect to the percentage of such class Beneficially Owned by such Person on the Determination Date and (ii) shall (subject to Section 4(k)(II)) designate any Person that Constructively Owns more than 9.9% of the outstanding shares of a class on the Determination Date and that properly so notifies the Board of Directors within 75 days of the Determination Date as an Existing Constructive Holder with respect to the percentage of such class Constructively Owned by such Person on the Determination Date.

(f) Remedies for Breach. If the Board of Directors shall at any time determine in good faith that a Transfer has taken place in violation of Section 4(b) of this Article IV or that a Person intends to acquire or has attempted to acquire Direct Ownership, Beneficial Ownership or Constructive Ownership of any Shares in violation of Section 4(b) of this Article IV, the Board of Directors shall take

such action as it deems advisable to refuse to give effect or to prevent such Transfer (or any Transfer related to such intent), including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers or attempted Transfers in violation of paragraphs (II) through (IV) or (VI) of Section 4(b) shall automatically result in the exchange described in Section 4(c), irrespective of any action (or non-action) by the Board of Directors.

(g) Remedies Not Limited. Nothing contained in Section 4 of this Article IV shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preserving the Corporation's status as, or eligibility to be taxed as, a REIT.

(h) Ambiguity. In the case of an ambiguity in the application of any of the provisions of Section 4 of this Article IV, including any definition contained in Section 4(a), and any ambiguity with respect to which Shares are to be exchanged for Excess Stock in a given situation, the Board of Directors shall have the power to determine the application of the provisions of Section 4 of this Article IV with respect to any situation based on the facts known to it.

(i) Modification of Existing Holder Limits and Ownership Limit. Subject to the provisions of Section 7 of this Article IV, the Existing Holder Limits may be modified as follows:

(I) Subject to the limitations provided in Section 4(j) of this Article IV, any Existing Holder with respect to a class, who is an individual within the meaning of Section 542(a)(2) of the Code may Transfer Shares of such class to any Person up to the number of Shares Beneficially Owned by such transferor Existing Holder in excess of the Ownership Limit with respect to such class. Any such Transfer will decrease the Existing Holder Limit with respect to such class for such transferor Existing Holder by the percentage of the outstanding Equity Stock of such class so Transferred. The transferee's Existing Holder Limit shall be equal to the percentage of the outstanding Equity Stock of such class owned by the transferee immediately after the transfer. The transferor Existing Holder shall give the Board of Directors of the Corporation prior written notice of any such Transfer.

(II) Subject to the limitations provided in Section 4(j), the Board of Directors may grant stock options which result in Beneficial Ownership of Shares of any class by an Existing Holder with respect to such class pursuant to a stock option plan approved by the shareholders. Any such

grant shall increase the Existing Holder Limit with respect to such class for the affected Existing Holder to the maximum extent possible under Section 4(j) to permit the Beneficial Ownership of the Shares of such class issuable upon the exercise of such stock option.

(III) The Board of Directors may reduce the Existing Holder Limit for any class of Equity Stock for any Existing Holder, with the written consent of such Existing Holder, after any Transfer permitted in Section 4 of this Article IV by such Existing Holder to a Person other than an Existing Holder, after the lapse (without exercise) of a stock option described in Section 4(i)(II) or after any other event.

(IV) Upon the divorce of an Existing Holder, the Existing Holder Limits of the divorced couple shall be adjusted to reflect their Beneficial Ownership of Shares after such divorce.

(V) Subject to the limitations provided in Section 4(j) of this Article IV, any Existing Holder who is an individual within the meaning of Section 542(a)(2) of the Code may transfer Shares of a class to a Person (other than another Existing Holder) who is also an individual within the meaning of such section, provided that the transferee does not Beneficially Own more shares of such class following the transfer than the transferor Beneficially Owned prior to the transfer. Subject to the limitations provided in Section 4(j) of this Article IV, the Board of Directors shall, unless in its reasonable judgment a contrary decision is necessary or advisable to protect the Corporation's status as, or eligibility to be taxed as, a REIT, designate the transferee as an Existing Holder of the Shares Beneficially Owned by the transferee immediately following such transfer, in which case such transferee shall have an Existing Holder Limit equal to the percentage of the outstanding class represented by such Shares, and the Existing Holder Limit with respect to such class for the transferor Existing Holder shall be appropriately reduced. Transfers of Shares by Interstate Properties shall be treated as transfers of Shares by each of the partners of Interstate Properties in proportion to their interest in that partnership.

(VI) Subject to the limitations provided in Section 4.4(j), the Board of Directors may from time to time increase the Ownership Limit with respect to a class of shares.

(j) Limitations on Modifications.

(I) Neither an Ownership Limit nor an Existing Holder Limit with respect to a class of Equity Stock may be increased (nor may any additional Existing Holder Limit be created) if, after giving effect to such increase (or creation), five Beneficial Owners of Shares that are individuals within the meaning of Section 542(a)(2) of the Code (including all of the then-existing Existing Holders that are individuals within the meaning of Section 542(a)(2) of the Code) could Beneficially Own, in the aggregate, more than 49.9% of the outstanding Equity Stock of the class of Shares to which such Ownership Limit or Existing Holder Limit relates.

(II) Prior to the modifications of any Existing Holder Limit or Ownership Limit pursuant to Section 4(i), the Board of Directors may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Corporation's status as, or eligibility to be taxed as, a REIT.

(III) No Existing Holder Limit with respect to any class shall be reduced to a percentage which is less than the Ownership Limit for such class.

(IV) The Ownership Limit with respect to a class of shares may not be increased to a percentage which is greater than 9.9%.

