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As filed with the Securities and Exchange Commission on June 5, 2002.

Registration No. 333-88718

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

THE MACERICH COMPANY

(Exact name of Registrant as specified in its charter)

MARYLAND	**99-4448705**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

401 Wilshire Boulevard, No. 700
Santa Monica, California 90401
(310) 394-6000
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Arthur M. Coppola, President
The Macerich Company
401 Wilshire Boulevard, No. 700
Santa Monica, California 90401
(310) 394-6000
(Name, Address, including zip code, and telephone number, including area code, of Agent for Service)

COPY TO:

Frederick B. McLane, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071-2899
(213) 430-6000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:
FROM TIME TO TIME AFTER THIS REGISTRATION STATEMENT BECOMES EFFECTIVE.

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

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. ☒

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. o

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 registration statement for the same offering. o

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

Calculation of Registration Fee

Title of each class of securities to be registered	**Proposed maximum aggregate offering price**	**Amount of registration fee**

Common Stock ($.01 par value per share)	(1) (2) (3)	N/A
Warrants	(1) (2) (4)	N/A
Rights	(1) (2) (5)	N/A
Total	$1,000,000,000	$70,812 (6)

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 THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

(Footnotes on next page)

(Footnotes from preceding page)

(1) In no event will the aggregate maximum offering price of all securities issued pursuant to this Registration Statement exceed $1,000,000,000 (or its equivalent in foreign currency). Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.

(2) The proposed maximum offering price per security will be determined, from time to time, by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder.

(3) Subject to Footnote (1), there is being registered hereunder an indeterminate number of shares of common stock as may be sold, from time to time, by the Registrant. Each share is accompanied by a preferred share purchase right pursuant to the Registrant's Agreement dated November 10, 1998 with EquiServe Trust Company, N.A., as rights agent.

(4) Subject to Footnote (1), there is being registered hereunder an indeterminate number of Warrants representing rights to purchase common stock registered pursuant to this Registration Statement.

(5) Subject to Footnote (1), there is being registered hereunder an indeterminate number of Rights representing rights to purchase common stock registered pursuant to this Registration Statement.

(6) The registration fee has been calculated pursuant to Rule 457(o) of the rules and regulations under the Securities Act of 1933, as amended, and includes $230,307,208 aggregate amount of securities which were previously registered under the Registrant's Registration Statement on Form S-3 (No. 333-21157). The registration statement fee specified in the table has been computed on the basis of $769,692,792 aggregate amount of securities registered hereby, prior to including the previously registered and unsold securities referred to above.

This Registration Statement includes $230,307,208 aggregate amount of securities which were previously registered under the Registrant's Registration Statement on Form S-3 (No. 333-21157) and remain unsold as of the date hereof. As permitted by Rule 429, the Prospectus with respect to this Registration Statement also relates to the previously unsold securities covered hereby.

Subject to Completion Dated June 5, 2002

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and we are not soliciting offers to buy these securities, in any state where the offer or sale is not permitted.

Prospectus

$1,000,000,000

THE MACERICH COMPANY

Common Stock
Warrants
Rights

We may offer and sell from time to time, in one or more classes or series and in amounts, at prices and on the terms that we will determine at the time of the offering, with an aggregate initial offering price of up to $1,000,000,000:

- shares of common stock;
- warrants to purchase shares of common stock; and

- rights to purchase shares of common stock.

We will provide the specific terms of these securities in supplements to this prospectus. You should read this prospectus and the related supplement before you invest in any of these securities.

INVESTING IN OUR SECURITIES INVOLVES RISKS. SEE "RISK FACTORS" ON PAGE 3 OF THIS PROSPECTUS.

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

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

We will sell these securities directly to our stockholders or to purchasers, through agents on our behalf, or through underwriters or dealers we designate from time to time. If we involve any agents or underwriters in the sale of any of these securities, we will set forth in the applicable prospectus supplement their names and any fees, commission or discounts payable to them.

The date of this prospectus is , 2002.

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YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS OR TO WHICH THIS PROSPECTUS OR THE PROSPECTUS SUPPLEMENT REFERS YOU. NO ONE IS AUTHORIZED TO PROVIDE YOU WITH DIFFERENT INFORMATION. WE ARE NEITHER MAKING AN OFFER TO SELL THESE SECURITIES TO YOU NOR SOLICITING AN OFFER FROM YOU TO BUY THESE SECURITIES IN ANY PLACE WHERE THE OFFER OR SALE TO YOU IS NOT PERMITTED. YOU SHOULD NOT ASSUME THAT THE INFORMATION CONTAINED IN THIS PROSPECTUS OR THE PROSPECTUS SUPPLEMENT IS CORRECT ON ANY DATE AFTER THE DATE OF THIS PROSPECTUS OR THE PROSPECTUS SUPPLEMENT. THIS IS TRUE EVEN IF THIS PROSPECTUS OR THE PROSPECTUS SUPPLEMENT IS GIVEN TO YOU OR THESE SECURITIES ARE OFFERED OR SOLD TO YOU ON A LATER DATE.

RISK FACTORS

You should carefully consider, among other factors, the matters described below before purchasing any shares of our common stock, or warrants or rights to purchase shares of our common stock. We refer in this prospectus to our common stock, and warrants and rights to purchase our common stock, as the "securities."

Risks Related to Real Estate Investments

We invest primarily in shopping centers, which are subject to a number of significant risks which are beyond our control.

Real property investments are subject to varying degrees of risk that may affect the ability of our regional and community shopping centers to generate sufficient revenues to meet operating and other expenses, including debt service, lease payments, capital expenditures and tenant improvements, and to make distributions to us and our stockholders. In this prospectus, we will refer to shopping centers that are owned wholly by us as "Wholly-Owned Centers" and to shopping centers that are partly but not wholly-owned by us as "Joint Venture Centers." We will refer to each of the Wholly-Owned Centers and Joint Venture Centers as a "Center." A number of factors may decrease the income generated by the Centers, including:

- the national economic climate;
- the regional and local economy (which may be negatively impacted by plant closings, industry slowdowns, adverse weather conditions, natural disasters, terrorist activities and other factors);
-

local real estate conditions (such as an oversupply of, or a reduction in demand for, retail space or retail goods, and the availability and creditworthiness of current and prospective tenants);

- perceptions by retailers or shoppers of the safety, convenience and attractiveness of a Center; and
- increased costs of maintenance, insurance and operations (including real estate taxes).

Income from shopping center properties and shopping center values are also affected by applicable laws and regulations, including tax and zoning laws, and by interest rate levels and the availability and cost of financing. In addition, the number of prospective buyers interested in purchasing shopping centers is limited. Therefore, if we sell the Centers, we may receive less money than we have invested in the Centers.

Our centers must compete with other retail centers and retail formats for tenants and customers.

There are numerous shopping facilities that compete with the Centers in attracting tenants to lease space, and an increasing number of new retail formats and technologies other than retail shopping centers compete with the Centers for retail sales. Competing retail formats include factory outlet centers, power centers, discount shopping clubs, mail-order services, internet shopping and home shopping networks. Our revenues may be reduced as a result of increased competition.

Our centers depend on tenants to generate rental revenues.

Our revenues and funds available for distribution will be reduced if:

- a significant number of our tenants are unable (due to poor operating results, bankruptcy or other reasons) to meet their obligations;
- we are unable to lease a significant amount of space in the Centers on economically favorable terms; or
- for any other reason, we are unable to collect a significant amount of rental payments.

A decision by a department store or other large retail store tenant (an "anchor"), or other significant tenant, to cease operations at a Center could also have an adverse effect on our financial condition. The closing of an anchor may allow other anchors or other tenants to terminate their leases or cease operating their stores at the Center or otherwise adversely affect occupancy at the Center. In addition, tenants at one or more Centers might terminate their leases as a result of mergers, acquisitions, consolidations, dispositions or bankruptcies in the retail industry. The bankruptcy and/or closure of retail stores, or sale of a store or stores to a less desirable retailer, may reduce occupancy levels and rental income, or otherwise adversely affect our financial performance. Furthermore, if the store sales of retailers operating in the Centers decline sufficiently, tenants might be unable to pay their minimum rents or expense recovery charges. In the event of a default by a lessee, the affected Center may experience delays and costs in enforcing its rights as lessor.

Macerich Management Company is subject to the risks associated with the third party property management and leasing business.

One of our management companies, Macerich Management Company, is subject to the risks associated with providing third-party property management and leasing services. These risks include the risks that:

- management and leasing contracts with third-party owners will be lost to competitors;
- contracts will not be renewed on terms consistent with current terms; and
- leasing activity generally may decline.

Third parties can terminate most of our third-party management contracts on 30 to 60 days notice. In addition, if revenues fall, Macerich Management Company will receive reduced compensation under virtually all of our third-party property management agreements.

Our acquisition and real estate development strategies may not be successful.

Our historical growth in revenues, net income and funds from operations ("FFO") has been closely tied to the acquisition and redevelopment of shopping centers. Many factors, including the availability and cost of capital, our total amount of debt outstanding, interest rates and the availability of attractive acquisition targets, among others, will affect our ability to acquire and redevelop additional properties in the future. We may not be successful in pursuing acquisition opportunities, and newly acquired properties may not perform as well as expected. Expenses arising from our efforts to complete acquisitions, redevelop properties or increase our market penetration may have a material adverse effect on our business, financial condition and results of operations. We face competition for acquisitions primarily from other real estate investment trusts ("REITs"), as well as from private real estate companies and financial buyers. Some of our competitors have greater financial and other resources than we do. Increased competition for shopping center acquisitions may impact adversely our ability to acquire additional properties on favorable terms. We cannot guarantee that we will be able to

implement our growth strategy successfully or manage our expanded operations effectively and profitably.

If we complete the pending acquisition of Westcor Realty Limited Partnership, our business strategy will expand to include the selective development and construction of retail properties. See "OUR COMPANY—Recent Developments." Any development, redevelopment and construction activities that we undertake will be subject to the risks of real estate development, including lack of financing, construction delays, environmental requirements, budget overruns, sunk costs and lease-up. Furthermore, occupancy rates and rents at a newly completed property may not be sufficient to make the property profitable. Real estate development activities are also subject to risks relating to the inability to obtain, or delays in obtaining, all necessary zoning, land-use, building, occupancy and

other required governmental permits and authorizations. If any of the above events occur, the ability to pay distributions to our stockholders and service our indebtedness could be adversely affected.

Risks Related to Conflicts of Interest

The structure of Macerich Management Company and its management agreements may create conflicts of interest.

Macerich Property Management Company, LLC and Macerich Management Company (each a "management company" and collectively, the "management companies") carry on our management, leasing and redevelopment business. Macerich Management Company provides property management services to certain of the Joint Venture Centers and properties owned by third parties. Macerich Property Management Company, LLC provides the same or similar services to our Wholly-Owned Centers. Mace Siegel, Arthur M. Coppola, Dana K. Anderson and Edward C. Coppola (the "Principals") own 100% of the outstanding shares of voting common stock of Macerich Management Company. The Macerich Partnership, L.P., a Delaware limited partnership (the "operating partnership"), owns 100% of the outstanding shares of non-voting preferred stock of Macerich Management Company. We have a majority interest in the operating partnership and are its sole general partner. As the holder of 100% of the preferred stock, the operating partnership has the right to receive 95% of Macerich Management Company's net cash flow. However, since it is an operating company and not a passive entity, our investment in the non-voting preferred stock is subject to the risk that the Principals might have interests that are inconsistent with our interests.

Macerich Management Company also provides management, leasing, construction and redevelopment services for shopping centers owned by third parties that are unaffiliated with us. Macerich Management Company may agree to manage additional shopping centers that might compete with the Centers. These types of arrangements could also create conflicts of interest for the Principals.

The Principals have substantial influence over the management of both our Company and the operating partnership, which may create conflicts of interest.

Under the partnership agreement of the operating partnership (the "Partnership Agreement"), we, as the sole general partner, are responsible for the management of the operating partnership's business and affairs. Each of the Principals serves as one of our executive officers and as a member of our Board of Directors. Accordingly, the Principals have substantial influence over our management and the management of the operating partnership.

The tax consequences of the sale of some of the Centers may create conflicts of interest.

The Principals will experience negative tax consequences if some of the Centers are sold. As a result, the Principals may not favor a sale of these Centers even though such a sale may benefit our other stockholders. See "FEDERAL INCOME TAX CONSIDERATIONS."

The required consent of third party limited partners of the operating partnership for some transactions may create conflicts of interest.

The Partnership Agreement provides that a decision to merge the operating partnership, sell all or substantially all of its assets or liquidate must be approved by the holders of 75% of the outstanding common and preferred limited partnership interests in the operating partnership ("OP units"). Depending on the percentage of the outstanding OP units owned by us at the time, the concurrence of at least some of the other holders of OP units may be required to approve any merger, sale of all or substantially all of the assets, or liquidation of the operating partnership. As of the date of this prospectus, we own 80% of the outstanding common and preferred OP units.

The guarantees of indebtedness by the Principals may create conflicts of interest.

The Principals have guaranteed mortgage loans encumbering some of the Centers. As of the date of this prospectus, the Principals have guaranteed an aggregate principal amount of approximately $23.75 million. The existence of guarantees of these loans by the Principals could result in the Principals having interests that are inconsistent with our interests.

Other Risks Affecting our Business and Operations

If our indebtedness increases, our financial condition and results of operations could be adversely affected.

Since our initial public offering of common stock in March 1994, we have had a debt level of less than 69% of our total market capitalization. "Total market capitalization" means the sum of:

- the aggregate market value of our outstanding equity shares, assuming full redemption of outstanding OP units and full conversion of our outstanding preferred stock for shares of common stock; plus
- the total debt of the operating partnership, including a pro rata share of the debt of the Joint Venture Centers.

Our organizational documents do not limit the amount or percentage of indebtedness that we may incur. Accordingly, our Board of Directors could increase our leverage in the future. If it did, there would be an increase in our debt service requirements and an increased risk of default on our obligations, either of which may adversely affect our financial condition and results of operations.

We may change our policies in ways that adversely affect our financial condition or results of operations.

Our investment and financing policies and our policies with respect to other activities, including our growth, debt capitalization, distributions, REIT status and operating policies are determined by our Board of Directors. Our Board of Directors may change these policies at any time without a vote of our stockholders. A change in these policies might adversely affect our financial condition or results of operations.

If we fail to qualify as a REIT, we will have reduced funds available for distribution to our stockholders.

No assurance can be given that we have qualified or will remain qualified as a REIT. Qualification as a REIT involves the application of highly technical and complex Internal Revenue Code provisions for which there are only limited judicial or administrative interpretations. The complexity of these provisions and of the applicable income tax regulations is greater in the case of a REIT such as ours

that holds its assets in partnership form. The determination of various factual matters and circumstances not entirely within our control, including by our partners in the Joint Venture Centers, may affect our ability to qualify as a REIT. In addition, legislation, new regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to our qualification as a REIT or the federal income tax consequences of that qualification.

If in any taxable year we fail to qualify as a REIT, we will suffer the following negative results:

- we will not be allowed a deduction for distributions to stockholders in computing our taxable income; and
- we will be subject to federal income tax on our taxable income at regular corporate rates.

In addition, we will be disqualified from treatment as a REIT for the four taxable years following the year during which the qualification was lost, unless we were entitled to relief under statutory provisions. As a result, net income and the funds available for distribution to our stockholders will be reduced for five years. It is possible that future economic, market, legal, tax or other considerations might cause the Board of Directors to revoke our REIT election. See "FEDERAL INCOME TAX CONSIDERATIONS."

Our debt financing may adversely impact our stockholders.

We are subject to the risks associated with debt financing, including the risk that our cash flow will be insufficient to meet required payments of principal and interest. Other than our $7^1/_4$% Convertible Subordinated Debentures due 2002, our outstanding indebtedness represents obligations of the operating partnership and the entities that own the Centers (collectively, the "Property Partnerships"). Most of this outstanding indebtedness is nonrecourse to the obligor. We have mortgaged a majority of the Centers to secure payment of this indebtedness. If mortgage payments cannot be made, a mortgagee could foreclose, resulting in a loss to us. Outstanding indebtedness under our working capital credit facility is the obligation of the operating partnership and some of the Property Partnerships.

Our current indebtedness bears interest at both fixed and floating interest rates. For future financings, we intend to seek the most attractive financing arrangements available at the time, which may involve either fixed or floating interest rates. With respect to floating rate indebtedness, increases in interest rates may adversely affect our FFO, funds available for distribution and ability to meet our debt service obligations.

We are obligated to make balloon payments of principal under mortgages on some of the Centers. Although we anticipate that we will be able to refinance those mortgages by the time the balloon payments become due, or otherwise obtain funds by raising equity, incurring debt or selling assets, there can be no assurance that we will be able to do so. In addition, interest rates and other terms of any debt issued to refinance this mortgage debt may be less favorable than the terms of the current mortgage debt.

To qualify as a REIT under the Internal Revenue Code, we generally are required each year to distribute to our stockholders at least 90% of our net taxable income determined without regard to net capital gains and the dividends paid deduction. We may be required to borrow funds on a short-term basis or liquidate investments to meet the distribution requirements that are necessary to qualify as a REIT, even if management believes that it is not in our best interests to do so.

Outside partners in Joint Venture Centers result in additional risks to our stockholders.

We own partial interests in Property Partnerships that own 22 Joint Venture Centers. We own a 50% interest in Property Partnerships that own twelve of the Joint Venture Centers with shared

management control (Eastland Mall, Empire Mall, Granite Run Mall, Lake Square Mall, Lindale Mall, Mesa Mall, North Park Mall, Rushmore Mall, South Park Mall, Southern Hills Mall, Southridge Mall and Valley Mall), a 50% managing general partnership interest in Property Partnerships that own two of the Joint Venture Centers (Broadway Plaza and Panorama Mall), a 51% interest in the Property Partnerships that own seven of the Joint Venture Centers with shared management control (Lakewood Mall, Cascade Mall, Kitsap Mall, Los Cerritos Center, Redmond Town Center, Stonewood Mall and Washington Square), and a 19% non-managing general partnership interest in the Property Partnership that holds one of the Joint Venture Centers (West Acres Center). We may acquire partial interests in additional properties through joint venture arrangements. Investments in Centers that are not Wholly-Owned Centers involve risks different from those of investments in Wholly-Owned Centers.

We may have fiduciary responsibilities to our partners that could affect decisions concerning the Joint Venture Centers. Third parties may share control of major decisions relating to the Joint Venture Centers with us, including decisions with respect to sales, refinancings and the timing and amount of additional capital contributions, as well as decisions that could have an adverse impact on our REIT status. For example, we may lose our management rights relating to the Joint Venture Centers if:

- the operating partnership fails to contribute its share of additional capital needed by the Property Partnerships; or
- the operating partnership defaults under a partnership agreement for a Property Partnership or other agreements relating to the Property Partnerships or the Joint Venture Centers.

In addition, some of our outside partners control the day-to-day operations of seven Joint Venture Centers (West Acres Center, Eastland Mall, Granite Run Mall, Lake Square Mall, North Park Mall, South Park Mall and Valley Mall). We therefore do not control cash distributions from these Centers, and the lack of cash distributions from these Centers could jeopardize our ability to maintain our qualification as a REIT.

Our holding company structure makes us dependent on operating partnership distributions.

Because we conduct our operations through the operating partnership, our ability to service our debt obligations and our ability to pay dividends on our common stock are strictly dependent upon the earnings and cash flows of the operating partnership and the ability of the operating partnership to make intercompany distributions to us. Under the Delaware Revised Uniform Limited Partnership Act, the operating partnership is prohibited from making any distribution to us to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the operating partnership (other than some nonrecourse liabilities and some liabilities to the partners) exceed the fair value of the assets of the operating partnership.

Bankruptcy and/or closure of retail stores may adversely affect the Centers.

The bankruptcy and/or closure of an anchor, or its sale to a less desirable retailer, could reduce customer traffic in a Center and the income generated by that Center. Furthermore, the closing of an anchor may allow other anchors or other tenants to terminate their leases or cease operating their stores at the Center or otherwise lower the occupancy rate at the Center.

Retail stores at the Centers other than anchors may also seek the protection of the bankruptcy laws and/or close stores, which may result in the termination of their leases and reduce the cash flow generated by an affected Center, as well as the occupancy levels and rental incomes at the Center.

Possible environmental liabilities could adversely affect us.

Under various federal, state and local environmental laws, ordinances and regulations, a current or previous owner or operator of real property may be liable for the costs of removal or remediation of hazardous or toxic substances on, under or in that real property. These laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of hazardous or toxic substances. The costs of investigation, removal or remediation of hazardous or toxic substances may be substantial. In addition, the presence of hazardous or toxic substances, or the failure to remedy environmental hazards properly, may adversely affect the owner's or operator's ability to sell or rent affected real property or to borrow money using affected real property as collateral.

Persons or entities that arrange for the disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal or remediation of hazardous or toxic substances at the disposal or treatment facility, whether or not that facility is owned or operated by the person or entity arranging for the disposal or treatment of hazardous or toxic substances. Laws exist that impose liability for release of asbestos-containing materials into the air, and third parties may seek recovery from owners or operators of real property for personal injury associated with exposure to asbestos-containing materials. In connection with our ownership, operation, management, development and redevelopment of the Centers, or any other Centers or properties we acquire in the future, we may be potentially liable under these laws and may incur costs in responding to these liabilities. For a description of known environmental liabilities, see our most recent Annual Report on Form 10-K and our most recent Quarterly Report on Form 10-Q.

An ownership limit and certain anti-takeover defenses could inhibit a change of control of our Company or reduce the value of our stock.

The Ownership Limit. In order for us to maintain our qualification as a REIT, not more than 50% in value of our outstanding stock (after taking into account options to acquire stock) may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include some entities that would not ordinarily be considered "individuals") during the last half of a taxable year. Our charter restricts ownership of more than 5% (the "Ownership Limit") of the lesser of the number or value of our outstanding shares of stock by any single stockholder (with limited exceptions for some holders of the OP units, and their respective families and affiliated entities, including all four Principals). In addition to enhancing preservation of our status as a REIT, the Ownership Limit may:

- have the effect of delaying, deferring or preventing a change in control of our Company or other transaction without the approval of our Board of Directors, even if the change in control or other transaction is in the best interest of our stockholders; and
- limit the opportunity for our stockholders to receive a premium for their common stock that they might otherwise receive if an investor were attempting to acquire a block of common stock in excess of the Ownership Limit or otherwise effect a change in control of our Company.

Our Board of Directors, in its sole discretion, may waive or modify (subject to limitations) the Ownership Limit with respect to one or more stockholders, if it is satisfied that ownership in excess of this limit will not jeopardize our status as a REIT.

Stockholder Rights Plan and Selected Provisions of our Charter and Bylaws. Agreements to which we are a party, as well as some of the provisions of our charter and bylaws, may have the effect of delaying, deferring or preventing a third party from making an acquisition proposal for our Company and may inhibit a change in control that some, or a majority, of our stockholders might believe to be in their best interest or that could give our stockholders the opportunity to realize a premium over the then-prevailing market prices. These agreements and provisions include the following:

- a stockholder rights plan (which is generally triggered when an entity, group or person acquires 15% or more of our common stock), which, in the event of a takeover attempt not approved by

our Board of Directors, allows our stockholders to purchase our common stock, or the common stock of the acquiring entity, at a 50% discount;

- a staggered board of directors and limitations on the removal of directors, which may make the replacement of incumbent directors more time-consuming and difficult;
- advance notice requirements for stockholder nominations of directors and stockholder proposals to be considered at stockholder meetings;

- the obligation of the directors to consider a variety of factors (in addition to maximizing stockholder value) with respect to a proposed business combination or other change of control transaction;

- the authority of the directors to classify or reclassify unissued shares and issue one or more series of common stock or preferred stock;

- the authority to create and issue rights entitling the holders thereof to purchase from us shares of stock or other securities or property; and

- limitations on the amendment of our charter and bylaws, the dissolution or change in control of our Company, and the liability of our directors and officers.

Selected Provisions of Maryland Law. The Maryland General Corporation Law prohibits business combinations between a Maryland corporation and an interested stockholder (which includes any person who beneficially holds ten percent or more of the voting power of the corporation's shares) or its affiliates for five years after becoming an interested stockholder and, after the five-year period, requires the recommendation of the board of directors and two super-majority stockholder votes to approve a business combination unless the stockholders receive a minimum price determined by the statute. As permitted by Maryland law, our charter exempts from these provisions any business combination between us and the Principals and their respective affiliates and related persons. Maryland law also allows our Board of Directors to exempt particular business combinations before the interested stockholder becomes an interested stockholder.

The Maryland General Corporation Law also provides that the acquiror of over one-tenth or more of the voting stock of a Maryland corporation is not entitled to vote the shares in excess of the one-tenth threshold, unless voting rights for the shares are approved by holders of two-thirds of the disinterested shares or unless the acquisition of the shares has been specifically or generally approved or exempted from the statute by a provision in our charter or bylaws adopted before the acquisition of the shares. Our charter exempts from these provisions voting rights of shares owned by the Principals and their respective affiliates and related persons. Our bylaws also contain a provision exempting from this statute any acquisition by any person of shares of our stock. There can be no assurance that this bylaw will not be amended or eliminated in the future. The Maryland General Corporation Law also limits our ability to amend our charter, dissolve, merge, or sell all of our assets.

See also "DESCRIPTION OF OUR COMMON STOCK—Stockholder Rights Plan, Selected Provisions of Maryland Law and of our Charter and Bylaws," which provides a more detailed summary of these and other provisions. For a complete description, we refer you to our charter, bylaws and stockholders rights agreement (all of which are incorporated by reference into the registration statement of which this prospectus is a part) and to the Maryland General Corporation Law.

Uninsured losses could adversely affect our financial condition.

Each of our Centers has comprehensive liability, fire, extended coverage and rental loss insurance with insured limits customarily carried for similar properties. We do not insure certain types of losses (such as losses from wars), because they are either uninsurable or not economically insurable. In addition, while we or the relevant joint venture, as applicable, carry earthquake insurance on the Centers located in California, the policies are subject to a deductible equal to 5% of the total insured

value of each Center, a $100,000 per occurrence minimum and a combined annual aggregate loss limit of $200 million on these Centers. While we or the relevant joint venture also carry terrorism insurance on the Centers, the policies are subject to a $10 million deductible and a combined annual aggregate loss limit of $100 million. Furthermore, we carry title insurance on many of the Centers for less than their full value. If an uninsured loss or a loss in excess of insured limits occurs, the operating partnership or the Property Partnership, as the case may be, that owns the affected Center could lose its capital invested in the Center, as well as the anticipated future revenue from the Center, while remaining obligated for any mortgage indebtedness or other financial obligations related to the Center. An uninsured loss or loss in excess of insured limits may negatively impact our financial condition.

As the general partner of the operating partnership and certain of the Property Partnerships, we are generally liable for any of their unsatisfied obligations other than non-recourse obligations.

FORWARD-LOOKING STATEMENTS

This prospectus and any prospectus supplement may contain or incorporate statements that constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and, as such, involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by our use of the words "may," "will," "should," "expect," "anticipate," "estimate," "believe," "intend," "project," "predict," "plan," "seek" or the negative of these words, or other similar words or terms. You should be aware of important factors that may have a material impact on our future results. These factors include the matters described under the heading "RISK FACTORS" beginning on page 3 of this prospectus and the following, among other things:

- general industry, economic and business conditions (which will, among other things, affect demand for retail space or retail goods, availability and creditworthiness of current and prospective tenants, tenant bankruptcies, lease rents and terms, availability and cost of financing, interest rate fluctuations and operating expenses);

- adverse changes in the real estate markets, including, among other things, competition with other companies, retail formats and technologies and risks of real estate redevelopment, acquisitions and dispositions;

- governmental actions and initiatives (including legislative and regulatory changes);

- environmental and safety requirements; and
- terrorist activities that could adversely affect all of the above factors.

We undertake no obligation to publicly update or revise any forward-looking statements included or incorporated by reference in this prospectus or any prospectus supplement, whether as a result of new information, future events or otherwise. In light of the factors referred to above, the forward-looking events discussed in or incorporated by reference in this prospectus or any prospectus supplement may not occur, and actual results, performance or achievement may differ materially from that anticipated or implied in the forward-looking statements.

You should specifically consider the various factors identified in this prospectus, any prospectus supplement and the incorporated documents, which could cause actual results to differ, including particularly those discussed in the section entitled "RISK FACTORS" in this prospectus and in our other SEC filings. For information on how to obtain copies of our SEC filings, please refer to the section of this prospectus entitled "WHERE YOU CAN FIND MORE INFORMATION."

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the SEC using a "shelf" registration process. The aggregate offering price of all securities that we may sell under this prospectus will not exceed $1,000,000,000. We may sell any combination of the securities described in this prospectus from time to time up to that amount.

The types of securities that we may offer and sell from time to time, either separately or in units, by this prospectus are:

- common stock
- warrants to purchase shares of common stock; and
- rights to purchase shares of common stock.

This prospectus provides a general description of the securities that we may offer. Each time we sell securities pursuant to this prospectus, we will describe in a prospectus supplement, which we will deliver with this prospectus, specific information about the offering and the terms of the particular securities we are offering. In each prospectus supplement, we will include the following information:

- the type and amount of securities that we propose to sell;
- the initial public offering price of the securities;
- the names of any underwriters or agents through or to which we will sell the securities;
- any compensation of those underwriters or agents; and
- information about any securities exchanges or automated quotation systems on which the securities will be listed, traded or authorized for quotation.

In addition, the prospectus supplement may also add, update or change the information contained in this prospectus.

You should read both this prospectus and any prospectus supplement together with the additional information described under the heading "WHERE YOU CAN FIND MORE INFORMATION." Unless the context otherwise requires, all references to the "Company," "us," "we" or "our" in this prospectus include The Macerich Company, those entities owned or controlled by The Macerich Company and predecessors of The Macerich Company.

OUR COMPANY

We are involved in the acquisition, ownership, redevelopment, management and leasing of regional and community shopping centers located throughout the United States. As of the date of this prospectus, we own or have an ownership interest in 46 regional shopping centers and three community centers aggregating approximately 41 million square feet of gross leasable area. We are a self-administered and self-managed publicly-traded REIT, and we conduct all of our operations through an operating partnership and our management companies.

We were organized as a Maryland corporation in September 1993 to continue and expand the shopping center operations of the Principals and some of their business associates.

We conduct all of our operations through the following entities:

- the operating partnership;
- the management companies; and
- the Property Partnerships.

We have an 80% ownership interest in the operating partnership and, as its sole general partner, have exclusive power to manage and conduct its business, subject to limited exceptions. The operating partnership owns all of the non-voting preferred stock (generally entitled to dividends equal to 95% of cash flow) of Macerich Management Company. The Principals own all of the outstanding voting stock of Macerich Management Company.

Our primary objective is to enhance stockholder value by increasing our funds from operations per share, primarily by focusing on the acquisition, leasing, management and redevelopment of regional and community shopping centers. When we acquire shopping centers, we target potentially dominant franchise regional shopping centers that have internal growth characteristics. Our strategy is to increase the net operating income of each acquired property by rolling below-market rents up to market levels as leases expire, expanding our shopping centers, adding department stores, changing the tenant mix and increasing occupancy levels. In addition to our acquisition strategy, we also seek to improve the financial performance of the properties that we already own by rolling below-market rents up to market levels as leases expire, increasing occupancy levels and by redeveloping, expanding and renovating the properties.

Our principal executive offices are located at 401 Wilshire Boulevard, No. 700, Santa Monica, California 90401 and our telephone number is (310) 394-6000.

Recent Developments

On May 30, 2002, the operating partnership signed a definitive agreement under which it will acquire Westcor Realty Limited Partnership, an owner, operator and developer of regional malls and specialty retail assets in the greater Phoenix, Arizona area. The total purchase price will be approximately $1.475 billion, including the assumption of $733 million in existing debt and the issuance of approximately $80 million of convertible preferred OP units. The OP units will have a conversion price of $36.55 and a 9% dividend on an as-converted basis. The operating partnership will pay the balance of the consideration to Westcor's equity holders in cash. This transaction has been approved by each company's board of directors, subject to customary closing conditions. Westcor's existing portfolio includes interests in nine regional malls with approximately 10 million square feet of space located in Arizona and Colorado. Eight of the nine malls are located in Arizona, including six in the Phoenix market. Westcor also owns interests in 18 urban village and specialty retail assets located in close proximity to the malls. The gross leasable area of these properties totals 5.6 million square feet. In addition, the Westcor portfolio includes two retail properties in Arizona that are due to break ground shortly, as well as option rights for over 1,000 acres of undeveloped land. The parties currently anticipate that this transaction will be completed in the third quarter of 2002.

USE OF PROCEEDS

The terms of the Partnership Agreement for our operating partnership require us to invest, contribute or otherwise transfer the net proceeds of any sale of securities to the operating partnership in exchange for securities of the operating partnership equivalent to the securities sold by means of this prospectus. Except as otherwise provided in the applicable prospectus supplement, the operating partnership intends to use any net proceeds of offerings of securities under this prospectus for working capital and general business purposes, which may include the reduction of outstanding indebtedness, acquisitions and the development and redevelopment of certain properties in the operating partnership's portfolio. Pending the use thereof, the operating partnership intends to invest any net proceeds in short-term, interest-bearing securities.

DESCRIPTION OF OUR COMMON STOCK

The following description of the terms of our common stock is only a summary. Our charter and bylaws may affect some of the terms of our common stock. For a complete description of the terms of all of our capital stock, including our common stock, we refer you to the Maryland General Corporation Law, our charter and our bylaws. Our charter and bylaws are incorporated by reference as exhibits to the registration statement of which this prospectus is a part.

Capitalization

Our charter authorizes us to issue up to 220,000,000 shares of capital stock, consisting of 145,000,000 shares of common stock, $.01 par value per share, 15,000,000 shares of preferred stock, $.01 par value per share, and 60,000,000 shares of excess stock, $.01 par value per share (the "Excess Shares"). We had 36,639,591 shares of common stock outstanding as of June 4, 2002.

Our charter provides that our Board of Directors (as used in this prospectus, the term "Board of Directors" may include any of its duly authorized committees) may classify and reclassify any unissued shares of capital stock by setting or changing in any one or more respects the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption of the classified or reclassified shares of stock. The terms of any stock classified or reclassified by our Board of Directors in accordance with our charter will be set forth in Articles Supplementary filed with the State Department of Assessments and Taxation of Maryland prior to the issuance of any classified or reclassified stock.

We have authorized and issued 3,627,131 shares of Series A Cumulative Convertible Redeemable Preferred Stock, par value $.01 per share (the "Series A Preferred Stock"), and 5,487,471 shares of Series B Cumulative Convertible Redeemable Preferred Stock, par value $.01 per share (the "Series B Preferred Stock"). The Series B Preferred Stock is on a parity with the Series A Preferred Stock. The Series A Preferred Stock and Series B Preferred Stock can be converted into shares of our common stock based on a formula set forth in the Articles Supplementary. As of the date of this prospectus the conversion ratio is one-for-one for both the Series A Preferred Stock and the Series B Preferred Stock. Rights of holders of the Series A Preferred Stock and Series B Preferred Stock include dividend and liquidation preferences over the holders of our common stock and voting rights in some circumstances. The terms of the Series A Preferred Stock and Series B Preferred Stock, including the liquidation preference, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption are set forth in the Articles Supplementary filed as exhibits to our Current Reports on Form 8-K, event dates February 25, 1998 and June 17, 1998, respectively, incorporated herein by reference. See "WHERE YOU CAN FIND MORE INFORMATION."

In connection with our stockholder rights plan, we designated 1,500,000 shares of preferred stock as shares of Series C Junior Participating Preferred Stock, par value $0.01 per share (the "Series C Preferred Stock"), which may be issued to holders of rights if the rights become exercisable. Rights of holders of the Series C Preferred Stock include voting, dividend and liquidation preferences over the holders of our common stock. The Series C Preferred Stock is junior to the Series A Preferred Stock and Series B Preferred Stock with respect to both dividend and liquidation preferences. The terms of the Series C Preferred Stock, including the liquidation preference, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption are set forth in the Articles Supplementary filed as an exhibit to our Annual Report on Form 10-K for the fiscal year ended December 31, 1998,

incorporated herein by reference. See "WHERE YOU CAN FIND MORE INFORMATION." As of the date of this prospectus, no Series C Preferred Stock is outstanding. See "—Stockholder Rights Plan, Selected Provisions of Maryland Law and of our Charter and Bylaws."

Issuance of Excess Shares

Our charter provides that in the event of a purported transfer of stock or other event that will, if effective, result in any of the following:

- a person owning stock in excess of the Ownership Limit or owning (directly or indirectly) more than a specified percentage of our common stock as determined in accordance with our charter (that person's "Percentage Limitation");
- our common stock and preferred stock being owned by fewer than 100 persons (determined without reference to any rules of attribution);
- our becoming "closely held" under Section 856(h) of the Internal Revenue Code (determined without regard to Internal Revenue Code Section 856(h)(2) and by deleting the words "the last half of" in the first sentence of Internal Revenue Code Section 542(a)(2) in applying Internal Revenue Code Section 856(h)); or
- our disqualification as a REIT (each a "Prohibited Event"),

the relevant stock will automatically be exchanged for Excess Shares, to the extent necessary to ensure that the purported transfer or other event does not result in a Prohibited Event. Outstanding Excess Shares will be held in trust. The trustee of the trust will be appointed by us and will be independent of us, any purported record or beneficial transferee and any beneficiary of such trust (the "Beneficiary"). The Beneficiary will be one or more charitable organizations selected by the trustee.

Our charter further provides that Excess Shares are entitled to the same dividends as the shares of stock exchanged for Excess Shares (the "Original Shares"). The trustee, as record holder of the Excess Shares, is entitled to receive all dividends and distributions in respect of the Excess Shares as may be authorized and declared by the Board of Directors and will hold the dividends or distributions in trust for the benefit of the Beneficiary. The trustee is also entitled to cast all votes that holders of the Excess Shares are entitled to cast. Excess Shares in the hands of the trustee will have the same voting rights as Original Shares. Upon our liquidation, dissolution or winding up, each Excess Share will be entitled to receive ratably with each other share of stock of the same class or series as the Original Shares, the assets distributed to the holders of the class or series of stock. The trustee will distribute to the purported transferee the amounts received upon our liquidation, dissolution or winding up, but only up to the amount paid by the purported transferee, or the market price for the Original Shares on the date of the purported transfer, if no consideration was paid by the transferee, and subject to additional limitations and offsets set forth in our charter.

If, after the purported transfer or other event resulting in an exchange of stock for Excess Shares, dividends or distributions are paid with respect to the Original Shares, then the dividends or distributions will be paid to the trustee for the benefit of the Beneficiary. While Excess Shares are held in trust, Excess Shares may be transferred by the trustee only to a person whose ownership of the Original Shares will not result in a Prohibited Event. At the time of any permitted transfer, the Excess Shares will be automatically exchanged for the same number of shares of the same type and class as the Original Shares. Our charter contains provisions that prohibit the purported transferee of the Excess Shares from receiving in return for the transfer an amount that reflects any appreciation in the Original Shares during the period that the Excess Shares were outstanding. Our charter requires any amount received by a purported transferee, in excess of the amount permitted to be received, to be paid to the Beneficiary.

Our charter further provides that we may purchase, for a period of 90 days during the time the Excess Shares are held in trust, all or any portion of the Excess Shares at the lesser of the price paid for the stock by the purported transferee (or if no consideration was paid, the market price at the time of such transaction) or the market price of the relevant shares as determined in accordance with our charter. The 90-day period begins on the date of the prohibited transfer if the purported transferee

gives notice to the Board of Directors of the transfer or, if no notice is given, the date the Board of Directors determines in good faith that a prohibited transfer has been made.

These provisions of our charter will not be automatically removed even if the REIT provisions of the Internal Revenue Code are changed so as to no longer contain any ownership concentration limitation or if the ownership concentration limitation is increased. Amendments to our charter require the affirmative vote of at least two-thirds of the shares entitled to vote. In addition to preserving our status as a REIT, the Ownership Limit may have the effect of precluding an acquisition of control of our Company without the approval of the Board of Directors.

All certificates representing shares of our common stock and our preferred stock bear a legend referring to the restrictions described above.

All persons who own, directly or by virtue of the attribution provisions of the Internal Revenue Code, more than 5% of our outstanding stock must file an affidavit with us containing the information specified in our charter within 30 days after January 1 of each year. In addition, these and other significant stockholders are required, upon demand, to disclose to us in writing the information with respect to their direct, indirect and constructive ownership of shares that our Board of Directors deems necessary to comply with the provisions of the Internal Revenue Code applicable to a REIT.

Rights of Holders of Our Common Stock

Subject to the provisions of our charter regarding Excess Shares (as described above), the holders of our common stock have full voting rights, one vote for each share held of record. Subject to the provisions of our charter regarding Excess Shares and the rights of holders of preferred stock, holders of our common stock are entitled to receive the dividends authorized by our Board of Directors out of funds legally available for this purpose. Upon our liquidation, dissolution or winding up (but subject to the provisions of our charter and the rights of holders of preferred stock), the assets legally available for distribution to holders of our

common stock will be distributed ratably among the holders of our common stock. Except as set forth in our stockholder rights plan, holders of our common stock have no preemptive or other subscription or conversion rights and no liability for further calls upon shares. See "—Stockholder Rights Plan, Selected Provisions of Maryland Law and of our Charter and Bylaws." Our common stock is not subject to assessment.

The transfer agent and registrar for our common stock is Equiserve Trust Company, N.A.

Under Maryland law and our bylaws, stockholders are entitled to receive prior notice of our annual and special meetings of stockholders. Notice is given to a stockholder when it is personally delivered to him or her, left at his or her residence or usual place of business, mailed to him or her at his or her address as it appears on our records or transmitted to him or her by electronic mail or other electronic means.

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the corporation's board of directors and by the affirmative vote of holders of at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Except for Article Ninth of our charter, which provides that our Company is subject to termination at any time by the holders of a majority of the outstanding common stock entitled to vote on the matter, our charter does not provide for a lesser percentage in these situations.

Restrictions on Transfer and Ownership

For us to qualify as a REIT under the Internal Revenue Code, all of the following conditions must be satisfied:

- not more than 50% in value of our outstanding stock (after taking into account options to acquire stock) may be owned, directly or indirectly, by five or fewer "individuals" (as defined under the Internal Revenue Code to include some entities that would not ordinarily be considered "individuals") during the last half of a taxable year;
- 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; and
- specific percentages of our gross income must be from particular sources.

See "FEDERAL INCOME TAX CONSIDERATIONS—Taxation of our Company" and "—Requirements for Qualification." Our charter restricts the ownership and transfer of shares of our stock.

Subject to exceptions specified in our charter, no stockholder may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than the Ownership Limit. The attribution provisions are complex and may cause stock owned directly or indirectly by a group of related individuals or entities to be deemed to be owned by one individual or entity. As a result, the acquisition of less than 5% in value or in number of shares of stock (or the acquisition of an interest in an entity which owns stock) by an individual or entity could cause that individual or entity (or another individual or entity) to be deemed to own in excess of 5% in value or in number of shares of our outstanding capital stock, and thus subject that stock to the Ownership Limit. The Board of Directors, in its sole discretion, may waive the Ownership Limit with respect to stockholders, but is under no obligation to do so. As a condition of a waiver of the Ownership Limit, the Board of Directors may require opinions of counsel satisfactory to it or an agreement from the applicant that the applicant will not act to threaten our REIT status. Our charter excludes from the Ownership Limit some persons and their respective families and affiliates, but provides that no excluded participant may own (directly or indirectly) more than the excluded participant's Percentage Limitation, as described under "—Issuance of Excess Shares."

Our charter provides that any purported transfer or issuance of shares, or other event, will be null and void if it results in a Prohibited Event. The intended transferee or purported owner in a transaction that results in a Prohibited Event will not acquire, and will retain no rights to, or economic interest in, those shares of stock. See "—Issuance of Excess Shares."

Stockholder Rights Plan, Selected Provisions of Maryland Law and of Our Charter and Bylaws

In addition to the Ownership Limit, certain provisions of our charter and bylaws, as well as our stockholder rights plan, may delay, defer or prevent a change of control or other transaction in which holders of some, or a majority, of our common stock might receive a premium for their common stock over the then prevailing market price or which such holders might believe to be otherwise in their best interests. The following paragraphs summarize a number of these provisions, as well as selected provisions of the Maryland General Corporation Law. This summary is not complete. For a complete description, we refer you to our charter, bylaws and stockholders rights agreement (all of which are incorporated by reference into the registration statement of which this prospectus is a part) and to the Maryland General Corporation Law.

Stockholder Rights Plan

On November 10, 1998, we adopted a preferred share purchase rights plan (the "Rights Plan") and authorized a dividend distribution of one preferred share purchase right on each outstanding share of our common stock.

The Rights Plan is designed to give the Board of Directors the time and opportunity to protect stockholder interests and encourage equal treatment of all stockholders in a takeover situation. The Rights Plan provides for a trigger percentage of 15% (with certain exceptions). In the event of a takeover attempt not approved by our Board, the holders of the rights may exercise them to purchase our common stock at a 50% discount or, in the event of a "squeeze out" transaction where we would not be the surviving entity, acquire stock of the acquiror at a 50% discount.

Staggered Board of Directors

Under our charter, the number of our directors—currently nine—may be established in accordance with our bylaws. The charter also provides that the directors are divided into three classes. Directors hold office for a term of three years and until their successors are duly elected and qualify. The classification of the Board may make the replacement of incumbent directors more time-consuming and difficult.

Advance Notice of Director Nominations and New Business; Procedures for Special Meetings Requested by Stockholders

Our charter and bylaws provide that for any stockholder proposal to be presented in connection with an annual meeting or special meeting of our stockholders, including a proposal to nominate a director, the stockholder must have given timely written notice of the proposal to the Secretary. The bylaws provide that nominations to the Board of Directors and the proposal of business to be considered by stockholders at the annual meeting of stockholders may be made only:

- pursuant to our notice of the meeting;
- by or at the direction of the Board of Directors; or
- by a stockholder who is entitled to vote at the meeting and has complied with the advance notice procedures, including minimum and maximum time periods, set forth in our charter and bylaws.

Our bylaws also provide that only the business specified in our notice of meeting may be brought before a special meeting of stockholders. Nominations of persons for election to the Board of Directors at a special meeting of stockholders may be made only:

- pursuant to our notice of the meeting;
- by or at the direction of the Board of Directors; or
- if the Board of Directors has determined that directors shall be elected at such meeting, by a stockholder who is entitled to vote at the meeting and has complied with the advance notice provisions, including minimum and maximum time periods, set forth in our charter or bylaws.

Our bylaws also contain special procedures applicable to a special meeting of stockholders that is called at the request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at the meeting.

Exemptions for the Principals from the Maryland Business Combination Law

Under Maryland law, "business combinations" between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially owns ten percent or more of the voting power of the corporation's shares; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of ten percent or more of the voting power of the then outstanding voting stock of the corporation.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by two super-majority stockholder votes, unless, among other conditions, the holders of the corporation's common stock receive a minimum price, as defined by Maryland law, for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its common stock. None of these provisions of Maryland law will apply, however, to business combinations that are approved or exempted by the board of directors of the corporation before the time that the interested stockholder becomes an interested stockholder.

As permitted by Maryland law, our charter exempts from these provisions any business combination between us and the Principals and their respective affiliates or related persons. As a result, these persons may be able to enter into business combinations with us that may not be in the best interest of our stockholders without compliance with the super-majority vote requirements and the other provisions of the statute.

Non-Stockholder Constituencies

Under our charter, for the purpose of determining our Company's and our stockholders' best interests with respect to a proposed business combination or other transaction involving a change of control of our Company, our Board of Directors must give due consideration to all relevant factors, including, without limitation, the interests of our employees, the economy, community and societal interests and our Company's and our stockholders' long-term as well as short-term interests, including the possibility that these interests may be best served by our continued independence.

Other Provisions of our Charter

Our charter authorizes our Board of Directors to classify and reclassify unissued shares and issue one or one or more series of common stock or preferred stock and authorizes the creation and issuance of rights entitling holders thereof to purchase from us shares of stock or other securities or property.

Control Share Acquisitions

Maryland law provides that the acquirer of over one-tenth or more of the voting stock of a Maryland corporation is not entitled to vote the shares in excess of the one-tenth threshold unless voting rights for the shares are approved by holders of two-thirds of the disinterested shares or unless the acquisition of the shares

has been specifically or generally approved or exempted from the statute by a provision in the corporation's charter or bylaws adopted before the acquisition of the shares. Our charter exempts from these provisions voting rights of shares owned by the Principals and their

respective affiliates and related persons. Our bylaws also contain a provision exempting from this statute any acquisition by any person of shares of our stock. There can be no assurance that this bylaw will not be amended or eliminated in the future.