(k) Exceptions. Subject to the provisions of this Section 7 of this Article IV:

(I) The Board of Directors, with a ruling from the Internal Revenue Service or an opinion of counsel or upon such other grounds as it deems satisfactory, may in its discretion exempt a Person from an Ownership Limit or an Existing Holder Limit with respect to a class of Shares, by designating such Person as an Existing Holder, increasing such Person's then-effective Existing Holder Limit, or otherwise, if the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership of Shares of such class will violate the Ownership Limit or any applicable Existing Holder Limit with respect to such class, so as to jeopardize the Corporation's status or eligibility to be taxed as a REIT, and such Person agrees that any violation or attempted violation will result in, to the extent necessary, the exchange of Shares held by such Person for Excess Stock in accordance with Section 4(c).



(II) The Board of Directors, with a ruling from the Internal Revenue Service, an opinion of counsel or upon such other grounds as it deems satisfactory, may designate a Person as an Existing Constructive Holder with respect to Shares of a class, if such Person does not, and represents that it will not, own, directly or constructively (by virtue of the application of section 318(a) of the Code, as modified by section 856(d)(5) of the Code), more than a 9.9% interest (as set forth in section 856(d)(2)(B)) in a Tenant (or such smaller interest as would, in conjunction with the direct or constructive holdings of the Existing Constructive Holders, cause the aggregate interest held by the Existing Constructive Holders and such Person to exceed 9.9%) and the Corporation obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact and such Person agrees that any violation or attempted violation will result in, to the extent necessary, the exchange of Shares held by such Person in excess of the Constructive Ownership Limit with respect to such class for Excess Stock of the same type in accordance with Section 4(c) (as though the phrase "other than an Existing Constructive Holder" did not appear therein). The Board of Directors shall not decline to exercise its authority under this Section 4(k)(II) to designate a Person as an Existing Constructive Holder unless in its reasonable judgment such a decision is necessary or advisable to protect the Corporation's status as, or eligibility to be taxed as, a REIT.

(III) If, as a result of a transfer of Shares by or to an Original Owner, a Person who is an individual within the meaning of Section 542(a)(2) of the Code would Beneficially Own or Constructively Own Shares of any class in excess of the Ownership Limit with respect to such class (or any applicable Existing Holder Limit), with the result that there would be an exchange of Shares for Excess Stock pursuant to Section 4(c), the Board of Directors may in its discretion, except to the extent provided below, forestall such an exchange by designating such Person as an Existing Holder and/or an Existing Constructive Holder with respect to the percentage of such Shares Beneficially Owned or Constructively Owned (as the case may be) by such Person as a result of the transfer or increasing such Person's then-effective Existing Holder Limit. In consequence of the new Existing Holder Limit for such Person, the Board of Directors shall reduce the Ownership Limit and, to that end, may designate other Persons as Existing Holders and/or Existing Constructive Holders with respect to Shares of such class Beneficially Owned or Constructively Owned (as the case may be) by such Persons. Any action by the Board of Directors pursuant to this Section 4(k)(III) shall be subject to the limitations provided in Section 4(j), as well as the other provisions of this Article IV. The Board of Directors shall not exercise its authority under this Section 4(k)(III), (i) if as a result of such exercise any Person (other than an

Existing Holder) would own Shares in excess of the Ownership Limit; or (ii) to the extent that, in the reasonable judgment of the Board of Directors, such a decision is necessary or advisable to protect the Corporation's status as, or eligibility to be taxed as, a REIT. Transfers of Shares by or to Interstate Properties shall be treated as transfers of Shares by or to each of the partners of Interstate Properties in proportion to their interest in that partnership. In addition, the transfer by a partner of Interstate Properties of an interest in that partnership or the termination of a partner's interest shall be treated as a transfer by such partner of a proportionate amount of the Shares held by that partnership.

(IV) The Board of Directors shall have no obligation to consider exercising its authority under Section 4(k) with respect to a transfer unless it has prior written notice of such transfer within a reasonable period of time in advance of the proposed date of such transfer.

(V) The exercise by the Board of Directors of its authority pursuant to this Section 4(k) shall be subject to such conditions as it reasonably believes to be appropriate.

(1) Legend.

(I) Each certificate for Common Stock shall bear the following legend:

"The shares of Common Stock represented by this certificate are subject to restrictions on ownership and transfer for the purpose of maintaining the Corporation's eligibility to be taxed as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). No Person may Beneficially Own or Constructively Own shares of Common Stock in excess of the applicable Ownership Limit or Constructive Ownership Limit, respectively, with respect to the outstanding Common Equity Stock of the Corporation (unless such Person is an Existing Holder or an Existing Constructive Holder, respectively, of such Shares). Any Person who attempts to Beneficially Own or Constructively Own Shares in excess of the above limitations must immediately notify the Corporation. If the restrictions on ownership and transfer are violated, the shares of Common Stock represented hereby will be automatically exchanged for shares of Excess Stock which will be held in trust by the Corporation. In addition, the shares of Common Stock represented by this certificate are subject to the restrictions on transferability that are set forth in section 7 of Article IV of the Corporation's Amended and Restated Certificate of Incorporation. All capitalized terms used in this legend

have the meanings set forth in the Corporation's Amended and Restated Certificate of Incorporation, a copy of which, including the restrictions on ownership and transfer, will be sent without charge to each shareholder who so requests."

(II) Each certificate for Preferred Stock shall bear the following legend:

"The shares of Preferred Stock represented by this certificate are subject to restrictions on ownership and transfer for the purpose of maintaining the Corporation's eligibility to be taxed as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). No Person may Beneficially Own or Constructively Own shares of Preferred Stock of any series in excess of the applicable Ownership Limit or Constructive Ownership Limit, respectively, with respect to the outstanding Preferred Equity Stock of such series of the Corporation (unless such Person is an Existing Holder or an Existing Constructive Holder, respectively, of such Shares). Any Person who attempts to Beneficially Own or Constructively Own Shares in excess of the above limitations must immediately notify the Corporation. If the restrictions on ownership and transfer are violated, the shares of Preferred Stock represented hereby will be automatically exchanged for shares of Excess Stock which will be held in trust by the Corporation. In addition, the shares of Preferred Stock represented by this certificate are subject to the restrictions on transferability that are set forth in section 7 of Article IV of the Corporation's Amended and Restated Certificate of Incorporation. All capitalized terms used in this legend have the meanings set forth in the Company's Amended and Restated Certificate of Incorporation, a copy of which, including the restrictions on ownership and transfer, will be sent without charge to each shareholder who so requests."

(m) Preferred Stock Issued in More than One Series. If Shares of more than one series of Preferred Stock are outstanding, each such series shall be treated as a separate class for purposes of Sections 4 and 5 of this Article IV, except that the Board of Directors, at the time it authorizes the issue of a series of Shares of Preferred Stock, may treat such series as being of the same class as a different series of outstanding Shares of Preferred Stock and/or a different series of Shares of Preferred Stock simultaneously issued.

(n) Termination of Limitations. The Board of Directors may, at any time, determine, in its sole discretion, that the provisions of Sections (4), (5) and (6) of this Article IV shall no longer apply.

## (5) Excess Stock.

(a) Ownership in Trust. Upon any purported Transfer or other event that results in an exchange of Shares for Excess Stock pursuant to Section 4(c), such Excess Stock shall be deemed to have been transferred to the Corporation, as trustee of a Special Trust for the exclusive benefit of the Beneficiary or Beneficiaries to whom an interest in such Excess Stock may later be transferred pursuant to Section 5(e). Shares of Excess Stock so held in trust shall be issued and outstanding stock of the Corporation. The Purported Record Transferee or Purported Record Holder shall have no rights in such Excess Stock except as provided in Section 5(e). Where a Transfer or other event results in an automatic exchange of Shares of more than one class for Excess Stock, then separate Special Trusts shall be deemed to have been established for the Excess Stock attributable to the Shares of each such class.

(b) Dividend Rights. Excess Stock shall not be entitled to any dividends. Any dividend or distribution paid prior to the discovery by the Corporation that the Shares with respect to which the dividend or distribution was made had been exchanged for Excess Stock shall be repaid to the Corporation upon demand.

(c) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, (i) subject to the preferential rights of the Preferred Stock, if any, as may be determined by the Board of Directors of the Corporation pursuant to Section 2 of this Article IV and the preferential rights of the Excess Preferred Stock, if any, each holder of shares of Excess Common Stock shall be entitled to receive, ratably with each other holder of Common Stock and Excess Common Stock, that portion of the assets of the Corporation available for distribution to the holders of Common Stock or Excess Common Stock which bears the same relation to the total amount of such assets of the Corporation as the number of shares of the Excess Common Stock held by such holder bears to the total number of shares of Common Stock and Excess Common Stock then outstanding and (ii) each holder of shares of Excess Preferred Stock shall be entitled to receive that portion of the assets of the Corporation which a holder of the Preferred Stock that was exchanged for such Excess Preferred Stock would have been entitled to receive on liquidation had such Preferred Stock remained outstanding. The Corporation, as holder of the Excess Stock in trust, or if the Corporation shall have been dissolved, any trustee appointed by the Corporation prior to its dissolution, shall distribute ratably to the Beneficiaries of the Special Trust, when determined, any such assets received in respect of the Excess Stock in any liquidation, dissolution or winding up of, or any distribution of the assets of the Corporation.

(d) Voting Rights. All voting rights of the Excess Stock shall be vested exclusively in the Trustee of the Special Trust for the applicable class of Excess Stock. The Trustee of the Special Trust shall vote the Shares of Excess Common Stock in the same proportion as the holders of the outstanding Shares of Common Stock have voted and shall vote the Shares of Excess Preferred Stock in the same proportion as the holders of the outstanding Shares of Preferred Stock have voted.

(e) Restrictions On Transfer; Designation of Beneficiary.

(I) Excess Stock shall not be transferable. The Purported Record Transferee or Purported Record Holder may freely designate a Beneficiary of an interest in the Special Trust (representing the number of shares of Excess Stock held by the Special Trust attributable to a purported Transfer or other event that resulted in the Excess Stock), if (i) the shares of Excess Stock held in the Special Trust would not be Excess Stock in the hands of such Beneficiary and (ii) the Purported Beneficial Transferee or Purported Beneficial Holder does not receive a price, as determined on a Share-by-Share basis, for designating such Beneficiary that reflects a price for such Excess Stock that, in the case of a Purported Beneficial Transferee, exceeds (x) the price such Purported Beneficial Transferee paid for the Shares in the purported Transfer that resulted in the exchanges of Shares for Excess Stock, or (y) if the Purported Beneficial Transferee did not give value for such Shares (through a gift, devise or other transaction), a price per share equal to the Market Price of such Shares on the date of the purported Transfer that resulted in the exchange of Shares for Excess Stock or, in the case of a Purported Beneficial Holder, exceeds the Market Price of the Shares that were automatically exchanged for such Excess Stock on the date of such exchange. Upon such a transfer of an interest in the Special Trust, the corresponding shares of Excess Stock in the Special Trust shall be automatically exchanged for an equal number of shares of Common Stock or shares of a class of Preferred Stock (depending upon the type and class of Shares that were originally exchanged for such Excess Stock) and such shares of Common Stock or Preferred Stock shall be transferred of record to the transferee of the interest in the Special Trust if such Common Stock or Preferred Stock would not be Excess Stock in the hands of such transferee. Prior to any transfer of any interest in the Special Trust, the Purported Record Transferee or Purported Record Holder, as the case may be, must give advance notice to the Corporation of the intended transfer and the Corporation must have waived in writing its purchase rights under Section 5(f) of this Article IV.