Amendment to our Charter and Bylaws

Amendments to our charter require the affirmative vote of holders of not less than two-thirds of all the votes entitled to be cast on the matter. Our Board of Directors has the exclusive power to adopt, alter or repeal any provision of our bylaws and to make new bylaws.

Director Removal

Subject to the rights of holders of any series of preferred stock, our charter provides that a director may be removed only for cause and only by the affirmative vote of the holders of shares entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors.

Dissolution of our Company

Dissolution of our Company must be approved by the affirmative vote of not less than a majority of all of the votes entitled to be cast on the matter.

Supermajority Vote for Extraordinary Corporate Actions

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, or engage in a share exchange or in similar transactions outside the ordinary course of business unless approved by the corporation's board of directors and the affirmative vote of holders of at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Except for Article Ninth of our charter, which provides that our Company is subject to termination at any time by the vote of holders of a majority of our outstanding common stock entitled to vote on the matter, our charter does not provide for a lesser percentage in these situations.

Limitation of Liability of Directors

Our charter includes provisions that limit the liability of our directors and officers to us and to our stockholders for money damages to the fullest extent permitted under Maryland law. Our charter also requires us to indemnify our present and former directors and officers to the maximum extent permitted under Maryland law. In addition, we have entered into indemnification agreements with some of our officers and directors.

DESCRIPTION OF THE WARRANTS

We may issue warrants for the purchase of shares of our common stock. We may issue warrants independently of or together with shares of common stock offered by any prospectus supplement, and we may attach the warrants to, or issue them separately from, shares of common stock. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent, all as set forth in the prospectus supplement relating to the particular issue of offered warrants. The warrant agent will act solely as our agent in connection with the warrant certificates relating to the warrants and will not assume any obligation or relationship of agency or trust with any holders of warrant certificates or beneficial owners of warrants. The following summaries of certain provisions of the warrant agreements and warrants do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all the provisions of the warrant agreement and the warrant certificates relating to each series of warrants which we will file with the SEC and incorporate by reference as an exhibit to the registration statement of which this prospectus is a part at or prior to the time of the issuance of any series of warrants.

General

The applicable prospectus supplement will describe the terms of the warrants, including as applicable:

- the offering price;
- the aggregate number of shares purchasable upon exercise of the warrants and the exercise price;
- the number of warrants being offered;
- the date, if any, after which the warrants and the underlying common stock will be transferable separately;
- the date on which the right to exercise the warrants will commence, and the date on which the right will expire (the "Expiration Date");
- the number of warrants outstanding, if any;
- any material United States federal income tax consequences;
- the terms, if any, on which we may accelerate the date by which the warrants must be exercised; and
- any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

Warrants for the purchase of shares of common stock will be offered and exercisable for United States dollars only and will be in registered form only.

Holders of warrants will be able to exchange warrant certificates for new warrant certificates of different denominations, present warrants for registration of transfer, and exercise warrants at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of any warrants, holders of the warrants will not have any rights of holders of shares of common stock, including the right to receive payments of dividends, if any, on shares of common stock, or to exercise any applicable right to vote.

Certain Risk Considerations

Any warrants we issue will involve a degree of risk, including risks arising from fluctuations in the price of the underlying shares of common stock and general risks applicable to the securities market (or markets) on which the underlying shares of common stock are traded.

Prospective purchasers of the warrants will need to recognize that the warrants may expire worthless and, thus, purchasers should be prepared to sustain a total loss of the purchase price of their warrants. This risk reflects the nature of a warrant as an asset which, other factors held constant, tends to decline in value over time and which may, depending on the price of the underlying shares of common stock, become worthless when it expires. The trading price of a warrant at any time is expected to increase if the price of or, if applicable, dividend rate on, the underlying securities increases. Conversely, the trading price of a warrant is expected to decrease as the time remaining to expiration of the warrant decreases and as the price of or, if applicable, dividend rate on, the underlying securities, decreases. Assuming all other factors are held constant, the more a warrant is "out-of-the-money" (i.e., the more the exercise price exceeds the price of the underlying securities and the shorter its remaining term to expiration), the greater the risk that a purchaser of the warrant will lose all or part of his or her investment. If the price of the underlying securities does not rise before the warrant expires to an extent sufficient to cover a purchaser's cost of the warrant, the purchaser will lose all or part of his or her investment in the warrant upon expiration.

In addition, prospective purchasers of the warrants should be experienced with respect to options and option transactions, should understand the risks associated with options and should reach an investment decision only after careful consideration, with their financial advisers, of the suitability of the warrants in light of their particular financial circumstances and the information discussed in this prospectus and, if applicable, the prospectus supplement. Before purchasing, exercising or selling any warrants, prospective purchasers and holders of warrants should carefully consider, among other things:

- the trading price of the warrants;
- the price of the underlying securities at that time;
- the time remaining to expiration; and
- any related transaction costs.

Some of the factors referred to above are in turn influenced by various political, economic and other factors that can affect the trading price of the underlying securities and should be carefully considered prior to making any investment decisions.

Purchasers of the warrants should further consider that the initial offering price of the warrants may be in excess of the price that a purchaser of options might pay for a comparable option in a private, less liquid transaction. In addition, it is not possible to predict the price at which the warrants will trade in the secondary market or whether any such market will be liquid. We may, but will not be obligated to, file an application to list any warrants on a United States national securities exchange. To the extent that any warrants are exercised, the number of warrants outstanding will decrease, which may result in a lessening of the liquidity of the warrants. Finally, the warrants will constitute direct, unconditional and unsecured obligations of our Company, and as such will be subject to any changes in our perceived creditworthiness.

Exercise of Warrants

Each holder of a warrant will be entitled to purchase that number of shares of our common stock, at the exercise price, as will in each case be described in the prospectus supplement relating to the offered warrants. After the close of business on the Expiration Date (which may be extended by us), unexercised warrants will become void.

Holders may exercise warrants by delivering to the warrant agent payment as provided in the applicable prospectus supplement of the amount required to purchase the shares of common stock purchasable upon exercise, together with the information set forth on the reverse side of the warrant certificate. Warrants will be deemed to have been exercised upon receipt of payment of the exercise price, subject to the receipt within five business days of the warrant certificate evidencing the exercised warrants. Upon receipt of payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will, as soon as practicable, issue and deliver the underlying shares of commons stock purchasable upon such exercise. If fewer than all of the warrants represented by a warrant certificate are exercised, we will issue a new warrant certificate for the remaining amount of warrants.

Amendments and Supplements to Warrant Agreements

We may amend or supplement the warrant agreement without the consent of the holders of the warrants issued under the agreement to effect changes that are not inconsistent with the provisions of the warrants and that do not adversely affect the interests of the holders.

Common Stock Warrant Adjustments

Unless otherwise specified in the applicable prospectus supplement, the exercise price of, and the number of shares of common stock covered by, a warrant will be subject to adjustment in certain events, including:

- payment of a dividend on our common stock payable in stock, and stock splits, combinations or reclassifications of our common stock;
- issuance to all holders of our common stock of rights or warrants to subscribe for or purchase additional shares of our common stock at less than their current market price (as defined in the warrant agreement for that series of warrants); and
- certain distributions of evidences of indebtedness or assets (including securities, but excluding cash dividends or distributions paid out of consolidated earnings or retained earnings or dividends payable in our common stock) or of subscription rights and warrants (excluding those referred to above).

We will not be required to make an adjustment, unless the adjustment would require a change of at least 1% in the exercise price then in effect. Except as stated above, the exercise price of, and the number of shares of common stock covered by, a warrant will not be adjusted for the issuance of our common stock or any securities convertible into or exchangeable for our common stock, or carrying the right or option to purchase or otherwise acquire the foregoing, in exchange for cash, other property or services.

Unless otherwise specified in the applicable prospectus supplement, in the event of any:

- consolidation or merger of our Company with or into any entity (other than a consolidation or a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our common stock);
- sale, transfer, lease or conveyance of our assets substantially as an entirety; or
- reclassification, capital reorganization or change of our common stock,

then any holder of a warrant will be entitled, on or after the occurrence of the event, to receive on exercise of the warrant the kind and amount of shares of stock or other securities, cash or other property (or any combination thereof) that the holder would have received had the holder exercised the holder's warrant immediately prior to the occurrence of the event. If the consideration to be received upon exercise of the warrant following any such event consists of common stock of the surviving entity, then from and after the occurrence of the event, the exercise price of the warrant will be subject to the same anti-dilution and other adjustments described in the second preceding paragraph, applied as if the common stock of the surviving entity were our common stock.

DESCRIPTION OF RIGHTS

We may issue rights to our stockholders for the purchase of our common stock. Each series of rights will be issued under a separate rights agreement which we will enter into with a bank or trust company, as rights agent, all as set forth in applicable prospectus supplement. The rights agent will act solely as our agent in connection with the certificates relating to the rights and will not assume any obligation or relationship of agency or trust with any holders of rights certificates or beneficial owners of rights. We will file the rights agreement and the rights certificates relating to each series of rights with the SEC, and incorporate them by reference as an exhibit to the registration statement of which this prospectus is a part on or before the time we issue a series of rights.

The applicable prospectus supplement will describe the terms of any rights we issue, including as applicable:

- the date for determining the stockholders entitled to participate in the rights distribution;
- the aggregate number of shares of our common stock purchasable upon exercise of the rights and the exercise price;
- the aggregate number of rights being issued;
- the date, if any, on and after which the rights may be transferable separately;
- the date on which the right to exercise the rights commences and the date on which the right expires;
- the number of rights outstanding, if any;
- any material United States federal income tax consequences; and
- any other terms of the rights, including the terms, procedures and limitations relating to the distribution, exchange and exercise of the rights.

Rights will be exercisable for United States dollars only and will be in registered form only.

FEDERAL INCOME TAX CONSIDERATIONS

This section summarizes the current material federal income tax consequences to our Company and to our stockholders generally resulting from the treatment of our Company as a REIT. Because this section is a general summary, it does not address all of the potential federal income tax issues which may be relevant to you in light of your particular circumstances. Further, this section does not address any state, local, or foreign tax considerations. The discussion in this section is based on and is qualified in its entirety by the current Internal Revenue Code, its legislative history, administrative pronouncements, judicial decisions

and United States Treasury Department ("Treasury") regulations, all as in effect on the date hereof. Subsequent changes to any of the above may affect the tax consequences described in this section, possibly on a retroactive basis.

THIS SECTION IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING. YOU SHOULD CONSULT THE APPLICABLE PROSPECTUS SUPPLEMENT AND YOUR OWN TAX ADVISOR REGARDING THE SPECIFIC FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES TO YOU REGARDING THE PURCHASE, OWNERSHIP AND SALE OF THE SECURITIES. YOU SHOULD ALSO CONSULT WITH YOUR TAX ADVISOR REGARDING THE IMPACT OF POTENTIAL CHANGES IN THE APPLICABLE TAX LAWS.

We have elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code, commencing with our taxable year ending December 31, 1994. We believe that we are organized and have operated in a manner which qualifies for taxation as a REIT under the Internal Revenue Code. We further believe that our proposed future method of operation will enable us to continue to qualify as a REIT. However, no assurances can be given that our beliefs or expectations will be fulfilled, since qualification as a REIT depends on our continuing to satisfy numerous asset, income and distribution tests described below, and which depend, in part, on our operating results.

The sections of the Internal Revenue Code relating to qualification and operation as a REIT, and the federal income tax treatment of a REIT and its stockholders, are highly technical and complex. The following discussion sets forth only the material aspects of those sections. This summary is qualified in its entirety by the applicable Internal Revenue Code provisions and the related rules and regulations.

Taxation of our Company

We generally are not subject to federal income tax on the portion of our taxable income or capital gain that is distributed to stockholders annually as long as we qualify as a REIT. This treatment substantially eliminates the "double taxation" (at the corporate and stockholder levels) that typically results from investment in a corporation.

Notwithstanding our qualification as a REIT, we are subject to federal income tax as follows:

- we are taxed at normal corporate rates on any undistributed net income (including undistributed net capital gains);
- if we fail to satisfy either the 75% or the 95% gross income tests (discussed below), but nonetheless maintain our qualification as a REIT because other requirements are met, we will be subject to a 100% tax on the greater of (1) the amount by which we fail the 75% test and (2) the excess of 90% of our gross income over the amount of gross income attributable to sources that qualify under the 95% test, multiplied by a fraction intended to reflect our profitability;
- we are subject to a tax of 100% on net income from any "prohibited transaction;"
- we are subject to tax, at the highest corporate rate, on net income from (a) the sale or other disposition of "foreclosure property" which is held primarily for sale to customers in the ordinary course of business or (b) other non-qualifying income from foreclosure property;

- if we fail to distribute during each calendar year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain income for the year and (3) any undistributed taxable income from prior years, we will be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed;
- if we acquire any asset from a "C corporation" (that is, a corporation generally subject to the full corporate level tax) in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we recognize gain on the disposition of the asset during a ten-year period beginning on the date that we acquired the asset, then the asset's "built in" gain will be subject to tax at the highest regular corporate rate; and
- we are subject to the corporate alternative minimum tax, as well as additional taxes if we find ourselves in situations not presently contemplated.

Macerich Management Company is taxed on its income at regular corporate rates. We use the calendar year both for federal income tax purposes and for financial reporting purposes.

Requirements for Qualification

To qualify as a REIT, we must elect to be treated as a REIT, and we must meet various (a) organizational requirements, (b) gross income tests, (c) assets tests and (d) annual distribution requirements.

Organizational Requirements. We must be organized as a corporation, trust or association:

(1) that 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) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Internal Revenue Code;

(4) that is neither a financial institution nor an insurance company subject to specified provisions of the Internal Revenue 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 indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include some entities that would not ordinarily be considered "individuals"); and

(7) that meets other tests, described below, regarding the nature of its income and assets.

The Internal Revenue Code provides that conditions (1) through (4) must be met during our 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. Our charter provides for restrictions regarding transfer of our capital stock, in order to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. These transfer restrictions are described in "DESCRIPTION OF OUR COMMON STOCK—Restrictions on Transfer and Ownership."

We are treated as having satisfied condition (6) above if we comply with the regulatory requirements to request information from our stockholders regarding their actual ownership of our stock, and do not know, or in exercising reasonable diligence would not have known, that we failed to satisfy this condition. If we fail to comply with these regulatory requirements for any taxable year we

will be subject to a penalty of $25,000, or $50,000 if such failure was intentional. However, if our failure to comply was due to reasonable cause and not willful neglect, no penalties will be imposed.

Gross Income Tests. We must satisfy the following two separate gross income tests each year:

- 75% GROSS INCOME TEST. At least 75% of our gross income (excluding gross income from prohibited transactions) must consist of income derived directly or indirectly from investments relating to real property, mortgages on real property (including rents from real property and, in some circumstances, interest), or some types of temporary investment income.

- 95% GROSS INCOME TEST. At least 95% of our gross income (excluding gross income from prohibited transactions) must consist of items that satisfy the 75% gross income test and dividends, interest and gain from the sale or disposition of stock or securities (or from any combination of these types of income).

In addition, for each taxable year beginning before January 1, 1998, 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 have represented less than 30% of our gross income (including gross income from prohibited transactions).

In the case of a REIT which 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 federal income tax purposes. Thus, our proportionate share of the assets, liabilities and items of income of the operating partnership and the Property Partnerships will be treated as our assets, liabilities and items of income for purposes of applying the REIT requirements described in this prospectus.

Rents from Real Property. Rents received by us qualify as "rents from real property" in satisfying the gross income tests described above if the following 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. An amount received or accrued generally is not excluded from the term "rents from real property" solely because the amount is based on a fixed percentage or percentages of receipts or sales. Second, we, or an owner of 10% or more of our equity securities, must not directly or constructively own 10% or more of a tenant. Third, if more than 15% of the total rent we receive under the lease is attributable to personal property leased in connection with a lease of real property, then the portion of rent attributable to that personal property does not qualify as "rents from real property." Finally, we generally must not operate or manage the property, or furnish or render services to the tenants of the property, other than through an independent contractor from whom we do not derive revenue. However, we may directly perform services that are "usually or customarily rendered" in connection with the rental of space for occupancy only or are not otherwise considered "rendered to the occupant" for its convenience. A de minimis amount of up to 1% of the gross income may be received by us from each property from the provision of non-customary services without disqualifying all other amounts received from that property as "rents from real property." However, the de minimis amount itself will not qualify as "rents from real property" for purposes of the 75% and 95% gross income tests. In addition, we may furnish certain services (including "non-customary" services) through a taxable REIT subsidiary, which includes a corporation other than a REIT in which we hold stock and that has made a joint election with us to be treated as a taxable REIT subsidiary. A taxable REIT subsidiary is subject to federal income tax at regular corporate rates.

Macerich Property Management Company, LLC (which does not satisfy the independent contractor standard), as manager for the operating partnership and certain Property Partnerships, has

provided and will continue to provide services with respect to the Centers (other than the Joint Venture Centers) and any newly-acquired property of the operating partnership or certain Property Partnerships. We believe that all of the services so provided were and will be of the type usually or customarily rendered in connection with the rental of space for occupancy only. Therefore, the provision of those services will not cause the rents received with respect to the Centers or newly-acquired centers to fail to qualify as rents from real property for purposes of the 75% and 95% gross income tests. In addition, for our taxable year beginning January 1, 2001, we have elected taxable REIT subsidiary status with respect to Macerich Management Company. If the operating partnership or a Property Partnership contemplates providing services in the future that reasonably might be expected to fail the "usual or customary" standard, it will arrange to have those services provided by an independent contractor from which neither the operating partnership nor the Property Partnership receives any income, or by a management company that has elected taxable REIT subsidiary status.

Prohibited Transactions. Net income from prohibited transactions is subject to a 100% tax. The term "prohibited transaction" generally includes a sale or other disposition of property (other than foreclosure property) that is held primarily for sale to customers in the ordinary course of a trade or business. We believe that none of the assets owned by the operating partnership, the Property Partnerships, or us are held for sale to customers. Further, the sale of any Center and associated property will not be in the ordinary course of business of the operating partnership, the relevant Property Partnership or us. We will attempt to comply with the terms of the safe-harbor provisions in the Internal Revenue Code prescribing when asset sales will not be characterized as prohibited transactions. However, whether property is held "primarily for sale to customers in the ordinary course of a trade or business" depends on the facts and circumstances,

including those related to a particular property. As such, complete assurance cannot be given that we can comply with the safe-harbor provisions of the Internal Revenue Code or avoid owning property that may be characterized as property held "primarily for sale to customers in the ordinary course of business."

Our investment in the Centers through the operating partnership and Property Partnerships should give rise to qualifying income in the form of rents and gains on the sales of Centers. Substantially all income derived by us from Macerich Management Company will be in the form of dividends on the stock owned by the operating partnership. While these dividends only satisfy the 95% (and not the 75%) gross income test, we anticipate that non-qualifying income on our investments (including dividend income) will not result in our failing any of the gross income tests.

Relief Provisions for Failing the 75% or the 95% Gross Income Tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for that year if we are entitled to relief under provisions of the Internal Revenue Code. Relief provisions are generally available if (1) our failure to meet the tests is due to reasonable cause and not willful neglect, (2) we attach a schedule of the sources of our income to our tax return, and (3) any incorrect information on the schedule was not due to fraud with intent to evade tax. However, it is not possible to state whether in all circumstances we would be entitled to the benefit of these relief provisions. As discussed above in "—Taxation of our Company," even if the relief provisions apply, a tax will be imposed with respect to our excess gross income, reduced by approximated expenses.

Asset Tests. We must satisfy the following four tests relating to the nature of our assets at the close of each quarter of our taxable year:

- at least 75% of the value of our total assets must be represented by real estate assets (including (1) our allocable share of real estate assets held by partnerships in which we own an interest and (2) 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 our Company), cash, cash items and government securities;

- not more than 25% of our total assets may be represented by securities other than those in the 75% asset class;
- of the investments included in the 25% asset class, the value of any one issuer's securities owned by us may not exceed 5% of the value of our total assets (unless the issuer is a taxable REIT subsidiary), and we may not own more than 10% of the vote or value of any one issuer's outstanding securities (unless the issuer is a taxable REIT subsidiary or we can avail ourselves of the rules relating to "straight debt"); and
- not more than 20% of the value of our total assets may be represented by securities of one or more taxable REIT subsidiaries.

Our investment in the Centers through our interest in the operating partnership and Property Partnerships will constitute qualified assets for purposes of the 75% asset test.

The operating partnership owns 100% of the non-voting preferred stock of Macerich Management Company, which has elected taxable REIT subsidiary status. Because we have a partnership interest in the operating partnership, we are deemed to own our pro rata share of the assets of the operating partnership, including the securities of Macerich Management Company. In addition, effective March 31, 2001, we elected to convert Macerich Property Management Company into Macerich Property Management Company, LLC, a single member limited liability company that is disregarded for federal income tax purposes.

Because the management companies are either taxable REIT subsidiaries or are disregarded entities for federal income tax purposes, the operating partnership does not violate the limitation on holding more than 10% of the securities of any one issuer. In addition, not more than 20% of our total assets consist of securities issued by the management company that has elected taxable REIT subsidiary status. However, the Internal Revenue Code contains two provisions that ensure that taxable REIT subsidiaries are subject to an appropriate level of federal income taxation. First, they are limited in their ability to deduct certain interest payments made to an affiliated REIT. Second, if a taxable REIT subsidiary pays an amount to a REIT that exceeds the amount that would be paid to an unrelated party in an arm's length transaction, the REIT generally will be subject to an excise tax equal to 100% of the excess.

Annual Distribution Requirements. We are required to distribute dividends (other than capital gain dividends) to our stockholders in an amount at least equal to (A) the sum of (1) 90% of our REIT taxable income (computed without regard to the dividends paid deduction and our net capital gain) and (2) 90% of the net income (after tax), if any, from foreclosure property, minus (B) the sum of specified items of noncash income. Dividends must be paid in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for that year and if paid on or before the first regular dividend payment after the declaration. To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be subject to tax on the undistributed amount at regular ordinary and capital gains corporate tax rates, as applicable. We may designate all or a portion of our undistributed net capital gains as being includable in the income of our stockholders as gain from the sale or exchange of a capital asset. If so, the stockholders receive an increase in the basis of their stock in the amount of the income recognized. Stockholders are also to be treated as having paid their proportionate share of the capital gains tax imposed on us on the undistributed amounts and receive a corresponding decrease in the basis of their stock. Furthermore, if we should fail to distribute during each calendar year at least the sum of (1) 85% of our REIT ordinary income for that year, (2) 95% of our REIT capital gain net income for that year and (3) any undistributed taxable income from prior periods, we would be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed. We have made and intend to make timely distributions sufficient to satisfy all annual distribution requirements.

From time to time, we may experience timing differences between (1) the actual receipt of income and actual payment of deductible expenses and (2) the inclusion of that income and deduction of those expenses in arriving at our taxable income. Further, from time to time, we may be allocated a share of net capital gain attributable to the sale of depreciated property which exceeds our allocable share of cash attributable to that sale. Additionally, we may incur cash expenditures that are not currently deductible for tax purposes. As such, we may have less cash available for distribution than is necessary to meet our annual 90% distribution requirement or to avoid tax with respect to capital gain or the excise tax imposed on specified undistributed income. To meet the 90% distribution requirement necessary to qualify as a REIT or to avoid tax with respect to capital gain or the excise tax imposed on specified undistributed income, we may find it appropriate to arrange for short-term (or possibly long-term) borrowings or to pay distributions in the form of taxable stock dividends. We are required to arrange through the operating partnership any borrowings for the purpose of making distributions to stockholders.

Under circumstances relating to any Internal Revenue Service (the "IRS") audit adjustments that increase income, we may be able to rectify a failure to meet the distribution requirement for a year by paying "deficiency dividends" to stockholders in a later year, which may be included in our deduction for dividends paid

for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. However, we will be required to pay interest based upon the amount of any deduction taken for deficiency dividends.

To elect taxation as a REIT under applicable Treasury Regulations, we must maintain records and request information from our stockholders designed to disclose the actual ownership of our stock. We have complied and intend to continue to comply with these requirements.

Affiliated REITs. The operating partnership owns 100% of the outstanding common stock of Macerich PPR Corp., which in turn owns a 51% interest in Pacific Premier Retail Trust. These affiliated REITs must also meet the REIT tests discussed above. The failure of either of these affiliated REITs to qualify as a REIT could cause us to fail to qualify as a REIT, because we would then own (through the operating partnership) more than 10% of the securities of an issuer that was neither a REIT, a qualified REIT subsidiary nor a taxable REIT subsidiary. We believe that the affiliated REITs have been organized and operated in a manner that will permit them to qualify as REITs.