(II) Notwithstanding the foregoing, if a Purported Beneficial Transferee or Purported Beneficial Holder receives a price for designating a Beneficiary of an interest in the Special Trust that exceeds the amounts allowable under Section 5(e)(I) such Purported Beneficial Transferee or Purported Beneficial Holder shall pay, or cause such Beneficiary to pay, such excess to the Corporation.

(f) Purchase Right in Excess Stock. Shares of Excess Stock shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to, in the case of Excess Stock resulting from a purported Transfer, the lesser of (i) the price per share in the transaction that created such Excess Stock (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer or, in the case of Excess Stock created by any other event, the lesser of (i) the Market Price of the Shares originally exchanged for the Excess Stock on the date of such exchange or (ii) the Market Price of such Shares on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of ninety days after the later of (i) the date of the purported Transfer or other event which resulted in an exchanges of Shares for such Excess Stock and (ii) the date the Board of Directors determines in good faith that a purported Transfer or other event resulting in exchange of Shares for such Excess Stock has occurred, if the Corporation does not receive a notice of any such Transfer pursuant to Section 4(e) of this Article IV.

(6) Tenant Ownership Limitation.

(a) Notice Requirement. An Existing Constructive Holder shall, immediately upon the occurrence of an event causing such Existing Constructive Holder to Constructively Own 2.0% or more of (i) in the case of a Tenant that is a corporation, the outstanding voting power or the total number of outstanding shares of such Tenant, or (ii) in the case of a Tenant that is not a corporation, the assets or net profits of such Tenant, give written notice to the Corporation of its Constructive Ownership of interests in such Tenant. Such notice shall specify, as a percentage, (i) in the case of a Tenant that is a corporation, such Existing Constructive Holder's Constructive Ownership of the outstanding voting power and the total number of outstanding shares of such Tenant, or (ii) in the case of a Tenant that is not a corporation, such Existing Constructive Holder's Constructive Ownership of the assets and net profits of such Tenant. Existing Constructive Holders that Constructively Own such an interest in a Tenant on the Determination Date shall so notify the Corporation within 60 days after the Determination Date.

(b) Ownership Registration. Upon receipt of a notice described in Section 6(a) (a "Section 6(a) Notice"), the Corporation shall immediately notify the other Existing Constructive Holders of the name of the Tenant subject to the Section 6(a) Notice (the "Designated Tenant"). Each other Existing Constructive Holders shall, within 30 days of receiving such notice from the Corporation, provide the Corporation with written notice (a "Section 6(b) Notice") specifying, as a percentage, (i) where the Designated Tenant is a corporation, such Existing Constructive Holder's Constructive Ownership of the outstanding voting power and the total number of outstanding shares of such Designated Tenant, or (ii) where the Designated Tenant is not a corporation, such Existing Constructive Holder's Constructive Ownership of the assets and net profits of such Designated Tenant.

(c) Notice of Changes in Ownership. While a Tenant is a Designated Tenant, each Existing Constructive Holder shall, within 20 days of an event causing a change in the percentage levels of such Existing Constructive Holder's Constructive Ownership of such Designated Tenant, notify the Corporation of changes in the information contained in such Existing Constructive Holder's Section 6(a) Notice or Section 6(b) Notice with respect to such Designated Tenant (or any update of such information pursuant to this Section 6(c)).

(d) Recordkeeping. The Secretary of the Corporation shall maintain a record of the aggregate Constructive Ownership of each Designated Tenant by the Existing Constructive Holders and shall make such record available to an Existing Constructive Holder upon request. A Designated Tenant shall remain a Designated Tenant for so long as there is an Existing Constructive Holder which Constructively Owns 2.0% or more of (i) in the case of a Designated Tenant that is a corporation, the outstanding voting power or the total number of outstanding shares of such Designated Tenant, or (ii) in the case of a Designated Tenant that is not a corporation, the assets or net profits of such Designated Tenant. The Secretary of the Corporation shall notify the Existing Constructive Holders when the status of a Tenant as a Designated Tenant terminates. An Existing Constructive Holder's status as a Disqualified Existing Constructive Holder will terminate when the status of the Tenant with respect to such disqualified status arose as a Designated Tenant terminates.

(e) Excess Ownership. If, at any time from the Determination Date to the Ownership Limitation Termination Date, the aggregate Constructive Ownership of a Tenant (the "Related Party Tenant") by the Existing Constructive Holders equals or exceeds 10.0% of (i) in the case of a Tenant that is a corporation, the outstanding voting power or the total number of outstanding shares of such Tenant, or (ii) in the case of a Tenant that is not a corporation, the assets or net profits of such Tenant, then, provided that the amounts received by the Corporation from leases of real property rented by such Related Party Tenant exceeded \$100,000 in the immediately

preceding fiscal year (the "De Minimis Level"), one or more of the Existing Constructive Holders shall be a Disqualified Constructive Holder, in accordance with the rules set forth below. The De Minimis level for a particular Related Party Tenant shall be adjusted in the event that (i) there are preexisting Designated Tenants which are Related Party Tenants and (ii) the amounts received by the Corporation from leases of real property rented by such Designated Tenants do not exceed the De Minimis level in the absence of such adjustment.

(I) Excess Ownership of a Non-Designated Tenant. If the Related Party Tenant is not a Designated Tenant, then each Existing Constructive Holder whose Constructive Ownership of interests in such Related Party Tenant is such that such Existing Constructive Holder is required to provide a Section 6(a) Notice shall be a Disqualified Constructive Holder as of the first date that the aggregate ownership described in Section 6(e) first came to equal or exceed 10.0% or, if later, the first day of the first year in which amounts received by the Corporation with respect to Real Property rented by such Related Party Tenant exceeded the De Minimis Level.

(II) Excess Ownership of a Designated Tenant. Subject to the provisions of Section 6(e)(III), if the Related Party Tenant is a Designated Tenant, then each Existing Constructive Holder that has not complied with the provisions of Section 6(c) hereof shall be a Disqualified Constructive Holder as of the first date that the aggregate ownership described in Section 6(e) first came to equal or exceed 10.0% or, if later, the first day of the first year in which amounts received by the Corporation with respect to real property rented by such Related Party Tenant exceeded the De Minimis Level. If the aggregate Constructive Ownership described in Section 6(e) continues to equal or exceed 10.0%, then the Existing Constructive Holder (x) whose Constructive Ownership of interests in such Designated Tenant equals or exceeds 2.0% of (i) in the case of a Designated Tenant that is a corporation, the outstanding voting power or the total number of outstanding shares of such Designated Tenant, or (ii) in the case of a Designated Tenant that is not a corporation, the assets or net profits of such Designated Tenant and (y) which was the last such Existing Constructive Holder to (a) become an Existing Constructive Holder or (b) have an increase in its Constructive Ownership of the feature of the Designated Tenant with respect to which the aggregate ownership described in Section 6(e) equals or exceeds 10%, shall be treated as a Disqualified Constructive Holder for the period beginning on the first date that the aggregate ownership described in Section 6(e) first came to equal or exceed 10.0% or, if later, the first day of the first year in which amounts received by the Corporation with respect to real property rented by such



Related Party Tenant exceeded the De Minimis Level. If the aggregate Constructive Ownership of the remaining Existing Constructive Holders continues to equal or exceed 10%, then the process described above shall be repeated.

(III) Acquisitions During Notice Periods.

If the Related Party Tenant is a Designated Tenant and the aggregate Constructive Ownership described in Section 6(e) equals or exceeds 10.0% as a result of increases in Constructive Ownership taking place during the notice periods described in Section 6(a) or Section 6(b), then the Existing Constructive Holder that Constructively Owns an interest in the relevant feature of the Designated Tenant and that was the last such Existing Constructive Holder to (i) become an Existing Constructive Holder or (ii) have an increase in its Constructive Ownership of such feature of the Designated Tenant shall be treated as a Disqualified Constructive Holder for the period beginning on the first date that the aggregate ownership described in Section 6(e) first came to equal or exceed 10.0% or, if later, the first day of the first year in which amounts received by the Corporation with respect to Real Property rented by such Related Party Tenant exceeded the De Minimis Level. If excess aggregate Constructive Ownership continues to exist, then this process shall be repeated.

(f) Modifications. The Board of Directors may, on a prospective basis, modify the Constructive Ownership thresholds described in Section 6(a) and Section 6(d) and the De Minimis Level described in Section 6(e).

(g) Determination of Voting Power. The outstanding voting power of a corporate Tenant shall be determined for purposes of this Section 6 in the manner in which such is determined for purposes of Section 856(d)(2) of the Code.

(7) Additional Restrictions on the Transfer of Common Stock.

(a) Additional Restrictions. In order to preserve the net operating loss carryovers, capital loss carryovers, and business credit carryovers to which the Corporation is entitled pursuant to the Code and the regulations thereunder, the following restrictions shall apply from the Determination Date until the Expiration Date (as defined below). From and after the Determination Date no Person shall acquire Shares of any class, or any option or warrant to purchase any such Shares, to the extent that such acquisition would cause the Ownership Interest Percentage (as defined below) of the acquiror or any other person with respect to Shares of such class to equal or exceed 5 percent, whether or not said acquiror or other person held Shares of such class, or options or warrants to purchase such Shares equal to such percentage before such transfer. In addition, no person whose Ownership Interest

Percentage with respect to Shares of a class exceeds 5 percent shall acquire or transfer any Shares of such class, or any options or warrants to purchase such Shares.

(b) Definitions. For purposes of this Section 7, (i) a Person's "Ownership Interest Percentage" with respect to Shares of a class shall be the sum of such Person's direct ownership of such Shares, as determined under Treasury Regulation Section 1.382-2T(f)(8) or any successor regulation and such Person's indirect ownership of such shares, as determined under Treasury Regulation Section 1.382-2T(f)(15) or any successor regulation, except that, for purposes of determining a Person's direct ownership interest in the Corporation, any ownership interest held by such Person in the Corporation described in Treasury Regulation Section 1.382-2T(f)(18)(iii)(A) or any successor regulation shall be treated as Shares of a class, and for purposes of determining a Person's indirect ownership interest in the Corporation, Treasury Regulations Sections 1.382-2T(g)(2), 1.382-2T(h)(2)(iii) and 1.382-2T(h)(6)(iii) or any successor regulations shall not apply and any stock that would be attributed to such Person pursuant to the option attribution rule of Treasury Regulation Section 1.382-2T(h)(4) or any successor regulation, if to do so would result in an ownership change, shall be attributed to such Person without regard to whether such attribution results in an ownership change; (ii) "transfer" refers to any means of conveying legal or beneficial ownership of Shares, or options or warrants to purchase Shares, other than Shares, or options or warrants to purchase Shares, conveyed by reason of death, gift, divorce or separation, whether such means is direct or indirect, voluntary or involuntary, including, without limitation, the transfer of ownership of any entity that owns, directly or indirectly, Shares or options or warrants to purchase Shares; (iii) "transferee" means any Person to whom Shares, options or warrants to purchase stock, of the Corporation is transferred; and (iv) the "Expiration Date" shall be that date, determined by the Board of Directors pursuant to Section 7(k) of this Article IV, as of which the provisions of this Section 7 shall no longer apply.