Failure to Qualify as a REIT

If we fail to qualify for taxation as a REIT in any taxable year and the relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify will not be deductible by us, nor will we be required to make those distributions. If we fail to so qualify and the relief provisions do not apply, to the extent of current and accumulated earnings and profits, all distributions to stockholders will be taxable as ordinary income, and, subject to specified limitations of the Internal Revenue Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, we will also be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. It is not possible to state whether in all circumstances we would be entitled to statutory relief.

Taxation of Stockholders

Taxation of Taxable Domestic Stockholders

As long as we qualify as a REIT, distributions made to our taxable U.S. stockholders will be taxed as follows:

- Distributions out of current or accumulated earnings and profits (and not designated as capital gain dividends) constitute ordinary income to the U.S. stockholders and are not eligible for the dividends received deduction for corporations.

- Distributions in excess of current and accumulated earnings and profits are not taxable to a stockholder to the extent that they do not exceed the adjusted basis of the stockholder's shares, but rather reduce the adjusted basis of those shares. To the extent that distributions in excess of current and accumulated earnings and profits exceed the adjusted basis of a stockholder's shares, they are to be included in income as long-term capital gain (or short-term capital gain if the shares have been held for one year or less) assuming the shares are a capital asset in the hands of the stockholder.

- Distributions designated as capital gain dividends constitute long-term capital gains (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the stockholder has held its stock. Corporate stockholders may be required to treat up to 20% of some capital gain dividends as ordinary income.

- Distributions declared by us in October, November or December of any year payable to a stockholder of record on a specified date in October, November or December will be treated as both paid by us and received by the stockholder on December 31 of that year, provided that the distribution is actually paid by us during January of the following calendar year.

- Stockholders may not include in their individual income tax returns any of our net operating losses or capital losses.

- In general, any loss upon a sale or exchange of shares by a stockholder who has held its shares for six months or less (after applying holding period rules), is treated as a long-term capital loss to the extent of distributions from us required to be treated by that stockholder as long-term capital gain.

Backup Withholding

We will report to our U.S. stockholders and the IRS the amount of distributions paid during each calendar year and the amount of tax withheld, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to distributions paid, unless the holder (a) is a corporation or comes within 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 stockholder that does not provide us with his or her 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, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their nonforeign status to us. See "—Taxation of Foreign Stockholders."

Treatment of Tax-Exempt Stockholders

Distributions from us to a tax-exempt employee pension trust, or other domestic tax-exempt stockholder, generally will not constitute unrelated business taxable income ("UBTI"), unless the stockholder has borrowed to acquire or carry our common stock. However, qualified trusts that hold

more than 10% (by value) of some REITs may be required to treat a specified percentage of those REITs' distributions as UBTI. This requirement will apply only if (1) the REIT would not qualify for federal income tax purposes but for the application of a "look-through" exception to the "five or fewer" requirement applicable to shares held by qualified trusts and (2) the REIT is "predominantly held" by qualified trusts. A REIT is predominantly held if either (1) a single

qualified trust holds more than 25% by value of the REIT interests; or (2) one or more qualified trusts, each owning more than 10% by value of the REIT interests, hold in the aggregate more than 50% of the REIT interests. The percentage of any REIT dividend treated as UBTI is equal to the ratio of (a) the UBTI earned by the REIT (treating the REIT as if it were a qualified trust and therefore subject to tax on UBTI) to (b) the total gross income (less specified associated expenses) of the REIT. A de minimis exception applies where the ratio set forth in the preceding sentence is less than 5% for any year. For those purposes, a qualified trust is any trust described in Section 401(a) of the Internal Revenue Code and exempt from tax under Section 501(a) of the Internal Revenue Code. The provisions requiring qualified trusts to treat a portion of REIT distributions as UBTI will not apply if the REIT is able to satisfy the "five or fewer" requirement without relying upon the "look-through" exception. The restrictions on ownership of our common stock in our charter will prevent application of the provisions treating a portion of REIT distributions as UBTI to tax-exempt entities purchasing our common stock, absent approval by the Board of Directors.

Taxation of Foreign Stockholders

This section provides a brief summary of the complex rules governing United States federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships and other foreign stockholders (collectively, "Non-U.S. Stockholders"). Prospective Non-U.S. Stockholders should consult with their own tax advisors to determine the impact of federal, state and local income tax laws with regard to an investment in shares, including any reporting requirements.

Distributions that are not attributable to gain from sales or exchanges by us of United States real property interests and not designated by us as capital gains dividends will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. These distributions will ordinarily be subject to a withholding tax of 30% of the gross amount of the distribution, unless an applicable tax treaty reduces or eliminates that tax. However, if income from the investment in the shares is treated as effectively connected with the Non-U.S. Stockholder's conduct of a United States trade or business, the Non-U.S. Stockholder generally will be subject to a tax at graduated rates, in the same manner that U.S. stockholders are taxed with respect to distributions of this kind (and may also be subject to the 30% branch profits tax in the case of a stockholder that is a foreign corporation). We expect to withhold United States income tax at the rate of 30% on the gross amount of any distributions of this kind made to a Non-U.S. Stockholder, unless (1) a lower treaty rate applies, or (2) the Non-U.S. Stockholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a stockholder to the extent that these distributions do not exceed the adjusted basis of a stockholder's shares, but rather will reduce the adjusted basis of those shares. To the extent that distributions in excess of current accumulated earnings and profits exceed the adjusted basis of a Non-U.S. Stockholder's shares, these distributions will give rise to tax liability if the Non-U.S. Stockholder would otherwise be subject to tax on any gain from the sale or disposition of his or her shares in our Company, as described below. If it cannot be determined, at the time a distribution is made, whether or not that distribution will be in excess of current and accumulated earnings and profits, the distributions will be subject to withholding at the same rate as dividends. However, amounts thus withheld are refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits.

For any year in which we qualify as a REIT, distributions that are attributable to gain from sales or exchanges by us of United States real property interests will be taxed to a Non-U.S. Stockholder under the provisions of the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). Under FIRPTA, distributions attributable to gain from sales of United States real property interests are taxed to a Non-U.S. Stockholder as if the gain is effectively connected with a United States business. Non-U.S. Stockholders would thus be taxed at the normal capital gain rates applicable to U.S. stockholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). Also, distributions subject to FIRPTA may be subject to a 30% branch profits tax in the hands of a foreign corporate stockholder not entitled to treaty exemption. We are required by applicable Treasury Regulations to withhold 35% of any distribution that could be designated by us as a capital gains dividend. This amount is creditable against the Non-U.S. Stockholder FIRPTA tax liability.

Gain recognized by a Non-U.S. Stockholder upon a sale of shares generally will not be taxed under FIRPTA if we are a "domestically controlled REIT" (defined generally as a REIT in which at all times during a specified testing period less than 50% in value of the stock was held directly or indirectly by foreign persons). We currently anticipate that we constitute a domestically controlled REIT, although there can be no assurance that we will retain that status. If we are not domestically controlled, gain recognized by a Non-U.S. Stockholder will continue to be exempt under FIRPTA if that non-U.S. Stockholder at no time owned more than five percent of our common stock. However, gain not subject to FIRPTA will be taxable to a Non-U.S. Stockholder if (1) investment in the shares 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 U.S. stockholders with respect to the gain; or (2) the Non-U.S. Stockholder is a nonresident alien individual who was present in the United States for more than 182 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. If the gain on the sale of shares were to be subject to taxation under FIRPTA, the Non-U.S. Stockholder will be subject to the same treatment as U.S stockholders with respect to the gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

If the proceeds of a sale of shares are paid by or through a U.S. office of a broker, the payment is subject to information reporting and to backup withholding, unless the disposing Non-U.S. Stockholder certifies as to his or her name, address and non-U.S. status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding will not apply to a payment of disposition proceeds if the payment is made outside the U.S. through a non-U.S. office of a non-U.S. broker. U.S. information reporting requirements (but not backup withholding) will apply, however, to a payment of disposition proceeds outside the U.S. if: (1) the payment is made through an office outside the U.S. of a broker that is (a) a U.S. person, (b) a foreign person that derives 50% or more of its gross income for specified periods from the conduct of a trade or business in the U.S., or (c) a "controlled foreign corporation" for U.S. federal income tax purposes; and (2) the broker fails to initiate documentary evidence that the stockholder is a Non-U.S. Stockholder and that specified conditions are met or that the Non-U.S. Stockholder otherwise is entitled to an exemption.

Tax Aspects of Our Investments in Partnerships

We hold direct or indirect interests in the operating partnership and the Property Partnerships (each individually a "Partnership" and, collectively, the "Partnerships"). In general, partnerships are "pass-through" entities which are not subject to federal income tax. Rather, partners are allocated their proportionate shares of the items of income, gain, loss, deduction and credit of a partnership. Further, the partners are potentially subject to tax thereon without regard to whether the partners receive a distribution from the partnership. We will include our proportionate share of the items of income, gain,

loss, deduction and credit of the Partnerships for purposes of the various REIT income tests and in the computation of our REIT taxable income. See "—Requirements for Qualification—Gross Income Tests". Any resultant increase in our REIT taxable income will increase our distribution requirements (see "—Requirements for Qualification—Annual Distribution Requirements").

However, these increases will not be subject to federal income tax in our hands provided that the income is distributed by us to our stockholders. Moreover, for purposes of the REIT asset tests (see "—Requirements for Qualification—Asset Tests"), we will include our proportionate share of assets held by the Partnerships.

Tax Allocations with Respect to Contributed Properties

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

In general, the limited partners of the operating partnership will be allocated lower amounts of depreciation deductions for tax purposes and increased taxable income and gain on sale by the Partnerships of the contributed assets. This will tend to eliminate the Book-Tax Difference over the life of the Partnerships. However, the special allocation rules of Section 704(c) do not always rectify the Book-Tax Difference on an annual basis or with respect to a specific taxable transaction such as a sale. Under the applicable Treasury Regulations, special allocations of income and gain and depreciation deductions must be made on a property-by-property basis. Depreciation deductions resulting from the carryover basis of a contributed property are used to eliminate the Book-Tax Difference by allocating these deductions to the non-contributing partners (i.e., the REIT and the other non-contributing partners) up to the amount of their share of book depreciation. Any remaining tax depreciation for the contributed property would be allocated to the partners that contributed the property. The operating partnership intends to elect the traditional method of rectifying the Book-Tax Difference under the applicable Treasury Regulations, under which, if depreciation deductions are less than the non-contributing partners' share of book depreciation, then the non-contributing partners lose the benefit of these deductions ("ceiling rule"). When the property is sold, the resulting tax gain is used to the extent possible to eliminate the Book-Tax Difference (reduced by any previous book depreciation). Because of the application of the ceiling rule it is anticipated that tax depreciation will be allocated substantially in accordance with the percentages of OP units held by us and the limited partners of the operating partnership, notwithstanding Section 704(c) of the Internal Revenue Code. Thus, the carryover basis of the contributed assets in the hands of the Partnerships will cause us to be allocated lower depreciation and other deductions, and possibly greater amounts of taxable income in the event of a sale of those contributed assets in excess of the economic or book depreciation allocated to them, and possibly the economic and book income or gain allocated to them as a result of the sale. This may cause us to recognize taxable income in excess of cash proceeds, which might adversely affect our ability to comply with the REIT distribution requirements. See "—Requirements for Qualification—Annual Distribution Requirements."

Other Tax Considerations

The Management Companies

A portion of the cash to be used by the operating partnership to fund distributions to partners, including us, may come from the management companies through dividends on the stock that will be held by the operating partnership. The management companies will receive income from the operating partnership, the Property Partnerships and unrelated third parties. Because we, the operating partnership and the management companies are related through stock ownership, income of the management companies from services performed for us and the operating partnership may be subject to rules under which additional income may be allocated to the management companies. The management companies (other than Macerich Property Management Company, LLC) will pay federal and state income tax at the full applicable corporate rates on their income prior to payment of any dividends. The management companies will attempt to minimize the amount of these taxes, but there can be no assurance whether, or the extent to which, measures taken to minimize taxes will be successful. To the extent that the management companies are required to pay federal, state or local taxes, the cash available for distribution by us to stockholders will be reduced accordingly.

Possible Legislative or Other Actions Affecting Tax Consequences

You should recognize that the present federal income tax treatment of investment in our Company may be modified by legislative, judicial, or administrative action at any time and that any such action may affect investments and commitments previously made. The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in federal tax laws and interpretations of federal tax laws could adversely affect the tax consequences of investment in our Company.

State and Local Taxes

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

PLAN OF DISTRIBUTION

The securities being offered by this prospectus may be sold:

- through agents,
- to or through underwriters,
- through broker-dealers (acting as agent or principal),
- directly by us to purchasers, through a specific bidding or auction process or otherwise, or
- through a combination of any such methods of sale.

We may effect the distribution of securities from time to time in one or more transactions, including block transactions and transactions on the New York Stock Exchange or any other organized market where the securities may be traded.

We may offer and sell securities to the public through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. The applicable prospectus supplement will set forth any managing underwriter or underwriters, as well as any other underwriter or underwriters, with respect to a particular underwritten offering of securities. Underwriters may offer and sell the securities at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. In connection with their sale of the securities, underwriters may receive compensation from us 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.

We or any underwriters may sell the securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from us or the underwriters and/or commissions from the purchasers for whom they may act as agent. If we sell the securities to a dealer, as principal, the dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

Any underwriting compensation we pay 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 applicable prospectus supplement. Dealers and agents participating in the distribution of 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. We may agree to indemnify any underwriters, dealers and agents against civil liabilities, including liabilities under the Securities Act of 1933, incurred by them in connection with their services to us.

We may also offer and sell the securities in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more firms ("remarketing firms") acting as principals for their own accounts or as our agents. We will identify any remarketing firm and describe the terms of our agreement with it, if any, including its compensation, in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters in connection with the securities remarketed by them. We may agree to indemnify remarketing firms against civil liabilities, including liabilities under the Securities Act of 1933, incurred by them in connection with their services to us, and they may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

We may authorize dealers acting as our agents to solicit offers by institutions to purchase the securities from us at the public offering price set forth in the applicable prospectus supplement pursuant to delayed delivery contracts. These contracts will provide for payment and delivery on the date or dates stated in the prospectus supplement. Each contract will be for an amount not less than,

and the aggregate principal amount of the securities sold pursuant to these contracts will be equal to, the respective amounts stated in the applicable prospectus supplement. Institutions with whom dealers may make these arrangements include commercial and savings banks, insurance companies, pension funds, investment companies, and educational and charitable institutions. In all cases, these arrangements will be subject to our approval. These contracts will not be subject to any conditions except:

- the purchase by the institution of the securities may not at the time of delivery be prohibited by law; and
- if we are also selling securities to underwriters, we must have sold to the underwriters the total principal amount of the securities we are offering less the principal amount of the securities covered by the contracts.

Some of the underwriters and their affiliates may be customers of, engage in transactions with and perform services for, us in the ordinary course of business.

Under the securities laws of some states, the securities offered by this prospectus may be sold in those states only through registered or licensed brokers or dealers.

Any person participating in the distribution of securities registered under the registration statement that includes this prospectus will be subject to applicable provisions of the Securities Exchange Act of 1934 and the applicable SEC rules and regulations, including, among others, Regulation M, which may limit the timing of purchases and sales of our securities by any such person. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of our securities to engage in market-making activities with respect to our common stock. These restrictions may affect the marketability of our common stock and the ability of any person or entity to engage in market-making activities with respect to our common stock.

Certain persons participating in the offering may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act that stabilize, maintain or otherwise affect the price of the offered securities.

EXPERTS

The consolidated financial statements and financial statement schedules of our Company and of Pacific Premier Retail Trust incorporated in this prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2001 have been incorporated in reliance on the reports (which contain explanatory paragraphs relating to the adoption by our Company and Pacific Premier Retail Trust of Staff Accounting Bulletin 101 as described in Note 2 to the consolidated financial statements of our Company and Pacific Premier Retail Trust, and the adoption by our Company of Statement of Financial Accounting

Standard No. 133 as described in Note 2 to the consolidated financial statements of our Company) of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

The balance sheets of SDG Macerich Properties, L.P. as of December 31, 2001 and 2000 and the related statements of operations, cash flows and partners' equity for each of the years in the three-year period ended December 31, 2001, and the related financial statement schedule (Schedule III), have been incorporated by reference herein and in the registration statement by reference to our Annual Report on Form 10-K for the fiscal year ended December 31, 2001, in reliance upon the report of KPMG LLP, independent accountants, and incorporated by reference herein and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2001 financial statements contains an explanatory paragraph that states that SDG Macerich Properties, L.P. changed its method of accounting for overage rents in 2000.

LEGAL MATTERS

O'Melveny & Myers LLP will pass on legal matters relating to the validity of the securities and certain tax matters for us. O'Melveny & Myers LLP will rely as to selected matters of Maryland law on the opinion of Ballard Spahr Andrews & Ingersoll, LLP. O'Melveny & Myers LLP has in the past represented and is currently representing us and some of our affiliates.

WHERE YOU CAN FIND MORE INFORMATION

We have filed our registration statement on Form S-3 with the SEC under the Securities Act of 1933 with respect to the securities. The registration statement and the exhibits to the registration statement contain more information than this prospectus does. You may read and copy any document that we file with the SEC, including the registration statement and the exhibits to the registration statement, at the SEC's public reference facility at:

Securities and Exchange Commission
Room 1024
450 Fifth Street N.W.
Washington D.C. 20549.

Please call the SEC at 1-800-SEC-0330 for further information. Our SEC filings are also available to the public at the SEC's web site at www.sec.gov.

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's public reference room listed above, or through the web site listed above. In addition, you may inspect and copy reports, proxy statements and other information about us at the offices of the New York Stock Exchange, Inc. at 20 Broad Street, New York, New York 10005.

The SEC allows us to "incorporate by reference" in this prospectus the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and later information filed with the SEC will update and supercede the information included or incorporated by reference in this prospectus. We incorporate by reference in this prospectus the following information:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2001;
- our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2002;
- our Current Reports on Form 8-K for event dates February 19, 2002 and February 25, 2002; and
- the descriptions of our common stock and our preferred share purchase rights which are contained in registration statements filed under the Securities Exchange Act of 1934, including any amendment or reports filed for the purpose of updating such descriptions.

We also incorporate by reference any future filings we may make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until this offering is completed.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Corporate Secretary
The Macerich Company
401 Wilshire Boulevard, No. 700
Santa Monica, California 90401
Telephone: (310) 394-6000

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

Our estimated expenses in connection with the registration and sale of the securities are as follows:

SEC registration fee	$	71,000.00
Printing and duplicating expenses		350,000.00
Legal fees and expenses		400,000.00
Accounting fees and expenses		200,000.00
Transfer agent fees and expenses		70,000.00
Blue sky fees and expenses		75,000.00
Miscellaneous expenses		134,000.00
Total	$	1,300,000.00

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Maryland General Corporation Law permits a corporation formed in Maryland to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (1) active and deliberate dishonesty established by a final judgment as being material to that cause of action, or (2) actual receipt of an improper benefit or profit in money, property or services. Our charter has incorporated a provision that limits the liability of our directors and officers to the fullest extent permitted by the Maryland General Corporation Law.

Our charter requires us to indemnify our present and former officers and directors, whether serving us or at our request another entity, and to pay or reimburse reasonable expenses in advance of the final disposition of the proceeding to the maximum extent permitted from time to time by the laws of Maryland. Our charter provides that the indemnification rights are non-exclusive of any other rights to which those seeking indemnification may be entitled. The Maryland General Corporation Law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (1) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith, or (b) was the result of active and deliberate dishonesty; (2) the director or officer actually received an improper personal benefit; or (3) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. In addition, the Maryland General Corporation Law requires us, as conditions to advancing expenses, to obtain (1) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by us and (2) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by us if it is ultimately determined that the standard of conduct was not met. The Maryland General Corporation Law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. However, under the Maryland General Corporation Law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received unless, in either case, a court orders indemnification and then only for expenses. Our bylaws specify the procedures for indemnification and advance of expenses.

The Partnership Agreement of the operating partnership also provides for indemnification of us and our officers and directors similar to that provided to our officers and directors in the charter, and includes limitations on the liability of our Company and our officers and directors to the operating partnership and its partners similar to those contained in the charter.

We and the operating partnership have entered into indemnification agreements with certain of our executive officers and directors. The indemnification agreements require, among other things, that we and the operating partnership indemnify those executive officers and directors to the fullest extent permitted by law, and advance to them all related reasonable expenses, subject to certain defenses. We and the operating partnership must also indemnify and advance all expenses incurred by those executive officers and directors seeking to enforce their rights under the indemnification agreements, and cover them under our directors' and officers' liability insurance. Although this form of indemnification agreement offers substantially the same scope of coverage afforded by provisions in our charter and our bylaws and the Partnership Agreement of the operating partnership, it provides greater assurance to directors and officers that indemnification will be available, because, as a contract, it cannot be modified unilaterally in the future by the Board of Directors, by the stockholders or by the partners of the operating partnership to eliminate the rights it provides.

ITEM 16. EXHIBITS

EXHIBIT NUMBER	DESCRIPTION
2.1	Agreement and Plan of Merger by and among Westcor Realty Limited Partnership, Macerich Galahad LP and The Macerich Partnership, L.P. dated as of May 30, 2002
4.1	Articles of Amendment and Restatement (filed as Exhibit 3.2 to our Registration Statement on Form S-11, as amended (No. 33-68964) and incorporated herein by reference)
4.2	Articles Supplementary (filed as Exhibit 4.2 to our Current Report on Form 8-K, event date May 30, 1995, and incorporated herein by reference)
4.3	Articles Supplementary (Series A Preferred Stock) (filed as Exhibit 3.1 to our Current Report on Form 8-K, event date February 25, 1998 and incorporated herein by reference)
4.4	Articles Supplementary (Series B Preferred Stock) (filed as Exhibit 3.1 to our Current Report on Form 8-K, event date June 17, 1998 and incorporated herein by reference)

4.5	Articles Supplementary (Series C Preferred Stock) (filed as Exhibit A to Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
4.6*	Articles Supplementary (Reclassification of Shares) effective May 20, 2002
4.7	Amended and Restated Bylaws (filed as Exhibit 4.1 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
4.8	Agreement dated as of November 10, 1998, between us and Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent (filed as Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)

4.9	Form of Common Stock Certificate (filed as Exhibit 4.3 to our Amendment to Current Report on Form 8-KA, event date November 10, 1998 and incorporated herein by reference)
4.10	Form of Series A Preferred Stock Certificate (filed as Exhibit 4.2 to our Annual Report on Form 10-K for the year ended December 31, 1997 and incorporated herein by reference)
4.11	Form of Series B Preferred Stock Certificate (filed as Exhibit 4.2.1 to our Annual Report on Form 10-K for the year ended December 31, 1998 and incorporated herein by reference)
4.12	Form of Rights Certificate (filed as Exhibit B to Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
5.1*	Opinion of O'Melveny & Myers LLP regarding the legality of the securities
8.1*	Opinion of O'Melveny & Myers LLP regarding certain tax matters
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of KPMG LLP
23.3*	Consent of O'Melveny & Myers LLP (contained in Exhibits 5.1 and 8.1)
24.1*	Power of Attorney

* Previously filed.

ITEM 17. UNDERTAKINGS

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(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;

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

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

The undersigned registrant hereby further undertakes:

(1) That for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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;

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

(3) That, for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act will be deemed to be part of this Registration Statement as of the time it was declared effective;

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

(5) To supplement the prospectus, after the expiration of the subscription periods, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Santa Monica, State of California, on June 5, 2002.

THE MACERICH COMPANY

By: /s/ RICHARD A. BAYER

Richard A. Bayer
Executive Vice President, General Counsel And Secretary

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities indicated, effective as of June 5, 2002.