(c) Excepted Transfers. The transfer restrictions in this Section 7 shall not apply to (i) any acquisition of Shares of a class by a Person whose Ownership Interest Percentage with respect to such class on the Determination Date is equal to or greater than 5 percent or any affiliate of such a Person; (ii) any transfer of Shares of a class (or acquisition resulting from such transfer) from a Person whose Ownership Interest Percentage with respect to such class on the Determination Date is equal to or greater than 5 percent or any affiliate of such a Person; (iii) any transfer of Shares of a class pursuant to an offering of such Shares by the Corporation, to the extent determined by the Board of Directors at the time of such offering; (iv) any transfer of Shares (not otherwise described in this Section 7(c)) made in accordance with or pursuant to the plan of reorganization; or (v) any transfer of Shares specifically approved by the Board of Directors, upon an opinion of counsel, a private

letter ruling or such other grounds, and subject to such conditions, as it deems satisfactory.

(d) Attempted Transfer in Violation of Transfer Restrictions. Any attempted acquisition or transfer of Shares of a class, or of options to acquire such Shares, that is not described in Section 7(c) and that is in excess of the Shares or options or warrants that could be transferred to the transferee without restriction under Section 7(a) shall not be effective to transfer ownership of such excess Shares, or options or warrants to acquire Shares (the "Prohibited Shares/Options") to the purported acquiror thereof (the "Purported Acquiror"), and the Purported Acquiror shall not be entitled to any rights as stockholder or optionholder or warrant holder of the Corporation with respect to such Prohibited Shares/Options (including, without limitation, the right to vote or to receive dividends with respect thereto). All rights with respect to the Prohibited Shares/Options shall remain the property of the Person who initially purported to transfer Prohibited Shares/Options to a Purported Acquiror (the "Initial Transferor") until such time as the Prohibited Shares/Options are resold as set forth in Section 7(e) or 7(f). The Purported Acquiror, by acquiring ownership of Shares or options or warrants to purchase such Shares, that are Prohibited Shares/Options, shall be deemed to have consented to all the provisions of this Section 7 and to have agreed to act as provided in Section 7(e).

(e) Transfer of Prohibited Shares/Options or Proceeds Thereof to Agent. Upon demand by the Corporation, the Purported Acquiror shall transfer any certificate or other evidence of purported ownership of the Prohibited Shares/Options within the Purported Acquiror's possession or control, along with any dividends or other distributions paid by the Corporation with respect to the Prohibited Shares/Options that were received by the Purported Acquiror (the "Prohibited Distributions"), to an agent designated by the Corporation (the "Agent"). If the Purported Acquiror has sold the Prohibited Shares/Options to an unrelated party in an arm's-length transaction after purportedly acquiring them, the Purported Acquiror shall be deemed to have sold the Prohibited Shares/Options as agent for the Initial Transferor, and in lieu of transferring the Prohibited Shares/Options and Prohibited Distributions to the Agent shall transfer to the Agent the Prohibited Distributions and the proceeds of such sale (the "Resale Proceeds") except to the extent that the Agent grants written permission to the Purported Acquiror to retain a portion of the Resale Proceeds not exceeding the amount that would have been payable by the Agent to the Purported Acquiror pursuant to Section 7(f) if the Prohibited Shares/Options had been sold by the Agent rather than by the Purported Acquiror. Any purported transfer of the Prohibited Shares/Options by the Purported Acquiror other than a transfer described in one of the two preceding sentences shall not be effective to transfer any ownership of the Prohibited Shares/Options.

(f) Sale of Prohibited Shares/Options and Allocation of Proceeds. The Agent shall sell in an arms-length transaction (through the exchange upon which the relevant class of securities is listed, if reasonably possible) any Prohibited Shares/Options transferred to the Agent by the Purported Acquiror, and the proceeds of such sale (the "Sales of Proceeds"), or the Resale Proceeds, if applicable, shall be allocated to the Purported Acquiror up to the purported purchase price paid or value of consideration surrendered by the Purported Acquiror for the Prohibited Shares/Options. Subject to the succeeding provisions of this Section 7(f), any Resale Proceeds or Sales Proceeds in excess of the amount allocable to the Purported Acquiror pursuant to the preceding sentence, together with any Prohibited Distributions, shall be the property of the Initial Transferor. If the identity of the Initial Transferor cannot be determined by the Agent through inquiry made to the Purported Acquiror, the Agent shall publish appropriate notice (in the Wall Street Journal, if reasonably possible) for seven consecutive business days in an attempt to identify the Initial Transferor in order to transmit any Resale Proceeds or Sales Proceeds or Prohibited Distributions due to the Initial Transferor pursuant to this Section 7(f). The Agent may also take, but is not required to take, other reasonable actions to attempt to identify the Initial Transferor. If after 90 days following the final publication of such notice the Initial Transferor has not been identified, any amounts due to the Initial Transferor pursuant to this subparagraph may be paid over to a court or governmental agency, if applicable law permits, or otherwise shall be transferred to an entity designated by the Corporation that is described in Section 501(c)(3) of the Code. In no event shall any such amounts due to the Initial Transferor inure to the benefit of the Corporation or the Agent, but such amounts may be used to cover expenses (including but not limited to the expenses of publication) incurred by the Agent in attempting to identify the Initial Transferor.