Signature	Title
*	President and Chief Executive Officer and Director (Principal Executive Officer)
Arthur M. Coppola	
*	Chairman of the Board of Directors
Mace Siegel	
*	Vice Chairman of the Board of Directors
Dana K. Anderson	
*	Executive Vice President and Director
Edward C. Coppola	

*	Director
James S. Cownie	
*	Director
Theodore S. Hochstim	
*	Director
Fred S. Hubbell	

*	Director
Stanley A. Moore	
*	Director
Dr. William P. Sexton	
*	Executive Vice President, Treasurer and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
Thomas E. O'Hern	

*By: /s/ RICHARD A. BAYER

Richard A. Bayer
Attorney-in-Fact

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
2.1	Agreement and Plan of Merger by and among Westcor Realty Limited Partnership, Macerich Galahad LP and The Macerich Partnership, L.P. dated as of May 30, 2002
4.1	Articles of Amendment and Restatement (filed as Exhibit 3.2 to our Registration Statement on Form S-11, as amended (No. 33-68964) and incorporated herein by reference)
4.2	Articles Supplementary (filed as Exhibit 4.2 to our Current Report on Form 8-K, event date May 30, 1995, and incorporated herein by reference)
4.3	Articles Supplementary (Series A Preferred Stock) (filed as Exhibit 3.1 to our Current Report on Form 8-K, event date February 25, 1998 and incorporated herein by reference)
4.4	Articles Supplementary (Series B Preferred Stock) (filed as Exhibit 3.1 to our Current Report on Form 8-K, event date June 17, 1998 and incorporated herein by reference)
4.5	Articles Supplementary (Series C Preferred Stock) (filed as Exhibit A to Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
4.6*	Articles Supplementary (Reclassification of Shares) effective May 20, 2002
4.7	Amended and Restated Bylaws (filed as Exhibit 4.1 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
4.8	Agreement dated as of November 10, 1998, between us and Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent (filed as Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
4.9	Form of Common Stock Certificate (filed as Exhibit 4.3 to our Amendment to Current Report on Form 8-KA, event date November 10, 1998 and incorporated herein by reference)

4.10	Form of Series A Preferred Stock Certificate (filed as Exhibit 4.2 to our Annual Report on Form 10-K for the year ended December 31, 1997 and incorporated herein by reference)
4.11	Form of Series B Preferred Stock Certificate (filed as Exhibit 4.2.1 to our Annual Report on Form 10-K for the year ended December 31, 1998 and incorporated herein by reference)
4.12	Form of Rights Certificate (filed as Exhibit B to Exhibit 4.2 to our Current Report on Form 8-K, event date November 10, 1998 and incorporated herein by reference)
5.1*	Opinion of O'Melveny & Myers LLP regarding the legality of the securities
8.1*	Opinion of O'Melveny & Myers LLP regarding certain tax matters
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of KPMG LLP
23.3*	Consent of O'Melveny & Myers LLP (contained in Exhibits 5.1 and 8.1)
24.1*	Power of Attorney

* Previously filed.

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

by and among

WESTCOR REALTY LIMITED PARTNERSHIP,

MACERICH GALAHAD LP

and

THE MACERICH PARTNERSHIP, L.P.

dated as of May 30, 2002

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EXHIBITS LIST

SCHEDULES LIST

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "***Agreement***") is dated as of May 30, 2002, by and among WESTCOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "***Company***"), THE MACERICH PARTNERSHIP, L.P., a Delaware limited partnership (the "***Buyer***"), and MACERICH GALAHAD LP, a Delaware limited partnership and a subsidiary of the Buyer ("***Acquisition Sub***").

WHEREAS, the Buyer has formed Acquisition Sub as a subsidiary in order to effect the merger of Acquisition Sub with and into the Company (the "***Merger***"), in accordance with this Agreement and the laws of the State of Delaware such that, upon consummation of the Merger, the Company will be a subsidiary of the Buyer and Acquisition Sub will cease to exist;

WHEREAS, this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement have been approved by the board of directors of The Macerich Company, the general partner of the Buyer;

WHEREAS, this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement have been approved by Macerich Galahad GP Corp., in its capacity as the general partner of Acquisition Sub ("***Acquisition GP***"), and the requisite number of the limited partners of Acquisition Sub; and

WHEREAS, this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement have been approved by all necessary parties in accordance with the Limited Partnership Agreement of the Company dated as of July 28, 1994, as amended (the "***Limited Partnership Agreement***"), and Section 17-211 of the DRULPA (as hereinafter defined).

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

"***1998 Equity Plan***" shall have the meaning set forth in Section 5.9.

"***1998 Incentive Plan***" shall have the meaning set forth in Section 5.9.

"***Accountant***" shall have the meaning set forth in Section 2.8.

"***Acquired Company***" or "***Acquired Companies***" shall mean the Company and the Subsidiaries.

"***Acquired Companies Employees***" shall have the meaning set forth in Section 5.9.

"***Acquisition GP***" shall have the meaning set forth in the Preamble.

"***Acquisition Sub***" shall have the meaning set forth in the Preamble.

"Additional Adjustment Payment" shall have the meaning set forth in Section 2.8(d)(i)(B).

"***Adjusted Liabilities***" shall mean, with respect to any Person and without duplication, the sum of: (a) non-mortgage liabilities (exclusive of contingent liabilities under GAAP), including, without limitation, accounts payable, sales tax payable, property tax payable, accrued taxes, incentive compensation to the extent unfunded or unpaid (and excluding, for the avoidance of doubt, the 1998 Incentive Plan and 1998 Equity Plan), liability for non-qualified deferred compensation plans, interest payable, tenant allowances payable, notes payable to any Acquired Company or Affiliated Property Owner less amounts due any Acquired Company or Affiliated Property Owner, assessments payable, contracts payable and other payables (excluding, for the avoidance of doubt, obligations pursuant to the Arrowhead Master Lease to the extent of the Arrowhead Escrow), prepaid rents, and tenant security deposits, but excluding reserves for construction at the Property commonly known as Desert Sky Mall; (b) Net Change in Mortgage Debt (adding the absolute value of any negative Net Change in Mortgage

Debt and subtracting the absolute value of any positive Net Change in Mortgage Debt, as the case may be); and (c) budgeted but unpaid tenant improvement allowances that are reflected in leases signed before the Closing Date, of such Person.

"***Adjustment Escrow Amount***" shall have the meaning ascribed thereto in the Indemnification Escrow Agreement.

"***Adjustment Escrow***" shall have the meaning set forth in Section 2.8 hereof.

"***Affiliate***" of any Person shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"***Affiliated Property Owners***" shall mean those entities, other than the Acquired Companies, that own directly or indirectly any of the Properties and in which one or more Acquired Companies owns a direct or indirect equity interest.

"***Aggregate Additional Amount***" shall mean the result obtained by subtracting (a) $2,000,000 from (b) the total cash amount equal to the product of (i) the number of days in calendar year 2002 occurring prior to the Closing Date (and exclusive of the Closing Date) *multiplied by* (ii) the quotient equal to (x) the aggregate amount of Percentage Rent actually received by, or directly or indirectly credited for the account of, the Buyer or any of its Affiliates or any of their respective successors or assigns with respect to the calendar year in which the Closing occurs *divided by* (y) 365.

"***Agreed Amount***" shall have the meaning set forth in Section 7.2.

"***Arbiter***" shall have the meaning set forth in Section 2.9.

"***Arrowhead Escrow***" shall have the meaning set forth in Section 2.7.

"***Arrowhead Master Lease***" shall mean the master lease entered into by The Westcor Company II Limited Partnership with respect to the Property commonly known as the Arrowhead Marketplace in connection with the Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 13, 2001 between Parcel 18 Associates, LLC, as seller, and GDA Real Estate Services, LLC, as buyer.

"***Balance Sheet Adjustment Amount***" shall mean, as of the Closing Date and after giving effect to the Pre-Closing Distributions, the aggregate amount of (a) with respect to any Acquired Company, the difference between (i) the Tangible Non-Real Estate Assets of such Acquired Company and (ii) the Adjusted Liabilities of such Acquired Company, and (b) with respect to any Affiliated Property Owner, the Acquired Companies' pro rata portion of (i) the Tangible Non-Real Estate Assets of such Affiliated Property Owner and (ii) the Adjusted Liabilities of such Affiliated Property Owner.

"Balance Sheet Adjustment Amount Differential" shall mean the difference between (a) the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners and (b) the aggregate Balance Sheet Adjustment Amounts shown on the Post-Closing Audited Balance Sheets for all Acquired Companies and Affiliated Property Owners.

"***Benefit Plans***" shall have the meaning set forth in Section 3.9.

"***Budget***" shall have the meaning set forth in Section 5.1.

"***Business Day***" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required by law to be closed in New York City; Boston, Massachusetts; or Phoenix, Arizona.

"***Buyer***" shall have the meaning set forth in the Preamble.

"***Buyer Disclosure Schedules***" shall have the meaning set forth in Section 4.8.

"***Buyer Indemnified Party***" shall have the meaning set forth in Section 7.2.

"***Buyer Knowledge Party***" shall have the meaning set forth in Section 4.8.

"***Buyer's Knowledge***" shall have the meaning set forth in Section 4.8.

"***Certificate of Merger***" shall have the meaning set forth in Section 2.1.

"***Claim***" shall have the meaning set forth in Section 5.11.

"***Claim Notice***" shall have the meaning set forth in Section 7.2.

"***Claimed Amount***" shall have the meaning set forth in Section 7.2.

"***Closing***" shall have the meaning set forth in Section 2.6.

"***Closing Date***" shall have the meaning set forth in Section 2.6.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Company***" shall have the meaning set forth in the Preamble.

"***Company Disclosure Schedules***" shall have the meaning set forth in Section 3.18.

"***Company Knowledge Party***" shall have the meaning set forth in Section 3.18.

"***Company's Knowledge***" shall have the meaning set forth in Section 3.18.

"***Confidential Memorandum***" shall have the meaning set forth in Section 3.18.

"***Confidentiality Agreement***" shall have the meaning set forth in Section 5.3.

"***Contractual Debt Payments***" shall mean, with respect to any Person, all indebtedness of such Person that (a) is accrued and unpaid at Closing, (b) arises under contract (including, without limitation, trade payables, construction costs and tenant improvement allowances, but excluding Mortgage Debt, Funded Debt Payments and construction loans) and (c) is for goods and services delivered or rendered (or deemed to have been delivered or rendered pursuant to the applicable contract) on or prior to the Closing Date.

"***Delaware Courts***" shall have the meaning set forth in Section 9.7.

"***Deposit L/C***" shall have the meaning set forth in Section 2.5.

"***Deposits***" shall have the meaning set forth in Section 2.5.

"***Deposit Escrow Agreement***" shall have the meaning set forth in Section 2.5.

"***Dispute***" shall have the meaning set forth in Section 7.2.

"***DRULPA***" shall have the meaning set forth in Section 2.1.

"***Eastrich***" shall mean Eastrich No. 128 Corp., a Massachusetts corporation and the general partner of the Company.

"***Effective Time***" shall have the meaning set forth in Section 2.1.

"***Employment Agreements***" shall have the meaning set forth in Section 3.12.

"***Encumbrance***" shall mean any security interest, pledge, mortgage, deed of trust, lien (including without limitation, environmental and tax liens), charge, encumbrance adverse claim, preferential arrangement or restriction of any kind.

"***Environmental Condition***" shall have the meaning set forth in Section 3.14.

"***Environmental Laws***" shall have the meaning set forth in Section 3.14.

"***Environmental Liabilities and Costs***" shall have the meaning set forth in Section 3.14.

"***Environmental Reports***" shall have the meaning set forth in Section 3.14.

"***ERISA***" shall have the meaning set forth in Section 3.9.

"***Escrow Agent***" shall have the meaning set forth in Section 2.5.

"***Estimated Closing Date Balance Sheets***" shall have the meaning set forth in Section 2.8.

"***Excluded Occupancy Agreement***" shall have the meaning set forth in Section 3.10.

"***Financial Statements***" shall have the meaning set forth in Section 3.4.

"***Funded Debt Payments***" shall mean, with respect to any Person, accrued and unpaid scheduled payments of principal of and interest on (and fees and costs corresponding thereto) indebtedness for borrowed money of such Person for periods ending on or prior to the Closing Date.

"***GAAP***" shall mean United States generally accepted accounting principles consistently applied.

"***Governmental Authority***" shall have the meaning set forth in Section 3.6.

"***Holdback Escrow***" shall have the meaning set forth in Section 5.9 hereof.

"***Home Office***" shall mean the offices of the Company located at 11405, 11411 and 1805 N. Tatum Boulevard, Phoenix, Arizona.

"***HSR Act***" shall have the meaning set forth in Section 3.6.

"***Indemnification Cut-Off Date***" shall have the meaning set forth in Section 7.2.

"***Indemnification Escrow Agreement***" shall have the meaning set forth in Section 2.7.

"***Indemnification Escrow Amount"*** shall have the meaning set forth in Section 2.7.

"***Indemnification Representative***" shall have the meaning set forth in Section 7.2.

"***Indemnified Persons***" shall have the meaning set forth in Section 5.11.

"***Intellectual Property Rights***" shall have the meaning set forth in Section 3.13.

"***Interest***" shall mean, with respect to any Partner, the interest (expressed as a percentage) set forth with respect to such Partner on *Exhibit A* attached hereto, which represents such Partner's right, title and interest in and to the Company.

"***IRS***" shall have the meaning set forth in Section 3.8.

"***Law***" shall have the meaning set forth in Section 3.15.

"***Leases***" shall have the meaning set forth in Section 3.10.

"***Limited Partnership Agreement***" shall have the meaning set forth in the Preamble.

"***Losses***" of a Person shall mean any and all losses, liabilities (including liabilities for Taxes), damages, claims, awards, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) actually suffered or incurred by such Person.

"***Material Adverse Effect***" shall have the meaning set forth in Section 3.18.

"***Maximum Amount***" shall have the meaning set forth in Section 7.2.

"***Merger***" shall have the meaning set forth in the Preamble.

"***Mortgage Debt***" shall mean the indebtedness for borrowed money secured by a mortgage or a deed of trust set forth on *Schedule 2.8* hereto.

"***Most Recent Balance Sheet***" shall have the meaning set forth in Section 3.4.

"***Municipal Taxes***" shall have the meaning set forth in Section 5.10.

"***Net Change in Mortgage Debt***" shall mean, with respect to any Person, the difference between the aggregate amount of the Mortgage Debt of such Person reflected on *Schedule 2.8* and the aggregate amount of the Mortgage Debt as of the Closing Date.

"***Net Purchase Price***" shall have the meaning set forth in Section 2.7.

"***Neutral Auditor***" shall have the meaning set forth in Section 2.8.

"***Objection Notice***" shall have the meaning set forth in Section 2.9.

"***Partner***" or "***Partners***" shall mean Eastrich and each limited partner of the Company.

"***Partners Indemnified Party***" shall have the meaning set forth in Section 7.3.

"***Per Interest Additional Payment***" shall have the meaning set forth in Section 2.4.

"***Per Interest Cash Payment***" shall have the meaning set forth in Section 2.4.

"***Percentage Rent***" shall mean that portion of rent payable by any tenant at any of the Properties, including cart, kiosk and seasonal lease tenants, that is based upon a percentage of such tenant's sales.

"***Person***" shall mean an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

"***Physical Inspection Deposit***" shall have the meaning set forth in Section 2.5.

"***Physical Inspection Period***" shall have the meaning set forth in Section 2.10.

"***Post-Closing Audited Balance Sheets***" shall have the meaning set forth in Section 2.8.

"***Pre-Closing Distributions***" shall have the meaning set forth in Section 2.8.

"***Properties***" and each, a "***Property***," shall have the meaning set forth in Section 3.10.

"***PTCE***" shall have the meaning set forth in Section 4.7.

"***Representatives***" shall have the meaning set forth in Section 5.3.

"***Required Approvals***" shall have the meaning set forth in Section 6.1.

"***Response***" shall have the meaning set forth in Section 7.2.

"Restricted Transaction" shall have the meaning set forth in Section 2.11.

"***Retained Cash***" shall mean the Tier I Retained Cash and the Tier II Retained Cash (each as defined herein).

"***Review Room***" shall have the meaning set forth in Section 3.18.

"***Schedules***" and each, a "***Schedule***," shall mean either the Company Disclosure Schedules or the Buyer Disclosure Schedules, as the case may be.

"***Securities Act***" shall have the meaning set forth in Section 3.1.

"***Signing Deposit***" shall have the meaning set forth in Section 2.5.

"***Specified Litigation***" shall have the meaning set forth in Section 5.13 hereof.

"***Statement***" shall have the meaning set forth in Section 2.9.

"***Subsidiary***" and collectively, the "***Subsidiaries***," shall mean Westcor Partners, L.L.C., an Arizona limited liability company, The Westcor Company Limited Partnership, an Arizona limited partnership,

and The Westcor Company II Limited Partnership, an Arizona limited partnership, and any other entity that is 100% owned directly or indirectly by any of the foregoing.

"***Surviving Partnership***" shall have the meaning set forth in Section 2.1.

"***Tangible Non-Real Estate Assets***" shall mean, with respect to any Person, the aggregate value of the tangible assets exclusive of real estate and associated personal property (such real estate and associated personal property shall include, for these purposes (w) the proceeds of any sale or other disposition, which proceeds are required to be retained in the applicable Acquired Company or Affiliated Property Owner pursuant to Section 5.1(b)(i) hereof, (x) the reserve for construction at the Property commonly known as Superstition Mall, (y) an additional $608,432 and (z) any receivable or liability associated with straight-lining of rents) of such Person, including, without limitation, Retained Cash (other than Retained Cash consisting of retained proceeds as contemplated above), other cash and cash equivalents, accounts receivable less reserves for doubtful accounts in accordance with GAAP, notes receivable less amounts due from any Acquired Company or Affiliated Property Owner and a reserve for doubtful payments in accordance with GAAP, if any, interest receivable, restricted investments (including assets of any non-qualified deferred compensation plan), prepaid expenses, impounds and deposits.

"***Taxes***" shall have the meaning set forth in Section 3.8.

"***Tax Return***" shall have the meaning set forth in Section 3.8.

"***Termination Notice***" shall have the meaning set forth in Section 2.10.

"***Threshold Amount***" shall have the meaning set forth in Section 7.2.

"***Tier I Retained Cash***" shall mean cash and cash equivalents of the Acquired Companies with an aggregate value equal to the amount of the following payment and other obligations of each such Acquired Company, in each case, as reflected on such entity's Estimated Closing Date Balance Sheet and without duplication: (a) Contractual Debt Payments; (b) Funded Debt Payments; (c) accrued and unpaid commitment fees for periods ending on or prior to the Closing Date on any revolving credit facility of such Acquired Company; (d) accrued and unpaid payroll obligations of such Acquired Company for periods ending on or prior to Closing, including, without limitation, payroll taxes, employer 401(k) matching funds obligations, and employer contributions to employee benefits programs (other than the 1998 Equity Plan and the 1998 Incentive Plan); (e) amounts accrued to fund incentive programs of such Acquired Company, including long-term incentive programs, annual incentive programs and annual bonus programs (other than the 1998 Equity Plan and the 1998 Incentive Plan); (f) accrued and unpaid overhead and other costs allocated to the Home Office for periods ending on or prior to the Closing Date, including, without limitation, rent, allocated property taxes, service contracts and utilities; and (g) obligations payable with respect to periods ending on or prior to the Closing Date by such Acquired Company for development costs of any Affiliated Property Owner pursuant to the partnership or limited liability company operating agreement of such Affiliated Property Owner.

"***Tier II Retained Cash***" shall mean the Acquired Companies' pro rata portion of cash and cash equivalents of the Affiliated Property Owners, with an aggregate value equal to the aggregate amount of the following payment and other obligations of each such Acquired Companies' pro rata portion of each such Affiliated Property Owner, in each case, as reflected on such entity's Estimated Closing Date Balance Sheet and without duplication: (a) Contractual Debt Payments; (b) Funded Debt Payments; (c) accrued and unpaid property taxes for the Properties, net of any impounds, for the period ending on or prior to the Closing Date; (d) all tenant security deposits; (e) prepaid rents and all other prepayments of amounts due from any tenant under any lease with respect to any period subsequent to the Closing Date; (f) reserves for construction at the Properties commonly known as Superstition

Springs Center and Desert Sky Mall; and (g) restricted cash balances with respect to the Property commonly known as Chandler Gateway.

ARTICLE II
THE MERGER; CLOSING

Section 2.1 ***The Merger***.

(a) At the Effective Time (as defined below) and subject to the terms and conditions hereof and the provisions of the Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* Section 17-101, *et seq.* (the "***DRULPA***"), and in reliance on the representations, warranties and covenants herein set forth, the Company shall merge with Acquisition Sub in accordance with the DRULPA and shall file a certificate of merger substantially in the form of *Exhibit B* attached hereto (the "***Certificate of Merger***") with the Secretary of State of the State of Delaware and make all other filings or recordings required by Delaware law in connection with the Merger. The Merger shall become effective at such time as is specified in the Certificate of Merger (the "***Effective Time***").

(b) At the Effective Time, Acquisition Sub shall be merged with and into the Company, whereupon the separate existence of Acquisition Sub shall cease, and the Company shall be the surviving limited partnership of the Merger (the "***Surviving Partnership***") in accordance with Section 17-211 of the DRULPA.

Section 2.2 ***Effects of the Merger***. From and after the Effective Time:

(a) The Merger shall have the effects provided herein and set forth in Section 17-211 of the DRULPA. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, the Surviving Partnership shall succeed to and possess all of the rights, privileges and powers of Acquisition Sub, and all of the assets and property of whatever kind and character of Acquisition Sub shall vest in the Surviving Partnership without further act or deed; thereafter, the Surviving Partnership shall be liable for all of the liabilities and obligations of Acquisition Sub, and any claim or judgment against Acquisition Sub may be enforced against the Surviving Partnership, in accordance with Section 17-211 of the DRULPA.

(b) The certificate of limited partnership of the Company as in effect immediately prior to the Effective Time shall be the certificate of limited partnership of the Surviving Partnership until amended in accordance with applicable law.

(c) Promptly following the Effective Time, the Limited Partnership Agreement shall be amended, and such amended Limited Partnership Agreement shall be the partnership agreement of the Surviving Partnership unless and until amended in accordance with its terms and applicable law.

(d) The name of the Surviving Partnership shall be Westcor Realty Limited Partnership.

(e) *Tax Characterization of the Merger*.

(i) Acquisition Sub is owned entirely by the Buyer and by Acquisition GP, an entity that is owned entirely by The Macerich Company and disregarded for federal income tax purposes as a Qualified REIT Subsidiary pursuant to Section 856(i) of the Code. Acquisition Sub is properly characterized as a partnership for federal income tax purposes. Following the Merger, the Company will be owned entirely by the Buyer and Acquisition GP, with the result that the Company will be properly characterized as a partnership for federal income tax purposes following the Merger.

(ii) The Company, the Buyer and Acquisition Sub agree that, pursuant to Treasury Regulation § 1.708-1(c)(3), the Merger shall be treated as an "assets over" form of merger, with the consequences set forth in Treasury Regulation §1.708-1(c)(3)(i). Notwithstanding the foregoing, for federal income tax purposes, the Company, the Buyer and Acquisition Sub agree to treat the payment of cash, as specified in Section 2.4(c) hereof, as the sale by the Partners receiving such cash of their Interests to the Buyer and as a direct purchase by the Buyer of such Interests from such Partners immediately prior to the Merger (and not as a transfer of cash from the Buyer to the Company as part of the Merger). Each Partner who receives, directly or indirectly, any cash in connection with the Merger agrees to treat the Merger and the payment of cash as specified in Section 2.4(c) hereof as the acquisition by the Buyer of the Interests of such Partner in a transaction described in Code Section 741 and Treasury Regulation § 1.708-1(c)(4).

Section 2.3 ***General Partner Authorization.*** The general partner of the Surviving Partnership shall be authorized, at such time in its sole discretion as it deems appropriate to execute, acknowledge, verify, deliver, file and record, for and in the name of the Surviving Partnership, and, to the extent necessary, Acquisition GP, the limited partners of Acquisition Sub, Eastrich and the limited partners of the Company, any and all documents and instruments including, without limitation, the partnership agreement of the Surviving Partnership and the Certificate of Merger, and shall do and perform any and all acts required by applicable law that are necessary in order to effectuate the Merger.