(g) Prompt Enforcement Against Purported Acquiror. Within thirty business days of learning of a purported transfer of Prohibited Shares/Options to a Purported Acquiror, the Corporation, through its Secretary, shall demand that the Purported Acquiror surrender to the Agent the certificates representing the Prohibited Shares/Options, or any Resale Proceeds, and any Prohibited Distributions, and, if such surrender is not made by the Purported Acquiror within thirty business days from the date of such demand, the Corporation shall institute legal proceedings to compel such transfer; provided, however, that nothing in this Paragraph (g) shall preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand, and also provided that failure of the Corporation to act within the time periods set out in this Paragraph (g) shall not constitute a waiver of any right of the Corporation to compel any transfer required by Section 7(e).

(h) Additional Actions to Prevent Violation of Attempted Violation. Upon a determination by the Board of Directors that there has been or is threatened a

purported transfer of Prohibited Shares/Options to a Purported Acquiror, the Board of Directors may take such action in addition to any action required by the preceding Paragraph as it deems advisable to give effect to the provisions of this Section 7, including, without limitation, refusing to give effect on the books of this Corporation to such purported transfer or instituting proceedings to enjoin such purported transfer.

(i) **Obligation to Provide Information.** The Corporation may require as a condition to the registration of the transfer of any Shares, or options or warrants to acquire Shares, that the proposed transferee furnish to the Corporation all information reasonably requested by the Corporation with respect to all the proposed transferee's direct or indirect ownership interests in, or options or warrants to acquire Shares of, the Corporation.

(j) In the event that a purported transfer of Shares violates the provisions of both Section 4 of this Article IV and this Section 7, the provisions of this Section 7 shall apply.

(k) The Board of Directors may, at any time, determine, in its sole discretion, that the provisions of this Section (7) shall no longer apply.

(8) **Prohibition on Issuance of Nonvoting Equity Securities.** Notwithstanding anything to the contrary contained herein, the Corporation shall not issue nonvoting equity securities; provided, however, that any series of Preferred Stock designated pursuant to Section 2 of Article IV as having the right, voting separately as a class, to elect any directors of the Corporation if and when dividends payable on such shares of Preferred Stock shall have been in arrears and unpaid for a specified period of time (such directors to be in addition to the number of directors constituting the Board of Directors immediately prior to the accrual of such right) shall not be nonvoting equity securities for purposes of this Article IV.

(9) **Preemptive Rights.** No holder of Shares of any class, now or hereafter authorized, shall have any preferential or preemptive right to subscribe for, purchase or receive any Shares of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe to or purchase such shares, or any securities convertible into or exchangeable for such Shares, which may at any time be issued, sold or offered for sale by the Corporation.

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

(11) New York Stock Exchange Transactions. Nothing in this Article IV shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange.

#### Article V

##### Perpetual Existence

The Corporation is to have perpetual existence.

#### Article VI

##### Limited Liability

The private property of the stockholders shall not be subject to the payment of any corporate debts to any extent whatever.

#### Article VII

##### Directors

The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The Board of Directors shall be constituted as follows:

(a) The number of directors constituting the Board of Directors shall be fixed by, or in the manner provided in the By-Laws of the Corporation, but in no event shall such number be less than three nor more than seventeen.

(b) There shall be three classes of directors, designated as Classes I, II and III, respectively. At the annual election of directors held at the annual meeting of stockholders in 1975, the directors shall be divided into such classes, as nearly equal in number as may be. The exact number of directors in each class shall be determined by resolution of the Board of Directors as provided in the By-Laws of the Corporation. The term of office of Class I directors shall expire at the first annual meeting of stockholders after their election, the term of office of Class II directors shall expire at the second annual meeting of stockholders after their election, and the

term of office of Class III directors shall expire at the third annual meeting of stockholders after their election. At each annual election held after such classification and election to be held in 1975, directors chosen to succeed those whose terms expire shall be elected for a term of office to expire at the third annual meeting of stockholders after the election.

(2) The Board of Directors shall have the power without the assent or vote of the stockholders:

(a) To make, alter, amend, change, add to or repeal the By-Laws of the Corporation; to fix and vary the amount to be reserved for any proper purpose; to authorize and cause to be executed mortgages and liens upon all or any part of the property of the Corporation; to determine the use and disposition of any surplus or net profits; and to fix the times for the declaration and payment of dividends.

(b) To determine from to time to time whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation (other than the stock ledger) or any of them shall be open to the inspection of the stockholders.

(c) By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in the resolution or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the By-Laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

(3) No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(a) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee and the board or committee in good faith authorizes the contract or transaction by a vote

sufficient for such purpose without counting the vote of the interested director or directors; or

(b) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

(4) (a) The affirmative vote of the outstanding shares of stock of the Corporation entitled to cast two-thirds or more of the votes thereon (voting as one class) shall be required:

(i) to adopt any agreement for the merger or consolidation of the Corporation with or into any other corporation or other entity, whether or not the Corporation is the surviving entity of such merger or consolidation;

(ii) to authorize the sale to any other corporation, individual or other entity of all or substantially all of the property or assets of the Corporation;

(iii) to authorize any liquidation or dissolution of the Corporation; or

(iv) to reserve to the stockholders of the Corporation, by an amendment to this Amended and Restated Certificate of Incorporation or otherwise, the right to determine the consideration for the issuance of any shares or for the disposition of any treasury shares.

(b) The provisions of this paragraph (4) shall not apply to any statutory merger or any consolidation in which the Corporation and one or more subsidiaries of the Corporation are the only constituent parties. For the purpose of this paragraph (4), "subsidiary" is any corporation 50% or more of the voting securities of which are owned, directly or indirectly, by the Corporation.



(c) The affirmative vote of the outstanding shares of stock of the Corporation entitled to cast two-thirds or more of the votes thereon (voting as one class) shall be required to authorize any amendment to this Amended and Restated Certificate of Incorporation which shall alter, amend, change, or repeal any of the provisions of this paragraph (4).

(5) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the laws of the State of Delaware, of this certificate, and to any By-Laws from time to time made by the stockholders; provided, however, that no By-Law so made shall invalidate any prior act of the directors which would have been valid if such By-Law had not been made.

#### Article VIII

##### Reorganization

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

## Article IX

Meetings of Stockholders;  
Books of the Corporation

Meetings of stockholders may be held outside the State of Delaware, if the By-Laws so provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation. Elections of directors need not be by ballot unless the By-Laws of the Corporation shall so provide.

## Article X

Indemnification of Directors,  
Officers and Others

The Corporation shall, to the fullest extent permitted under Section 145 of the General Corporation Law, as amended from time to time, indemnify all persons that it may indemnify pursuant thereto. Without limiting or (except to the extent required by applicable law) being limited by the foregoing, the Corporation shall indemnify persons in accordance with the following provisions:

(1) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(3) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections (1) and (2) of this Article X, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under Sections (1) and (2) of this Article X (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in such Sections (1) and (2). Such determination shall be made (a) by the Board of Directors of the Corporation by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the stockholders of the Corporation.

(5) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation authorized in this Article X. Such

expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors of the Corporation deems appropriate.

(6) The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(7) The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of Section 145 of the General Corporation Law.

(8) For purposes of this Article X, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(9) For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves service by, such director, officer, employee or agent with respect to any employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article X.

(10) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### Article XI

##### Directors Not Personally Liable

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

#### Article XII

##### Amendment

The Corporation reserves the right to amend, alter, change or repeal any provision of this Certificate of Incorporation, in the manner now or hereafter prescribed by law and this Certificate of Incorporation, and all rights conferred on stockholders in this Certificate of Incorporation are subject to this reservation.

#### Article XIII

##### By-Laws

The directors of the Corporation shall have the power to adopt, amend or repeal by-laws.

IN WITNESS WHEREOF, Alexander's, Inc. has caused its corporate seal to be hereunto affixed and this Amended and Restated Certificate of Incorporation to be signed by Robin L. Farkas, its Chairman and Chief Executive Officer, and attested by Brian M. Kurtz, its Senior Vice President and Secretary this 27th day of September, 1993 and the undersigned affirm that the statements made herein are true under the penalties of perjury.

/s/ Robin L. Farkas

-----

Chairman and Chief  
Executive Officer

[SEAL]

Attest:

/s/ Brian M. Kurtz

-----

Senior Vice President  
and Secretary

RATIO OF EARNINGS TO FIXED CHARGES  
(amounts in thousands except ratios)

	Six Months Ended		Year Ended		Five Months Ended	YEAR ENDED			
	June 30, 1995	June 30, 1994	December 31, 1994	December 31, 1993	December 31, 1993	JULY 31, 1993	JULY 25, 1992	JULY 27, 1991	JULY 28, 1990
	-----								
	(unaudited)								
(Loss)/income from continuing operations before income taxes	(6,110)	736	4,033	9,644	946	27,151(2)	(14,630)	(300)	1,503
Fixed charges(1)	6,388	1,675	4,228	2,621	633	1,300	1,131	1,092	1,115
	-----								
(Loss)/income from continuing operations before income taxes and fixed charges	278	2,411	8,261	12,265	1,579	28,451	(13,499)	792	2,618
	=====								
Fixed charges:									
Interest and debt expense	6,305	1,592	4,063	2,456	468	1,135	966	927	950
1/3 of Rent expense - interest factor	83	83	165	165	165	165	165	165	165
	-----								
Capitalized interest	3,100	851	1,718	0	0	0	0	0	0
	-----								
	9,488	2,526	5,946	2,621	633	1,300	1,131	1,092	1,115
	=====								
Ratio of earnings to fixed charges	--	--	1.39	4.68	2.49	21.89(2)	--	--	2.35
Deficiency in earnings available to cover fixed charges	(9,210)	(115)	--	--	--	--	(14,630)	(300)	--

## NOTES:

- (1) For purposes of this calculation, earnings before fixed charges consist of earnings before income taxes plus fixed charges. Fixed charges consist of interest expense on all indebtedness (including amortization of debt issuance costs) from continuing operations and the portion of operating lease rental expense that is representative of the interest factor (deemed to be one-third of operating lease rentals). Fixed charges does not include any interest paid to unsecured creditors or charged against the reserve from discontinued operations. Fixed charges also does not include any interest expensed or capitalized during the period the Company was in the retail business (prior to 5/15/92) except for its share of the Kings Plaza Mall interest expense.
- (2) Includes a gain on sale of leases of \$28,779 without which the Company would have a deficiency in earnings to cover fixed charges of \$1,628.

## INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement of Alexander's, Inc. on Form S-3 of our report dated March 29, 1995 which expresses an unqualified opinion and includes explanatory paragraphs relating to (i) the Company's adoption of Statement of Financial Accounting Standards No. 106 - Accounting for Postretirement Benefits and (ii) the Company's ability to operate as a viable real estate company which depends on the successful completion of the development and leasing of a substantial portion of its existing properties, appearing in the Annual Report on Form 10-K of Alexander's, Inc. for the year ended December 31, 1994 and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

DELOITTE & TOUCHE LLP

New York, New York  
September 19, 1995