Section 2.4 ***Conversion of Interests.*** At the Effective Time, by virtue of the Merger and without any action on the part of any party hereto or the holder of any of the following securities:

(a) Each limited partnership interest in Acquisition Sub outstanding immediately prior to the Effective Time shall be converted into a limited partnership interest in the Surviving Partnership representing a proportionate economic ownership interest in the Surviving Partnership equal to its proportionate economic ownership interest in Acquisition Sub immediately prior to the Effective Time;

(b) The interest of Acquisition GP in Acquisition Sub shall be converted into a general partnership interest in the Surviving Partnership representing a proportionate economic ownership interest in the Surviving Partnership equal to its proportionate economic ownership interest in Acquisition Sub immediately prior to the Effective Time;

(c) The Interest of Eastrich and each limited partner in the Company shall be converted into and shall represent the right to receive:

(i) a cash payment in the amount of the Net Purchase Price (as hereinafter defined) multiplied by such Partner's Interest, subject to adjustment pursuant to Section 2.8 hereof (the "***Per Interest Cash Payment***");

(ii) an interest in the Indemnification Escrow Amount (as hereinafter defined) equal to such Partner's Interest multiplied by the Indemnification Escrow Amount, subject to the terms and conditions of Article VII hereof and the Indemnification Escrow Agreement (as hereinafter defined);

(iii) an interest in the cash, if any, delivered into the Holdback Escrow (as hereinafter defined) or into the control of the Indemnification Representative pursuant to Section 2.7(f) equal to such Partner's Interest multiplied by the aggregate amount of cash delivered into the Holdback Escrow or into the control of the Indemnification Representative pursuant to Section 2.7(f);

(iv) an interest in the Arrowhead Escrow (as hereinafter defined) equal to such Partner's Interest multiplied by the aggregate amount of cash delivered into the Arrowhead Escrow; and

(v) if the Aggregate Additional Amount is positive, a cash payment in the amount of the Aggregate Additional Amount multiplied by such Partner's Interest (the "***Per Interest Additional Payment***") payable in accordance with Section 2.9 hereof.

(d) Upon conversion of the Interests of the Partners in accordance with Section 2.4(c) hereof, each Partner shall be deemed to have withdrawn as a partner of the Surviving Partnership as of the Effective Time, whereupon each Partner will have no further Interest (or other interest) in the Surviving Partnership, and shall be deemed to have withdrawn any representatives to the Management Committee of the Surviving Partnership.

Section 2.5 ***Deposits***.

(a) Prior to 12:00 p.m. (Arizona time) on the next Business Day following the execution and delivery of this Agreement by all parties hereto, the Buyer shall deliver to US Bank Trust National Association, as escrow agent (the "***Escrow Agent***"), the sum of Five Million Dollars ($5,000,000) as a non-refundable deposit (the "***Signing Deposit***"). Prior to 12:00 p.m. (Arizona time) on the next Business Day following the expiration of the Physical Inspection Period (and assuming the Buyer does not exercise its termination rights during the Physical Inspection Period), the Buyer shall deliver to the Escrow Agent the sum of Twenty Million Dollars ($20,000,000) (the "***Physical Inspection Deposit***", and together with the Signing Deposit, the "***Deposits***"). The Deposits shall be held in escrow by the Escrow Agent in an interest-bearing account pursuant to and in accordance with the escrow agreement in the form of *Exhibit C* attached hereto and executed concurrently with this Agreement (the "***Deposit Escrow Agreement").*** Subject to the terms and conditions set forth in Article VIII with respect to the termination of this Agreement, the Deposits, together with any income earned thereon, shall be delivered to the Escrow Agent at the Closing as a credit against the Indemnification Escrow Amount pursuant to Section 2.7(d) below. Any Taxes (as hereinafter defined) due on any income earned on the Deposit shall be the responsibility of the party that receives such income, subject to the terms and as set forth in the Indemnification Escrow Agreement.

(b) As an alternative to making any or all of the Deposits in cash, the Buyer may elect to deliver to the Escrow Company one or more irrevocable, clean standby letters of credit in the amount of such Deposit (each a "***Deposit L/C***"). Each Deposit L/C shall be (i) in a form reasonably acceptable to the Company and (ii) issued in favor of the Escrow Agent.

Section 2.6 ***Closing.*** The closing of the transactions contemplated by this Agreement (the "***Closing***") shall be held at the offices of Goodwin Procter LLP, 53 State Street, Boston, Massachusetts, at 10:00 a.m. (local time) on the date that is five (5) Business Days following the date on which the conditions set forth herein with respect thereto shall be satisfied or duly waived or such other place or date as may be fixed by mutual agreement of the Buyer and the Company. The date on which the Closing is actually held hereunder is sometimes referred to herein as the "***Closing Date***."

Section 2.7 ***Actions at Closing.*** Subject to the terms and conditions set forth in this Agreement, at the Closing:

(a) the Company shall deliver to the Buyer and Acquisition Sub the various certificates, instruments and documents referred to in Section 6.3;

(b) the Buyer and Acquisition Sub shall deliver to the Company the various certificates, instruments and documents referred to in Section 6.2;

(c) the Surviving Partnership shall file with the Secretary of State of the State of Delaware the Certificate of Merger;

(d) the Escrow Agent shall retain the Deposits and any income earned thereon and hold such amounts in escrow (such aggregate amounts the "***Indemnification Escrow Amount***" in interest-bearing accounts pursuant to and in accordance with the terms and provisions of the escrow agreement to be executed at the Closing in the form of *Exhibit D* attached hereto (the "***Indemnification Escrow Agreement***") for the purpose of securing (i) the obligations of the Partners under Section 2.8(d) hereof to pay the Balance Sheet Adjustment Amount, if any, to the Buyer, and (ii) the indemnification obligations of the Partners set forth in Article VII of this Agreement. The Indemnification Escrow Amount shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of the Indemnification Escrow Agreement;

(e) the Buyer shall deliver to each of the Partners by wire transfer of immediately available funds, pursuant to the wiring instructions for such Partner delivered within two (2) Business Days prior to the Closing, the Per Interest Cash Payment for such Partner, which funds shall, in the aggregate, equal Seven Hundred Forty Two Million Dollars ($742,000,000) less the Indemnification Escrow Amount, the amount of the Arrowhead Escrow, and the amount paid into the Holdback Escrow or into the control of the Indemnification Representative pursuant to Section 2.7(f) hereof, which amount so reduced is further subject to adjustment pursuant to Section 2.8 hereof (the "***Net Purchase Price***");

(f) pursuant to written notice and instruction of the Company, which notice shall be delivered no later than five (5) Business Days prior to the Closing Date, the Buyer shall deliver at Closing by wire transfer of immediately available funds, cash in an amount specified in such notice into the Holdback Escrow or into the control of the Indemnification Representative in accordance with the written instructions provided by the Company in such notice; and

(g) unless otherwise agreed in writing by the Buyer and the Company, the Buyer shall deliver by wire transfer of immediately available funds, cash in an amount equal to Five Hundred Thousand Dollars ($500,000) into an escrow account established by the Company and the Buyer and subject to

the general terms and conditions applicable to the Indemnification Escrow Amount under the Indemnification Escrow Agreement, but which shall be an escrow account separate from the other Indemnification Escrow Amounts (such escrow arrangement, the "***Arrowhead Escrow***").

Section 2.8 ***Pre-Closing Distribution; Balance Sheet Adjustment***.

(a) *Pre-Closing Distributions*. The parties hereto acknowledge and agree that, prior to the Closing Date, the Company shall cause each Affiliated Property Owner and each Subsidiary to distribute to such entities' partners or members, as applicable, all cash and cash equivalents of such Affiliated Property Owner or Subsidiary other than Retained Cash, and the Company shall distribute, subject to the following sentence, to the Partners all of its cash and cash equivalents other than Retained Cash; provided that no such distribution shall be in violation of any loan agreement or other contractual restriction on the distribution of funds, or the covenant regarding construction loans contained in Section 5.1 hereof (such distributions, the "***Pre-Closing Distributions***"). Unless otherwise agreed in writing by the Buyer, the Company and the Indemnification Representative (on behalf of the Partners), the Company shall make the Pre-Closing Distributions to the Partners by delivering (on behalf of the Partners), by wire transfer in immediately available funds, all such Pre-Closing Distributions to the Adjustment Escrow, whereupon such Pre-Closing Distributions shall be and shall be deemed to be the

Adjustment Escrow Amount (or a portion thereof, as the case may be) and subject to the terms and conditions of Section 2.8(d) hereof and the Indemnification Escrow Agreement.

(b) *Purchase Price Adjustment.* Prior to the Closing Date, the Company shall in good faith prepare, with the assistance of the Buyer, an estimated balance sheet for each Affiliated Property Owner and Acquired Company as of the Closing Date after taking into account the Pre-Closing Distributions (the "***Estimated Closing Date Balance Sheets***"). The Estimated Closing Date Balance Sheets shall be prepared in accordance with GAAP consistently applied, and otherwise consistent with the methodology used to prepare such entity's most recent regularly prepared balance sheet. Not later than five (5) Business Days prior to the Closing Date, the Company shall deliver to the Buyer the Estimated Closing Date Balance Sheets, together with worksheets and data that support the Estimated Closing Date Balance Sheets and any other information that the Buyer may reasonably request in order to verify the amounts reflected on the Estimated Closing Date Balance Sheets. The Net Purchase Price to be paid at the Closing shall be adjusted as follows: (i) the Net Purchase Price paid at the Closing shall be increased, dollar for dollar, to the extent that the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners is positive, by the Balance Sheet Adjustment Amount; and (ii) the Net Purchase Price paid at Closing shall be decreased, dollar for dollar, to the extent that the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners is negative, by the absolute value of the Balance Sheet Adjustment Amount.

(c) *Confirmation of Purchase Price Adjustment.* As soon as practical after the Closing Date, Ernst and Young LLP (the "***Accountant***") shall review the Company's books and records and also shall review the Estimated Closing Date Balance Sheets in accordance with GAAP consistently applied and otherwise consistent with the methodology used to prepare such entity's most recent regularly prepared balance sheet (taking into account the Pre-Closing Distributions) and make any adjustments necessary thereto (the "***Post-Closing Audited Balance Sheets***") consistent with the provisions of this Section 2.8. The Company shall pay all fees and expenses of the Accountant, which shall be paid (unless otherwise off-set), from the Indemnification Escrow Amount in accordance with the terms of the Indemnification Escrow Agreement, and, in all events, shall be accounted for as a credit against the Net Purchase Price. The Accountant shall, within forty-five (45) days following the Closing Date, deliver the Post-Closing Audited Balance Sheets to the Indemnification Representative and the Buyer, together with worksheets and data that detail any adjustments and the basis thereof and any other information that the Indemnification Representative may reasonably request in order to verify the amount of any such adjustments. The Post-Closing Audited Balance Sheets, and the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing reflected on the Post-Closing Audited Balance Sheet applicable to such entity, shall be binding upon the parties upon approval by the Indemnification Representative and the Buyer of such Post-Closing Audited Balance Sheets. If the Indemnification Representative and the Buyer do not both approve of the Post-Closing Audited Balance Sheets and the calculation of the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing stated thereon, and the Buyer and the Indemnification Representative cannot mutually agree on any proposed modifications, then within the later of (i) sixty (60) days after the Closing Date and (ii) fifteen (15) days following receipt by the Indemnification Representative and the Buyer of the Post-Closing Audited Balance Sheets, the Buyer and the Indemnification Representative shall select a nationally recognized independent accounting firm with no affiliation to the Buyer, the Company or the Indemnification Representative and who is mutually satisfactory to the Buyer and the Indemnification Representative to resolve such dispute (the "***Neutral***

Auditor"), and shall submit in writing to the Neutral Auditor their respective positions with respect to the Post-Closing Audited Balance Sheets and the calculation of the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing. The Neutral Auditor shall review the Post-Closing Audited Balance Sheets and, within ten (10) Business Days of its appointment, shall make any adjustments necessary thereto, and, upon completion of such review, such Post-Closing Audited Balance Sheets and the Balance Sheet Adjustment Amount at the Closing for each Affiliated Property Owner and Acquired Company stated thereon as determined by the Neutral Auditor shall be binding upon the parties. The fees and expenses associated with such a review shall be borne by the non-prevailing party, which shall be the party whose written position submitted to the Neutral Auditor is, furthest from that determined by the Neutral Auditor.

(d) *Payment of Balance Sheet Adjustment Amount*.

(i) In the event the Balance Sheet Adjustment Amount Differential is negative, the Buyer and the Indemnification Representative jointly shall authorize and direct the Escrow Agent to pay, on behalf of each Partner, to the Buyer, by check or wire transfer of immediately available funds, to the extent available in the Adjustment Escrow Amount, an amount equal to the absolute value of the Balance Sheet Adjustment Amount Differential multiplied by such Partner's Interest. Such authorization and direction shall instruct the Escrow Agent to make such payments within four (4) Business Days following delivery to each Partner and the Escrow Agent of joint notice from the Buyer and the Indemnification Representative as to the determination of Balance Sheet Adjustment Amount Differential in accordance with this Section 2.8.

(A) If the Adjustment Escrow Amount exceeds the Balance Sheet Adjustment Amount Differential, concurrently with the Buyer's and the Indemnification Representative's delivery of such joint authorization and direction, the Buyer and the Indemnification Representative shall deliver to the Escrow Agent a joint notice and instruction directing the Escrow Agent to pay to each Partner, by check or wire transfer of immediately available funds, an amount equal to (1) the Adjustment Escrow Amount Differential less the Balance Sheet Adjustment Amount Differential, multiplied by (2) such Partner's Interest. All such disbursements shall be paid contemporaneously with the payment of the Balance Sheet Adjustment Amount to the Buyer.

(B) If the Balance Sheet Adjustment Amount Differential exceeds the Adjustment Escrow Amount, each Partner shall severally, but not jointly, indemnify the Buyer with respect to any shortfall, in an amount equal to the aggregate amount of such shortfall multiplied by such Partner's Interest (the amount of such payment with respect to any Partner, such Partner's "***Additional Adjustment Payment***"). At the Buyer's option, the Buyer shall be entitled to request payment of, and the Escrow Agent shall pay, the entire amount of all Additional Adjustment Payments (but not less than such entire amount) from the Indemnification Escrow Amount, and each Partner shall be obligated to repay promptly the amount of its Additional Adjustment Payment, together with any accrued interest, to the Indemnification Escrow Amount. The Indemnification Representative shall cooperate with the Buyer and the Escrow Agent in seeking repayment of any such funds to the Indemnification Escrow Amount.

(ii) In the event Balance Sheet Adjustment Amount Differential is positive, the Buyer shall, within four (4) Business Days following the determination of Balance Sheet Adjustment Amount Differential in accordance with Section 2.8(c) above, (A) pay to each of the Partners an amount equal to the Balance Sheet Adjustment Amount Differential

multiplied by such Partner's Interest by wire transfer of immediately available funds in accordance with the wire transfer instructions provided to the Buyer prior to the Closing (unless such wire transfer instructions are subsequently updated or amended by any particular Partner and confirmed by the Buyer with the Indemnification Representative prior to wiring) and (B) deliver to the Escrow Agent, with Indemnification Representative, a joint notice and instruction, authorizing and directing the Escrow Agent to pay to the Partners the amount of the Adjustment Escrow Amount and any investment income earned thereon, in accordance with the terms of the Indemnification Escrow Agreement.

Section 2.9 ***Additional Payment***.

(a) The Aggregate Additional Amount shall be paid as set forth in clause (i) of this Section 2.9(a) to the extent that it exceeds zero, and as set forth in clause (ii) of this Section 2.9(a) to the extent it is less than zero. If the Aggregate Additional Amount is zero, no party shall have any payment obligation under this Section 2.9(a).

(i) The Per Interest Additional Payment shall be paid by the Buyer to the Partners on March 15, 2003 by wire transfer of immediately available funds in accordance with the wire transfer instructions provided to the Buyer prior to the Closing (unless such wire transfer instructions are subsequently updated or amended by any particular Partner) and confirmed by the Buyer with the Indemnification Representative (as hereinafter defined) prior to wiring. To the extent that any Percentage Rent is owed to, but has not been actually received by, or directly or indirectly credited for the account of, the Buyer or any of its Affiliates or their respective successors or assigns prior to March 15, 2003, the Buyer will make additional Per Interest Additional Payments to the Partners promptly (but in no event more often than quarterly) following the receipt by (or direct or indirect crediting for the account of) the Buyer or any of its Affiliates or their respective successors or assigns of all or any portion of such Percentage Rent so paid or credited on or after March 15, 2003 in the amount necessary to increase the total payments received by each Partner pursuant to this Section 2.9 to the amount of such Partner's Per Interest Additional Payment calculated as if such Percentage Rent had been received (or credited) timely. (It being understood that any additional payments made pursuant to the preceding sentence shall be considered and deemed to be part of the "Aggregate Additional Amount" and, with relation to any Partner, part of the Per Interest Additional Payments of such Partner for all purposes under this Agreement.) At the time of such payment, the Buyer shall concurrently deliver to each Partner a statement showing the method used to compute the Aggregate Additional Amount and the Per Interest Additional Payment, certified by the chief financial officer of the Buyer as true and correct, together with reasonable back-up data for such computation (the "***Statement***") and shall also deliver to the Indemnification Representative such additional back-up data or documents as the Indemnification Representative from time to time may reasonably request in connection with the computation of the Aggregate Additional Amount.

(ii) Each Partner shall, severally and not jointly, indemnify the Buyer for an amount equal to such Partner's Interest multiplied by the absolute value of the amount by which the Aggregate Adjustment Amount is less than zero, which right of indemnification shall be satisfied solely by recourse to the Indemnification Escrow Amount and shall otherwise be subject to the terms and conditions of Article VII hereof other than the Threshold Amount in Section 7.2(b); provided that in no case shall the aggregate obligation of the Partners under this Section 2.9(a)(ii) exceed $2,000,000.

(b) The Buyer agrees to keep accurate records sufficient for the tracking of the Percentage Rent with respect to calendar year 2002 and computation of the Aggregate Additional Amount. The parties agree that they will keep each other informed as to the status of Percentage Rent collected and cooperate reasonably in good faith and jointly attempt to resolve any disputes with tenants regarding the Percentage Rent owed by them. Following receipt of the Statement, the Indemnification Representative shall have a right to conduct a limited audit of the Buyer or any of its Affiliates or their respective successors or assigns solely for the purpose of determining the amount of Percentage Rents collected by (or directly or indirectly credited for the account of) the Buyer or any of its Affiliates or their respective successors or assigns with respect to calendar year 2002 and the Aggregate Additional Amount, subject to the condition that such audit be conducted upon reasonable advance notice during normal business hours. To the extent that the Buyer or any of its Affiliates effectively assigns its right to receive any Percentage Rents with respect to calendar year 2002, the Buyer shall provide in the agreements relating to such transfer a continuing right of the Indemnification Representative to

conduct the foregoing limited audit for the purpose of determining the amount of such collected or credited Percentage Rents.

(c) In the event that the Indemnification Representative disputes the calculation of the Aggregate Additional Amount, the Indemnification Representative shall deliver to the Buyer a written notice of objection (an "***Objection Notice***") within twenty (20) days following receipt of the Statement or the receipt of such additional back-up data or documents as the Indemnification Representative may have reasonably requested in connection therewith, as applicable, which notice shall include a statement showing the Indemnification Representative's method of computing the Aggregate Additional Amount and reasonable back-up data or documents to support the objection. During the fifteen (15) days following delivery of an Objection Notice, the Indemnification Representative and the Buyer shall in good faith attempt to resolve their differences with respect to the computation of the Aggregate Additional Amount. If the parties are unable to resolve their differences within such period, the matter will be referred as promptly as practicable to a nationally recognized independent accounting firm with no affiliation to the Buyer, the Company or the Indemnification Representative, selected by mutual agreement of the Buyer and the Indemnification Representative. Such accounting firm (the "***Arbiter***") shall make a determination as to the appropriate computation of the Aggregate Additional Amount and the Per Interest Additional Payments, which determination will be (i) in writing, (ii) furnished to the Buyer and the Indemnification Representative as soon as practicable following referral of the matter, (iii) made in accordance with this Agreement, and (iv) conclusive, binding and non-appealable, in the absence of fraud or manifest error, upon the Buyer, the Surviving Partnership, the Indemnification Representative and each of the Partners. Subject to a confidentiality agreement reasonably acceptable to the Buyer, the Arbiter shall have such access to the financial books and records of the Buyer or any of its Affiliates or their respective successors or assigns as is reasonably necessary to complete its evaluation. The Buyer shall promptly pay to the Partners any additional funds finally determined to have been owed as part of the Per Interest Additional Payments pursuant to this Section 2.9. The expenses of the Arbiter shall be borne by the non-prevailing party.

Section 2.10 ***Physical Inspection Period.*** The Buyer shall have the period beginning on the date of this Agreement and ending on the thirtieth (30^{th}) day following the date hereof (such period, the "***Physical Inspection Period***") to complete its physical and environmental inspections of the Properties, and the Buyer shall promptly provide to the Company a copy of any physical or environmental inspection report or similar report it obtains in connection with such inspections. If, but only if, a physical or environmental inspection report obtained by the Buyer and provided to the Company discloses a structural, building system or other physical or environmental deficiency or liability in the

Properties that is not disclosed in the physical condition or environmental reports included in the Review Room (as hereinafter defined) and that would reasonably be expected to cost in excess of $20,000,000 (in the aggregate if there is more than one such deficiency) to remedy, then (a) the Buyer shall be entitled to terminate this Agreement by giving written notice to the Company (the "***Termination Notice***"), with a copy to the Escrow Agent, which Termination Notice shall specify the grounds for such termination and which must be received by the Company by 5:00 p.m. (Arizona time) on the last day of the Physical Inspection Period, and (b) the Company and the Buyer shall have no further obligations or liabilities to each other hereunder, except as otherwise stated herein. If the Buyer does not give a Termination Notice to the Company prior to the expiration of the Physical Inspection Period, then the Buyer's right to terminate this Agreement pursuant to this Section 2.10 shall automatically expire and be of no further force or effect.

Section 2.11 ***Alternative Transaction Structures.*** The parties hereby acknowledge that it is their intent following execution of this Agreement to pursue amending or amending and restating this Agreement (and, to the extent applicable, any exhibits or schedules hereto) in order to modify the structure of the transactions in accordance with the terms and otherwise as set forth on the sheet attached hereto as *Exhibit G* (any such alternatively structured transaction, the "***Restructured Transaction***") subject, however, to obtaining any required third-party consents thereto and, to the extent necessary, the execution of documents required to implement the Restructured Transaction by Partners. For the purposes of effectuating the foregoing intent, the parties agree to cooperate in good faith to negotiate and prepare all necessary amendments to this Agreement and other agreements, instruments and other documents agreed by the parties hereto to be necessary or appropriate to consummate such Restructured Transaction prior to the expiration of the Physical Inspection Period; *provided*, *however*, that, in the event that the parties hereto are unable for any reason whatsoever to complete such negotiations and preparations or to obtain required third-party consents or the signature of any Partner required to implement the Restructured Transaction, in each case on or prior to the expiration of the Physical Inspection Period, this Section 2.11 and *Exhibit G* shall terminate and be of no further force and effect and the parties shall proceed with the Merger in the form and on the terms agreed on the date hereof and subject only to the terms and conditions of this Agreement.

Section 2.12 ***Proposed Development Properties Transactions.*** The parties hereto acknowledge that it is the intent of the Buyer and certain current employees of the Company to pursue a transaction, the material terms of which are set forth on the term sheet attached hereto as *Exhibit H*, following the Closing and consummation of the Merger and other transactions contemplated in this Agreement; *provided*, *however*, that the consummation of the transaction described in such term sheet shall not constitute a condition to the Closing and consummation of the Merger and the other transactions contemplated in this Agreement.

Section 2.13 ***Time of the Essence.*** The parties hereto acknowledge and agree that, subject only to the express adjournment rights contained herein, time is of the essence in consummating the Merger and the delivery of the Net Purchase Price.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As a material inducement to the Buyer and Acquisition Sub to enter into this Agreement and to consummate the transactions contemplated hereby, the Company represents and warrants to the Buyer and Acquisition Sub as follows:

Section 3.1 ***Capitalization.*** *Exhibit A* constitutes a complete and accurate list of all Partners and the percentage of the total outstanding Interests held by each Partner, which constitutes all the holders of all the Interests. The Interests and all of the issued and outstanding equity interests in the Subsidiaries have been duly authorized and validly issued and, to the Company's Knowledge, are free

and clear of any and all Encumbrances (except for federal and state securities law restrictions of general applicability and certain transfer restrictions set forth in the Limited Partnership Agreement). Except as set forth on *Schedule 3.1*, there are no contracts or commitments relating to the issuance, sale or transfer of any

equity securities or other securities of any Acquired Company, including, without limitation, options, warrants, call rights or preemptive rights. None of the outstanding equity securities or other securities of any Acquired Company was issued in violation of the Securities Act of 1933 (the "***Securities Act***") or other state securities laws. Except as set forth on *Schedule 3.1*, no Acquired Company owns, or has any contract to acquire, any equity securities or other securities of any Person (other than the Acquired Companies or the Affiliated Property Owners) or any direct or indirect equity or ownership interest in any other business. Except as set forth on *Schedule 3.1*, there are no voting trusts, equity holder agreements or understandings in effect with respect to the voting or transfer of the Interests, or any other securities of, or equity interests in, any Acquired Company.

Section 3.2 ***Organization of Acquired Companies; Authority***.

(a) *Organization of Acquired Companies. Schedule 3.2(a)* contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of organization, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each equity holder and the percentage interest held by each). Each Acquired Company is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all the requisite limited liability company or partnership, as applicable, power and authority to carry on its business as now being conducted and to own, operate and lease the Properties currently owned, operated and leased by it. Each of the Acquired Companies is qualified to do business and is in good standing in each jurisdiction in which the nature of its business requires it to be so qualified, except to the extent the failure to so qualify would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as hereinafter defined). The Company has delivered to the Buyer complete and correct copies of the partnership agreements or limited liability company agreements of each of the Acquired Companies, which are in full force and effect as of the date hereof. *Schedule 3.2(a)* lists all current appointed and acting officers and directors of each Acquired Company on the date of this Agreement.

(b) *Authority*. The Company has full authority, right, power and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of the Company pursuant to or as contemplated by this Agreement and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action of the Company, and no other action on the part of the Company is required in connection therewith. This Agreement and each agreement, document and instrument to be executed and delivered by the Company pursuant to or as contemplated by this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the rules of law governing (and all limitations on) specific performance, injunctive relief and other equitable remedies. Except as provided in *Schedule 3.2(b)*, and except as may result from any facts or circumstances relating solely to the Buyer (including, without limitation, its sources of financing), and assuming that all consents, approvals, authorizations and other actions set forth on *Schedule 3.6* have been obtained and all filings and notifications set forth on *Schedule 3.6* have been made, the execution, delivery and performance by the Company of this

Agreement and each such other agreement, document and instrument pursuant to or as contemplated by this Agreement:

(i) do not and will not violate the governing documents of any of the Acquired Companies or the Affiliated Property Owners;

(ii) do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to any Acquired Company or Affiliated Property Owner require any Acquired Company or Affiliated Property Owner to obtain any approval, consent or waiver of, or make any filing with, any Person (governmental or otherwise) that has not been obtained or made, except for such violations as would not reasonably be expected to have a material adverse effect on any Acquired Company, Affiliated Property Owner or Property; and

(iii) do not and will not result in a material breach of, constitute a material default under, accelerate any material obligation under or give rise to a material right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which any Acquired Company or Affiliated Property Owner is a party or by which any of the Properties is bound or affected, or result in the creation or imposition of any material Encumbrance on any of the assets or properties of any Acquired Company or Affiliated Property Owner.

Section 3.3 ***Affiliated Property Owners.*** *Schedule 3.3* contains a complete and accurate list for each Affiliated Property Owner of its name, its jurisdiction of organization, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each equity holder that is an Acquired Company and the percentage interest held by such holders and, to the Company's Knowledge, the identity of each other equity holder and the percentage interest held by such holders). Each Affiliated Property Owner is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all the requisite limited liability company or partnership power, as applicable, and authority to carry on its business as now being conducted and to own, operate and lease the properties owned, operated and leased by it. Each of the Affiliated Property Owners is qualified to do business and is in good standing in each jurisdiction in which the nature of its business requires it to be so qualified, except to the extent the failure to so qualify would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Acquired Company is and, to the Company's Knowledge, no equity holder of an Affiliated Property Owner that is not an Acquired Company is, in default of its obligations under the partnership or limited liability company agreement or other governing document for the Affiliated Property Owner of which it is an equity holder. There are no pending capital calls or capital calls currently being contemplated in the foreseeable future with respect to any Affiliated Property Owner other than the equity required to fund (as reflected in the Budget) the development of the Property commonly known as Scottsdale 101.

Section 3.4 ***Financial Statements; Undisclosed Liabilities***.

(a) Attached hereto as *Schedule 3.4* is (i) the audited consolidated balance sheet as of December 31, 2001, 2000 and 1999 and statements of income, changes in partnership equity and cash flows of the Company and its Subsidiaries for the years ended December 31, 2001, 2000 and 1999 and (ii) the unaudited consolidated balance sheet as of March 31, 2002 (the "***Most Recent Balance Sheet***") and statements of income, changes in partnership equity and cash flows of the Acquired Companies and the Affiliated Property Owners for the three months ended March 31, 2002 (collectively, the "***Financial Statements***"). Such Financial Statements fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of the respective dates thereof and for the periods referred

to therein and are consistent with the books and records of the Company. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as noted therein and for the fact that the unaudited financial statements may not include footnotes normally contained therein and are subject to normal year-end adjustments.

(b) As of the date hereof, except as set forth on *Schedule 3.4*, the Acquired Companies and Affiliated Property Owners have no liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (i) liabilities stated or adequately reserved against on the Most Recent Balance Sheet, (ii) liabilities that arose in the ordinary course of business after the date of the Most Recent Balance Sheet substantially consistent with past practice, (iii) liabilities resulting from routine litigation arising in the ordinary course of the Acquired Companies' or the Affiliated Property Owners' business or that are adequately covered by insurance, (iv) any liability that would not reasonably be expected to exceed $100,000 individually, and (v) liabilities under the Acquired Companies' existing contracts and agreements disclosed pursuant to Section 3.12(a) hereof but not required to be disclosed pursuant to GAAP.

Section 3.5 ***Absence of Certain Changes.*** Except as set forth on *Schedule 3.5*, since March 31, 2002, the Acquired Companies and the Affiliated Property Owners have operated only in the ordinary course of business consistent with past practice and there has not been any of the following:

(a) any declaration, setting aside or payment of any distribution (whether in cash, partnership interests or property) to the holders of the Interests other than distributions in the ordinary course of business consistent with past practice and the distributions contemplated by Section 2.8 hereof;

(b) any amendment of the Limited Partnership Agreement or other organizational or governing document of any Acquired Companies or any Affiliated Property Owners;

(c) any redemption, repurchase or other acquisition of any Interests by the Company or any issuance of any equity interests or other securities (including any grant or issuance of any options, call, warrants or other rights or agreements relating to such issuance);

(d) any change in, or effect on, the Acquired Companies or the Affiliated Property Owners or other event, damage or destruction relating to the business of the Acquired Companies, the Affiliated Property Owners or the Properties that has had, or would reasonably be expected to have, a Material Adverse Effect;

(e) incurrence of material amount of indebtedness or a guarantee of a material amount of indebtedness or other liability of any unaffiliated third party by any Acquired Company or Affiliated Property Owner;

(f) change in the accounting methods or principles used by the Company (with respect to the assets, liabilities, financial condition or results of operations of any Acquired Company), except for such adjustments as required by GAAP or any change in any tax method or election by any Acquired Company;

(g) any revaluation by any of the Acquired Companies or the Affiliated Property Owners of any of their assets, including writing off of notes or accounts receivable other than in the ordinary course of business;

(h) any increase in, establishment of or amendment of any Benefit Plans or Employment Agreements, other than as set forth on *Schedule 3.9*, or any other increase in compensation payable or to become payable to any present or former directors, officers or key employees of

any Acquired Company other than in the ordinary course of business consistent with past practice;

(i) any sale or Encumbrance of the Properties or other assets of the Acquired Companies or the Affiliated Property Owners other than in the ordinary course of business; or

(j) any material obligation or liability incurred by any of the Acquired Companies or Affiliated Property Owners other than in the ordinary course of business.

Section 3.6 ***Consents and Approvals***.

(a) To the Company's Knowledge, except as set forth on *Schedule 3.6*, the execution, delivery and performance of this Agreement by the Company will not, as of the Closing Date, require any consent, approval, authorization or other action by, or filing with or notification to, any federal, state, local, or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body (each, a "***Governmental Authority***"), except (i) the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "***HSR Act***"), if applicable, (ii) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or (B) have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, and (iii) as may be necessary as a result of any facts or circumstances relating solely to the Buyer (including, without limitation, its sources of financing).

(b) Except as set forth on *Schedule 3.6*, the execution, delivery and performance of this Agreement by the Company will neither, as of the Closing Date, require any third-party consents, approvals, authorizations or actions, nor trigger any rights of first offer or first refusal, buy/sell rights, put rights or other preferential rights in favor of third parties owning direct or indirect equity interests in Affiliated Property Owners, except (i) where the failure to obtain such consent, approval, authorization or action would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or (B) have a material adverse effect on the ability of the Company to perform its obligations under this Agreement and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Buyer (including, without limitation, its sources of financing).

Section 3.7 ***Litigation***. To the Company's knowledge, except as set forth on *Schedule 3.7*, except for routine litigation arising in the ordinary course of the Acquired Companies' or the Affiliated Property Owners' business or that is adequately covered by insurance, there is no action, suit or proceeding, claim, arbitration or investigation against an Acquired Company or Affiliated Property Owner pending or, to the Company's Knowledge, threatened in writing.

Section 3.8 ***Taxes***

(a) Except as set forth on *Schedule 3.8*:

(i) The Acquired Companies and the Affiliated Property Owners have paid or caused to be paid and will as of the Closing Date pay or cause to be paid all Taxes required to be so paid by the Acquired Companies or the Affiliated Property Owners, as applicable, prior to the date of this Agreement and prior to the Closing Date, have made adequate accruals, in accordance with GAAP, for all Taxes owed or accrued by the Acquired Companies or the Affiliated Property Owners, as applicable, through the date of this Agreement.

(ii) The Acquired Companies and the Affiliated Property Owners have timely filed or been included in, or will timely file or be included in, all Tax Returns (as hereinafter defined)

required to be filed by them or in which they are required to be included with respect to Taxes for any period ending on or before the date of this Agreement and which such Tax Returns are due on or before the Closing Date, taking into account any extension of time to file granted to or obtained on behalf of the Acquired Companies or the Affiliated Property Owners, as applicable. All such filed Tax Returns are complete and accurate in all material respects.

(iii) Neither the Internal Revenue Service (the "***IRS***") nor any other Governmental Authority is asserting as of the date of this Agreement or the Closing by written notice to the Acquired Companies or the Affiliated Property Owners or, to the Company's Knowledge, is threatening in writing as of the date of this Agreement, to assert against the Acquired Companies or the Affiliated Property Owners, any deficiency, assessment or claim for any material amount of additional Taxes.

(iv) No federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending or, to the Company's Knowledge, threatened with regard to any Taxes or Tax Returns of any of the Acquired Companies or the Affiliated Property Owners and none of the Acquired Companies or the Affiliated Property Owners has received a written notice prior to the date of this Agreement of any actual or threatened audits or proceedings or is otherwise aware of any such audits or proceedings.

(v) There are no agreements, waivers or arrangements currently in effect that extend the statutory period of limitations applicable to any claim for, or the period for the collection or assessment of, Taxes due from the Acquired Companies or the Affiliated Property Owners for any taxable period, and no powers of attorney have been granted by or with respect to the Acquired Companies or the Affiliated Property Owners with respect to Taxes that are currently in force. No closing agreement pursuant to Section 7121 of the Code (or any predecessor provision) or any similar provision of any state, local or foreign law has been entered into by the Acquired Companies or the Affiliated Property Owners that is currently in force or effect.

(vi) None of the Acquired Companies has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company).

(vii) None of the Acquired Companies is a party to any Tax sharing, Tax indemnity or other agreement or arrangement with any Person, or has actual or potential liability for any Taxes as a result of transactions, events or undertakings occurring prior to the Closing.

(viii) No power of attorney granted by any of the Acquired Companies is currently in force with respect to any matter relating to Taxes of any of the Acquired Companies.

(ix) There are no outstanding or pending requests for rulings, determinations, letters or similar administrative pronouncements issued (or to be issued) by a Governmental Authority with respect to Taxes that will be (or if issued would be) binding upon any of the Acquired Companies or the Affiliated Property Owners after the Closing.

(x) All Taxes that any Acquired Company or Affiliated Property Owner is required by law to withhold or collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and added on the books of the applicable Acquired Company or Affiliated Property Owner. Each Acquired Company and Affiliated Property Owner has complied in all material respects with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts owing to any employee, independent contractor, creditor, equity holder or other third party.

(b) "***Taxes***" shall mean (i) any and all taxes, charges, fees, levies or other assessments, including, without limitation, income, gross receipts, excise, real or personal property, sales, withholding, social security, retirement, employment, unemployment, occupation, disability, service, use, license, net worth, payroll, franchise, transfer, employee, gift, recapture, estimated, alternative minimum, add-on minimum, value-added, severance, premium, profit, windfall profit, customs, duties, capital stock, stamp, registration and recording taxes, fees, charges, levies or assessments imposed by the IRS or any taxing authority (whether domestic or foreign including, without limitation, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined or other basis; and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies or other assessments, and (ii) any liability of any Acquired Company for the payment of amounts with respect to any Tax described in clause (i) whether imposed by Law, contractual agreement or otherwise, including liabilities imposed as a result of being a member of an affiliated, consolidated, combined or unitary group, a transferee of or successor to any Person, or a party to any tax sharing arrangement or tax indemnity arrangement.

"***Tax Return***" shall mean any report, return, document, declaration or other information or filing required to be supplied to any taxing authority or jurisdiction (foreign or domestic) with respect to Taxes, including, without limitation, information returns, any document, with respect to or accompanying

payments of estimated taxes, or with respect to or accompanying requests for the extension of time in which to file any such, report, return, document, declaration or other information.

Section 3.9 ***Employee Benefit Plans.*** All of the employee benefit plans and other similar programs and arrangements, including any plans or arrangements providing for "fringe benefits" or perquisites, maintained for the benefit of any current or former employee, partner, agent, officer or director or any dependents or beneficiaries of such individuals of any of the Acquired Companies (the "***Benefit Plans***") are listed on *Schedule 3.9*. With respect to such Benefit Plans, except as set forth in *Schedule 3.9*, (a) each Benefit Plan and any related trust intended to be qualified under Sections 401(a), 501(a) or 501(c) of the Code has been duly authorized by the appropriate board of directors or other governing body of the Company and each participating Subsidiary, is qualified in form and operation under Section 401(a) of the Code and each trust under such Benefit Plan is exempt from tax under Section 501(a) of the Code, has received a favorable determination letter from the IRS that it is so qualified and, to the Company's Knowledge, nothing has occurred that will or could give rise to disqualification or loss of tax-exempt status of any such Benefit Plan or trust under such sections, no event has occurred that will or could subject any such Benefit Plans to tax under Section 511 of the Code, and no non-exempt prohibited transaction (within the meaning of Section 4975 of the Code) or non-exempt party-in-interest transaction (within the meaning of Section 406 of the Employee Retirement and Income Security Act of 1974, as amended ("***ERISA***") has occurred with respect to any of such Benefit Plans, (b) each Benefit Plan has been operated in all material respects in accordance with the terms and requirements of applicable law including requirements under ERISA and the Code (including COBRA requirements under Section 4980B of the Code), (c) none of the Acquired Companies has incurred any direct or indirect liability under, arising out of or by operation of Title I or Title IV of ERISA in connection with any Benefit Plan or other retirement plan or arrangement, and no fact or event exists that would reasonably be expected to give rise to any such liability, (d) all contributions due and payable on or before the date of this Agreement in respect of each Benefit Plan have been made in full or properly accrued and as of the Closing, neither the Acquired Companies nor the Buyer shall have or assume any material liability that is unfunded or unaccrued related to any Benefit Plan, (e) none of the Acquired Companies, and no trade or business (whether or not incorporated) that is a member of a group of which the Company or any Subsidiary is a member and which is under common control within the meaning of Section 414(b) and (c) of the Code, has ever

sponsored or been obligated to contribute to any "multiemployer plan" (as defined in Section 3(37) of ERISA), "multiple employer plan" (as defined in Section 413 of the Code) or "defined benefit plan" (as defined in Section 3(35) of ERISA) and/or Section 412 of the Code, (f) except as set forth on *Schedule 3.9* and, except as otherwise required by Section 4980B of the Code and applicable state insurance laws, no Benefit Plan currently or previously maintained by the Acquired Companies provides any post-retirement health or life insurance benefits, and none of the Acquired Companies maintains any obligations to provide post-retirement health or life insurance benefits in the future, (g) all reporting and disclosure obligations imposed under ERISA and the Code have been satisfied with respect to each Benefit Plan in all material respects, (h) each Benefit Plan maintained for the benefit of any current or former employee, partner, agent, officer or director of any of the Acquired Companies is listed on *Schedule 3.9* and true and complete copies of the current plan documents, summary plan descriptions, most recent determination letters from the IRS and Forms 5500 (where applicable) for each such Benefit Plan have been provided to the Buyer, (i) there are no negotiations, demands or proposals that are pending or have been made which concern matters now covered by the Benefit Plans, or that would be covered by plans, agreements or arrangements of the type described in this section and there are not pending or, to the Company's Knowledge, threatened litigation or claims (other than routine claims for benefits) against the Benefit Plans or their assets or arising out of the Benefit Plans, and (j) no benefit or amount payable or which may become payable by the Acquired Companies pursuant to any Benefit Plan, agreement or contract with any employee, shall constitute an "excess parachute payment," within the meaning of Section 280G of the Code, which is or may be subject to the imposition of any excise tax under Section 4999 of the Code or which would not reasonably be expected to be deductible by reason of Section 280G of the Code. None of the Affiliated Property Owners has any employees and, thus, has no employee benefit plans, programs and arrangements maintained for the benefit of any employees.

Section 3.10 ***Properties***

(a) *Properties*. *Schedule 3.10(a)* sets forth a list by commonly known name and address of all real properties in which the Acquired Companies have a direct or indirect interest (collectively, the "***Properties***" and each, a "***Property***"), which Schedule indicates the Acquired Company or Affiliated Property Owner that directly owns each Property and the direct or indirect interest of the Acquired Companies in such Property and/or entity, and the type of interest (e.g., fee, leasehold, option, etc.). The Properties listed on *Schedule 3.10(a)* are all of the real properties in which the Acquired Companies own a direct or indirect real property interest.

(b) *Leases*. The Company has made available true and complete copies of all leases, licenses, concession agreements or other occupancy agreements with respect to the Properties as of the date of this Agreement (the "***Leases***") and guarantees of the obligations of the tenant under the Lease, if any, as of the date of this Agreement, (which Leases and amendments thereto are listed on *Schedule 3.10(b)*), and, except as listed on *Schedule 3.10(b)* and except for the Excluded Occupancy Agreements (as hereinafter defined), there are no other Leases in effect with respect to the Properties. The term "Leases" excludes, however, all cart, kiosk and seasonal leases with a term of six (6) months or less (the "***Excluded Occupancy Agreements***"). Except as disclosed on *Schedule 3.10(b)*: (i) with respect to the applicable Acquired Company or Affiliated Property Owner, each Lease is in full force and effect, and, with respect to tenants under the Leases, to the Company's Knowledge, each Lease is in full force and effect; (ii) the Company has received no written notice or a copy of a notice from any tenant claiming that the applicable Acquired Company or Affiliated Property Owner is currently in default under its obligations as landlord under any Lease; (iii) no tenant is in default in any rent or other material monetary obligation for any period in excess of three months or, to the Company's Knowledge, any material non-monetary obligation, under its Lease; and (iv) no rent has been paid by any tenant more than one month in advance and no tenant deposits have been applied to perform tenant obligations.

(c) *Rights to Purchase or Lease*. Except as set forth on *Schedule 3.10(c)*, no Acquired Company or Affiliated Property Owner has granted any unexpired option agreements or rights of first refusal with respect to the purchase of a Property or the lease of more than twenty-five percent (25%) of such Property or any other unexpired rights (including pursuant to purchase and sale or other similar agreements and rights of first refusal, first offer or similar rights) in favor of third persons to purchase or otherwise acquire a Property or any interest in a Property or any interest in any Acquired Company or any interest of an Acquired Company in an Affiliated Property Owner, other than such rights in Leases of out-parcels that (i) are less than two acres or improved with less than 10,000 square feet, and (ii) have a fair market value of less than $100,000.

(d) *Reciprocal Easement Agreements*. The Company has made available true and complete copies of all reciprocal easement agreements affecting the Properties. Except as disclosed on *Schedule 3.10(d)*, (i) the Company has received no written notice or a copy of a notice from any other party to

any such reciprocal easement agreement or similar agreement claiming that the Company is currently in default under its obligations thereunder, (ii) to the Company's Knowledge, no third party to any such reciprocal easement agreement or similar agreement is in default of any of its material obligations thereunder, (iii) with respect to the applicable Acquired Company or Affiliated Property Owner, each such reciprocal easement agreement or similar agreement is in full force and effect and (iv) with respect to the other parties to any such agreement, to the Company's Knowledge, such reciprocal easement agreement or similar agreement is in full force and effect.

(e) *Condemnation*. There is no currently pending condemnation proceeding with respect to any Property and, to the Company's Knowledge, the Company has not received any written notice or copy of notice from any Governmental Authority to the effect that any condemnation proceeding is contemplated in connection with any Property.

(f) *Title Reports*. The Company has made available in the Review Room the most recent title reports commissioned by the Company with respect to each of the Properties and, to the Company's Knowledge, such title reports are accurate and complete in all material respects and do not fail to list any material exception to title.

Section 3.11 ***Labor and Employment Matters*.** Except as set forth on *Schedule 3.11*:

(a) None of the Acquired Companies is a party to any collective bargaining agreement or other current labor agreement with any labor union or organization, and, to the Company's Knowledge, there is no question involving current union representation of employees of the Acquired Companies, nor do the Acquired Companies know of any activity or proceeding of any labor organization (or representative thereof) or employee group (or representative thereof) to organize any such employees.

(b) There is no unfair labor practice charge or grievance arising out of a collective bargaining agreement or other grievance procedure pending, or, to the Company's Knowledge, threatened in writing against the Acquired Companies.

(c) To the Company's Knowledge, except for routine litigation arising in the ordinary course of business of any of the Acquired Companies or the Affiliated Property Owners, or that is adequately covered by insurance (or as set forth on *Schedule 3.7*), there is no complaint, lawsuit or proceeding in any forum by or on behalf of any present or former employee of any of the Acquired Companies, any applicant for employment with any of the Acquired Companies or any classes of the foregoing, alleging breach of any express or implied contract of employment, any Law or regulation governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct by any of the Acquired Companies in connection with the employment relationship pending or threatened in writing against the Acquired Companies.

(d) There is no strike, slowdown, work stoppage or lockout pending, or, to the Company's Knowledge, threatened against or involving the Acquired Companies.

(e) To the Company's Knowledge, the Acquired Companies Employees (as hereinafter defined) are lawfully authorized to work in the United States according to federal immigration Laws.

(f) Each of the Acquired Companies is in compliance in all material respects with all applicable Laws in respect of employment and employment practices, terms and conditions of

employment, wages, hours of work, worker's compensation, non-discrimination, immigration and occupational safety and health.

(g) As of the date of this Agreement, there is no proceeding, claim, suit, action or governmental investigation pending or, to the Company's Knowledge, threatened in writing, with respect to which any current or former partner, officer, employee or agent of any of the Acquired Companies is claiming indemnification from any of the Acquired Companies.

Section 3.12 ***Contracts and Commitments***.

(a) *Schedule 3.12* lists each of the following contracts or agreements (if any) of each of the Acquired Companies and Affiliated Property Owners:

(i) material management contracts with respect to the Properties;

(ii) all material documents evidencing or creating indebtedness for borrowed money, or giving rise to a guarantee of such indebtedness, of the Acquired Companies or of an Affiliated Property Owner relating to a Property with a remaining principal balance in excess of $100,000**;**

(iii) partnership agreements, limited liability company agreements and joint venture agreements to which any Acquired Company is a party (and having as another party any Person who is not an Acquired Company);

(iv) leases relating to any material personal property leased by the Acquired Companies or any Affiliated Property Owner or other real property leased by the Acquired Companies or any Affiliated Property Owner;

(v) all of the employment agreements between any of the Acquired Companies and any of the Acquired Companies Employees in effect as of the date hereof (the "***Employment Agreements***"), any severance agreement or arrangement with any Acquired Companies Employee, and all agreements pursuant to which consulting services are rendered to any Acquired Company that are likely to involve payments in excess of $100,000 per year;

(vi) agreements granting to any unaffiliated third party a first-refusal, first-offer or other right to purchase or acquire any of the Interests;

(vii) agreements materially limiting or restricting the ability of any Acquired Company or any Affiliated Property Owner to enter into or engage in any geographic area or line of business other than as provided in any Leases or reciprocal easement agreements or similar agreements

affecting the Properties; and

(viii) agreements that will not be terminated on or before the Closing, or that cannot be terminated within thirty (30) days of the Closing, between any Acquired Company and any Partner or any Partner's Affiliates (other than an Acquired Company or an Affiliated Property Owner) that commit any one or more of the Acquired Companies or Affiliated Property Owners to pay, in the aggregate, more than $40,000 per year.

(ix) agreements entered into since March 31, 2002 pursuant to which any Acquired Company incurred an obligation to pay any amounts in respect of indemnification obligations, purchase price adjustment or otherwise in connection with (A) any acquisition or disposition of assets, (B) merger, consolidation or other business combination, or (C) series or group of related transactions or events of a type specified in (A) or (B).

(b) True and complete copies of the contracts and agreements disclosed pursuant to Section 3.12(a) hereof have been made available to the Buyer. Except as set forth on *Schedule 3.12* (i) each contract and agreement disclosed pursuant to Section 3.12(a) hereof is

valid and binding in all material respects on the Acquired Company or Affiliated Property Owner party thereto and, to the Company's Knowledge, on the other party or other parties thereto, and is in full force and effect in accordance with its respective terms, (ii) upon consummation of the transactions contemplated by this Agreement and assuming that all consents, approvals, authorizations and other actions set forth on *Schedule 3.6* have been obtained and all filings and notifications set forth on *Schedule 3.6* have been made, each such contract and agreement shall continue in full force and effect in all material respects in accordance with its respective terms without penalty, acceleration of payment or other adverse consequence (including any diminution of management or other control rights with respect to the Acquired Companies or the Affiliated Property Owners, subject to "key person" provisions in agreements relating to Properties listed on *Schedule 3.12*), (iii) none of the Acquired Companies or Affiliated Property Owners, as applicable, is in material breach of, or material default under, any such contract or agreement, and no event exists that, but for the giving of notice or passage of time, would result in such a breach or default by the Acquired Company or Affiliated Property Owner party thereto, and (iv) to the Company's Knowledge, no other party to any such contract or agreement is in material breach thereof or material default thereunder, and no event exists that, but for the giving of notice or passage or time, would result in such a breach or default by the other party thereto.

Section 3.13 ***Intellectual Property.*** Except as set forth on *Schedule 3.13*, each Acquired Company and Affiliated Property Owner owns or has the right to use all trademarks, trade names, product names, domain names, service marks, logos, patents, patent applications, trade secrets, copyrights and other intellectual property rights (including domestic and foreign registrations and applications therefore) (collectively, the "***Intellectual Property Rights***"), as are used in connection with the business of such Acquired Company or Affiliated Property Owner, as applicable, except where the failure to own or have the right to use such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. Except as set forth on *Schedule 3.13*, to the Company's Knowledge, use of the Intellectual Property Rights by the Acquired Companies and Affiliated Property Owners (a) does not infringe any rights of any third party, and (b) none of the Acquired Companies or Affiliated Property Owners has received any written notice from any Person claiming that the rights of any Acquired Company or Affiliated Property Owner in or to the Intellectual Property Rights conflict with or infringe on the rights of any other Person.

Section 3.14 ***Environmental Matters.*** Except as set forth on *Schedule 3.14* or disclosed in the Environmental Reports (as hereinafter defined), to the Company's Knowledge, (a) the Acquired Companies and the Affiliated Property Owners are in compliance in all material respects with all applicable Environmental Laws (as hereinafter defined), (b) there are no material Environmental Liabilities and Costs (as hereinafter defined) of the Acquired Companies, (c) there are no material Environmental Conditions (as hereinafter defined) on or related to the Properties, (d) the Company has not received any written notice during the two (2) year period prior to the date of this Agreement from any governmental agency or other third party alleging any material violation of, or noncompliance with, any Environmental Law, or requiring the removal, clean-up or remediation of any Environmental Condition, whether or not on any of the Properties, which such matter has not been resolved as of the date of this Agreement, and (e) the Company has not received written notice during the two (2) year period prior to the date of this Agreement that they are subject to any enforcement or investigatory action by any governmental agency regarding an Environmental Condition with respect to any Property, which such matter has not been resolved as of the date of this Agreement. As used herein, the terms "toxic" or "hazardous" wastes, substances or materials shall include, without limitation, all those so designated in and in any way regulated by any current Environmental Laws. The Acquired Companies have previously made available to the Buyer in the Review Room (as hereinafter defined) copies of the following written materials in their possession or control: copies of the most recent environmental

audits, site assessments and documentation regarding off-site disposal of hazardous materials (collectively, the "***Environmental Reports***").

For purposes of this Agreement, the following definitions shall apply:

"***Environmental Laws***" shall mean all applicable federal, state and local statutes or laws, judgments, orders, regulations, licenses, permits, rules and ordinances relating to pollution or protection of health, safety or the environment, including, but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq*.), Resources Conservation and Recovery Act (42 U.S.C. §6901 *et seq*.), Safe Drinking Water Act (42 U.S.C. §3000(f) *et seq*.), Toxic Substances Control Act (15 U.S.C. §2601 *et seq*.), Clean Air Act (42 U.S.C. §7401 *et seq*.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq*.), and other similar state and local statutes.

"***Environmental Condition***" shall mean the introduction into the environment of any contaminant, pollutant, hazardous or toxic waste, substance or material (whether or not upon the Properties) at levels or in amounts in excess of applicable legal or regulatory permits, limits or standards, as a result of which the Acquired Companies or Affiliated Property Owners, with respect to this Section 3.14, (1) has or may become liable to any Person or Governmental Authority, (2) is in violation of any Environmental Law, or (3) by reason of which any of the properties or other assets of any of the Acquired Companies or Affiliated Property Owners, with respect to this Section 3.14, may suffer or be subject to any lien.

"***Environmental Liabilities and Costs***" shall mean all liabilities, obligations, responsibilities, obligations to conduct cleanup, losses, damages, deficiencies, punitive damages, costs and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of any necessary investigations and feasibility studies and responding to government requests for information or documents), fines, penalties, monetary sanctions, known or unknown, absolute or contingent, past, present or future, resulting from any claim or demand, by any Person or Governmental Authority, whether based in contract, tort, implied or express warranty, strict liability, joint and several liability, criminal or civil statute, under any Environmental Law, or arising from Environmental Conditions, as a result of past or present ownership, leasing or operation of any properties, owned, leased or operated by the Acquired Companies or the Affiliated Property Owners with respect to Section 3.14.

Section 3.15 ***Compliance with Laws; Permits***

(a) Except as set forth on *Schedule 3.15*, the Company has not received written notice and the Company otherwise has no knowledge that any of the Acquired Companies, Affiliated Property Owners or the Properties is in material violation of any applicable federal, state, local or foreign judgment, order, decree, or any material statute, law, ordinance, rule, regulation, code and any judicial or administrative interpretation thereof, or any other government or rule of law ("***Law***") or order of any Governmental Authority applicable to any of the Acquired Companies, the Affiliated Property Owners or the Properties. To the Company's Knowledge, the Acquired Companies and the Affiliated Property Owners have obtained all material licenses, permits and other authorizations and have taken all actions required by applicable Law in order to conduct their business as now or as previously conducted and, to the Company's Knowledge, there is no pending threat of modification or cancellation of the same.

(b) To the Company's Knowledge, all material agreements, easements or other rights necessary to permit the lawful use and operation of the buildings and improvements on any Property (other than parcels ground leased to third parties, as to which the Company makes no representation or warranty pursuant to this Section 3.15(b)) or to permit the lawful use and operation of all driveways, roads and other means of egress and ingress to and from any

Property have been obtained and are in full force and effect. Except as set forth on *Schedule 3.15*, all material work to be completed, payments to be made and financial undertakings required to be taken by any of the Acquired Companies or Affiliated Property Owners prior to the date hereof and the Closing pursuant to any contract entered into with a Governmental Authority in connection with a site approval, zoning reclassification or other similar action relating to a Property (other than parcels ground leased to third parties, as to which the Company makes no representation or warranty pursuant to this Section 3.15(b)) have been paid or undertaken.

(c) To the Company's Knowledge, none of the Acquired Companies or Affiliated Property Owners, nor any of their respective directors, officers, agents or employees has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment or made any unlawful expenditures relating to any political activity to government officials or others. To the Company's Knowledge, none of the Acquired Companies or Affiliated Property Owners nor any of their respective directors, officers, agents or employees have accepted or received any unlawful contributions, payments, gifts or expenditures. No Acquired Company or Affiliated Property Owner has been charged with or committed, or to the Company's Knowledge, been under investigation with respect to, any violation of the Foreign Corrupt Practices Act.

Section 3.16 ***Insurance.*** *Schedule 3.16* sets forth a true and correct summary of the insurance policies held by, or for the benefit of, the Acquired Companies and the Affiliated Property Owners including the underwriter of such policies and the amount of coverage thereunder. The Acquired Companies or the Affiliated Property Owners have paid, or caused to be paid, all premiums due under such policies and are not in default with respect to any monetary obligations under such policies in any material respect. To the Company's Knowledge, each of the Acquired Companies and the Affiliated Property Owners maintains insurance with financially responsible insurers in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to those of the Acquired Companies (taking into account the cost and availability of such insurance), except where the failure to maintain such insurance would not reasonably be expected to have a Material Adverse Effect. Except as set forth on *Schedule 3.16*, the Company has not received any written notice of cancellation or termination with respect to any existing material insurance policy that is held by, or for the benefit of, any of the Acquired Companies or the Affiliated Property Owners or that relates to any Property.

Section 3.17 ***Brokers.*** No broker, investment banker, financial advisor or other Person, other than Eastdil Realty Company, L.L.C., the fees and expenses of which will be paid by the Company at or prior to Closing, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based on any contacts made by the Company or any Affiliate or agent of the Company.

Section 3.18 ***Disclaimer; Company's Knowledge; Disclosure; Material Adverse Effect***.

(a) The Company does not make, and has not made, any representations or warranties relating to the Acquired Companies, the Affiliated Property Owners, the Properties, or the operations or businesses of the Acquired Companies, the Affiliated Property Owners or the businesses or operations conducted on, at or with respect to the Properties, or otherwise in connection with the transactions contemplated hereby, other than those expressly made by the Company in this Agreement or in the other agreements and instruments delivered pursuant hereto in order to consummate the Merger. Other than as expressly set forth in this Agreement, the Company hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of any Property, including, without limitation, the water, soil and geology or any other matter affecting the

stability or integrity of such Property, and the suitability thereof and of any Property for any and all activities and uses that the Buyer may elect to conduct thereon, and the existence of any hazardous materials thereon, (ii) the compliance of any Property with any law, rule, regulation or ordinance to which the Property or the owner thereof is or may be subject, (iii) the condition of title to the Property or the nature and extent of any right of way, lease, license, reservation or contract, (iv) the profitability or losses or expenses relating to any Property and the businesses conducted in connection therewith, (v) the value of any Property, (vi) the existence, quality, nature or adequacy of any utility servicing any Property, (vii) the physical condition of any Property, (viii) whether any Lease will be in force or effect as to any tenant on the Closing Date or that any tenant thereunder will have performed all of its obligations thereunder through the Closing Date, and (ix) the legal or tax consequences of this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing, except only as expressly set forth in those representations and warranties made in Sections 3.1 through 3.17 hereof, the Company has not made, and shall not be deemed to have made, any representations or warranties in any presentation of the businesses of the Acquired Companies or the Affiliated Property Owners (including

without limitation any management presentation or property or facility tour) in connection with the transactions contemplated hereby, and no statement made in any such presentation (including without limitation any management presentation or property or facility tour) shall be deemed a representation or warranty hereunder or otherwise. It is understood that any cost estimates, projections or other predictions, any data, any financial information, document, reports, sales brochure or other literature, maps or sketches, financial information or statements, or presentations (including without limitation any management presentation or property or facility tour), or any memoranda or offering materials including, without limitation, those certain Confidential Offering Memorandum dated March 2002 or April 2002 and any materials or information contained therein and any amendments or supplements thereto (the "***Confidential Memorandum***"), are not and shall not be deemed to be or to include representations or warranties of the Acquired Companies, except only as expressly set forth in those representations and warranties made in Sections 3.1 through 3.17 hereof, and the Buyer acknowledges that it has not relied and is not relying on any such estimates, projections, predictions, data, financial information, memoranda, offering materials or presentations (including without limitation any management presentation or property or facility tour), including without limitation, the Confidential Memorandum. No Person has been authorized by the Acquired Companies to make any representation or warranty relating to the Acquired Companies, the Affiliated Property Owners, the Properties, the businesses of the Acquired Companies or the Affiliated Property Owners, or the businesses or operations conducted on, at or with respect to the Properties, or otherwise in connection with the transactions contemplated hereby and, if made, such representation or warranty must not be relied upon as having been authorized by the Acquired Companies.

(b) Prior to the Closing Date, the Buyer will have had the opportunity to make all inspections and investigations, including a review of the materials located on the Company's Internet web site (the "***Review Room***") and the physical inspection contemplated in Section 2.10, concerning the Acquired Companies, the Affiliated Property Owners and the Properties which the Buyer deems necessary or desirable to protect its interest in acquiring the Acquired Companies and their respective assets.

(c) Whenever a representation or warranty made by the Company herein refers to the knowledge of the Company, or to the "***Company's Knowledge***," the accuracy of such representation shall be based solely on the actual knowledge of Robert L. Ward, the President and Chief Executive Officer of the Company, Robert G. Mayhall, the Chief Financial Officer of the Company, Gilbert W. Chester, Executive Vice President of the Company, John F. Rasor, Executive Vice

President of the Company, and Robert B. Williams, Executive Vice President of the Company (each a "***Company Knowledge Party***"), and shall not be construed to refer to the knowledge of any other officer, agent, partner, member, manager or employee of the Company or of any Affiliate of the Company or to impose or have imposed upon any Company Knowledge Party any duty to investigate the matters to which such knowledge, or the absence thereof, pertains including, without limitation, the contents of any files, documents or materials made available to or otherwise disclosed to the Buyer or the contents of files maintained by any Company Knowledge Party. Whenever a representation provides that the Company has not received notice of a fact or event or words of similar import, the accuracy of such representation shall be based solely on the actual receipt by a Company Knowledge Party of such notice or on the receipt of such notice by another employee of the Company or an Affiliate of the Company where a Company Knowledge Party has actual knowledge that such notice has been received by such other employee of the Company or an Affiliate of the Company

(d) Notwithstanding anything to the contrary contained in this Agreement or in any of the schedules prepared by the Company and attached hereto (the "***Company Disclosure Schedules***"), any information disclosed on one Schedule shall be deemed to be disclosed on another Schedule provided that specific cross-references are made to such other Schedule. Certain information set forth on the Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Company in this Agreement or that it is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Company. The Company has prepared the Company Disclosure Schedules in good faith and without regard to any applicable "Material Adverse Effect" or other "materiality" qualifier; *provided, however*, that notwithstanding such standard of preparation, nothing contained herein shall limit or otherwise qualify the standard of the representations and warranties contained in Sections 3.1 through 3.17 hereof for the purposes of determining the existence of a breach of any such representation or warranty.

(e) "***Material Adverse Effect***" shall mean any change or effect that is (individually or in the aggregate with any other changes therein or effects thereon that would be specifically addressed by a representation or warranty contained in this Agreement but for a "Material Adverse Effect" exception or qualification) materially adverse to the business, operations, assets, liabilities, financial condition or results of operations of the Acquired Companies, taken as a whole (provided that any such change, effect, event, occurrence or state of facts that is cured prior to the Closing at the expense of such affected party shall not be considered a Material Adverse Effect), other than any such changes or effects resulting primarily from any of the following: (i) general changes in the economy or financial markets of the United States or any other region outside of the United States (other than those that would have a materially disproportionate effect, relative to other industry participants, on the Acquired Companies and the Affiliated Property Owner taken as a whole), (ii) changes in general (national, regional or local) economic, regulatory or political conditions or changes in the retail industry or retail real estate properties generally (other than those that would have a materially disproportionate effect, relative to other industry participants, on the Acquired Companies and the Affiliated Property Owners taken as a whole), (iii) changes in Law or GAAP, or (iv) this Agreement, the transactions contemplated hereby, or any announcement or indication thereof, or any actions taken by the Buyer hereunder or in contemplation hereof, or any actions that the Company was required to take, hereunder, or any direct contact of the Buyer or any of its representatives with any of the tenants, joint venture partners, customers or suppliers, or potential tenants, joint venture partners, customers or suppliers, of the

Acquired Companies, or any of the Acquired Companies Employees (including any departure of any such employee).

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE BUYER AND ACQUISITION SUB

As a material inducement to the Company to enter into this Agreement and to consummate the transactions contemplated hereby, the Buyer and Acquisition Sub represent and warrant to the Company as follows:

Section 4.1 ***Organization of the Buyer and Acquisition Sub.*** The Buyer is a duly organized, validly existing limited partnership and in good standing under the laws of the State of Delaware and has all the requisite corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. Acquisition Sub is a duly organized, validly existing limited partnership and in good standing under the laws of the State of Delaware and has all the requisite partnership power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. Each of the Buyer and Acquisition Sub is qualified to do business in each jurisdiction in which the nature of its business requires it to be so qualified except to the extent the failure to so qualify would not, either individually or in the aggregate, have a material adverse effect on the ability of the Buyer or Acquisition Sub to perform its obligations under this Agreement.

Section 4.2 ***Authority.*** Each of the Buyer and Acquisition Sub has full authority, right, power and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of the Buyer or Acquisition Sub, as applicable, pursuant to or as contemplated by this Agreement and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer and Acquisition Sub of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action of the Buyer or Acquisition Sub, as applicable, and no other action on the part of the Buyer and Acquisition Sub is required in connection therewith. This Agreement and each agreement, document and instrument to be executed and delivered by the Buyer and Acquisition Sub pursuant to or as contemplated by this Agreement (including, without limitation, the Deposit Escrow Agreement and the Indemnification Escrow Agreement) constitute, or when executed and delivered will constitute, valid and binding obligations of the Buyer or Acquisition Sub, as applicable, enforceable in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the rules of law governing (and all limitations on) specific performance, injunctive relief and other equitable remedies. Except as provided in *Schedule 4.2*, and except as may result from any facts or circumstances relating solely to the Company, and assuming that all consents, approvals, authorizations and other actions set forth in Section 4.3 have been obtained and all filings and notifications set forth on *Schedule 4.3* have been made, the execution, delivery and performance by the Buyer and Acquisition Sub of this Agreement and each such agreement, document and instrument:

(a) do not and will not violate the terms of any organizational documents of the Buyer or Acquisition Sub, as applicable;

(b) do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to the Buyer or Acquisition Sub or require the Buyer or Acquisition Sub to obtain any approval, consent or waiver of, or make any filing with, any Person (governmental or otherwise) that has not been obtained or made, except for such violations as would not reasonably be expected to have a material adverse effect on the ability of Buyer or Acquisition Sub to perform its obligations under this Agreement; and

(c) do not and will not result in a material breach of, constitute a material default under, accelerate any material obligation under or give rise to a material right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which the Buyer or Acquisition Sub is a party or by which the property of the Buyer or Acquisition Sub is bound or affected, or result in the creation or imposition of any material mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets or properties of the Buyer or Acquisition Sub.

Section 4.3 ***Consents and Approvals***.

(a) To the Buyer's Knowledge, except as set forth on *Schedule 4.3*, the execution, delivery and performance of this Agreement by the Buyer and Acquisition Sub will not, as of the Closing Date, require any consent, approval, authorization or other action by, or filing with or notification to, any Governmental Authority, except (i) the notification requirements of the HSR Act, if applicable, (ii) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or (B) have a material adverse effect on the ability of the Buyer and Acquisition Sub to perform its obligations under this Agreement, and (iii) as may be necessary as a result of any facts or circumstances relating solely to the Company.

(b) To the Buyer's Knowledge, except as set forth on *Schedule 4.3*, the execution, delivery and performance of this Agreement by the Buyer and Acquisition Sub will not, as of the Closing Date, require any third-party consents, approvals, authorizations or actions, except (i) where the failure to obtain such consents, approvals, authorizations or actions would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or (B) have a material adverse effect on the ability of the Buyer or Acquisition Sub to perform its obligations under this Agreement and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Company.

Section 4.4 ***Litigation.*** Except as set forth on *Schedule 4.4* and except for routine litigation arising in the ordinary course of the Buyer's or Acquisition Sub's business, or to the Buyer's Knowledge that is adequately covered by insurance, there is no action, suit or proceeding, claim, arbitration or investigation pending against the Buyer or Acquisition Sub or, to the Buyer's Knowledge, threatened, which, if adversely determined, (a) would delay or prevent the consummation of the transactions contemplated by this Agreement, or (b) would be reasonably expected to have a material adverse effect on the ability of the Buyer or Acquisition Sub to perform its obligations under this Agreement.

Section 4.5 ***Financing.*** The Buyer will have available to it at the Closing, all funds necessary to consummate the transactions contemplated by this Agreement. The Buyer has heretofore furnished the Company with sufficient evidence, including true and complete copies of balance sheets of the Buyer and/or a financing commitment from the Buyer's third party financing sources as are attached hereto as *Schedule 4.5*, of its financial ability to consummate the transactions contemplated by this Agreement. The Buyer acknowledges and agrees that the Buyer's performance of its obligations under this Agreement is not in any way contingent upon the availability of financing to the Buyer, including the closing of the financing under any financing commitment obtained by the Buyer.

Section 4.6 ***Brokers.*** No broker, investment banker, financial advisor or other Person, other than Deutsche Bank Securities Inc., the fees and expenses of which will be paid by the Buyer, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based on any contacts made by the Buyer or any Affiliate or agent of the Buyer.

Section 4.7 ***ERISA Compliance***

(a) Neither the Buyer nor Acquisition Sub, nor any of the "affiliates" of either (within the meaning of Part V(c) of Prohibited Transaction Class Exemption ("***PTCE***") 84-14, granted pursuant to Section 408(a) of ERISA) has, or during the immediately preceding year has exercised, the authority to appoint or terminate AEW Capital Management, L.P. ("***AEW***") as manager of any of the assets of any of the "Applicable Plans" identified below, or to negotiate the terms of any management agreement with AEW (including renewals or modifications thereof) on behalf of any such Applicable Plan. Neither the Buyer nor Acquisition Sub is "related" to AEW within the meaning of Parts I(d) and V(h) of PTCE 84-14. For purposes of this Section 4.7, the "Applicable Plans" are the plans that participate in either the Telephone Real Estate Equity Trust or the Harbor Capital Group Trust for Defined Benefit Plans.

Section 4.8 ***Buyer's Knowledge; Disclosure***.

(a) Whenever a representation or warranty made by the Buyer herein refers to the knowledge of the Buyer, or to the "***Buyer's Knowledge***," the accuracy of such representation shall be based solely on the actual knowledge of the following officers of The Macerich Company, the general partner of the Buyer: Arthur M. Coppola, President and Chief Executive Officer, Edward C. Coppola, Executive Vice President, Thomas E. O'Hern, Chief Financial Officer, Treasurer and Executive Vice President, and Richard A. Bayer, General Counsel, Secretary and Executive Vice President (each a "***Buyer Knowledge Party***") and shall not be construed to refer to the knowledge of any other officer, agent, partner or employee of the Buyer or of any Affiliate of the Buyer or to impose or have imposed upon any Buyer Knowledge Party any duty to investigate the matters to which such knowledge, or the absence thereof, pertains including, without limitation, the contents of any files, documents or materials made available to or otherwise disclosed to the Company or the contents of files maintained by any Buyer Knowledge Party. Whenever a representation provides that the Buyer has not received notice of a fact or event or words of similar import, the accuracy of such representation shall be based solely on the actual receipt by a Buyer Knowledge Party of such notice or on the receipt of such notice by another employee of the Buyer or an Affiliate of the Buyer where a Buyer Knowledge Party has actual knowledge that such notice has been received by such other employee of the Buyer or an Affiliate of the Buyer.

(b) Notwithstanding anything to the contrary contained in this Agreement or in any of the schedules prepared by the Buyer and attached hereto (the "***Buyer Disclosure Schedules***"), any information disclosed on one Schedule shall be deemed to be disclosed on another Schedule provided that specific cross-references are made to such other Schedule. Certain information set forth in the Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Buyer in this Agreement or that it is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Buyer. The Buyer has prepared the Buyer Disclosure Schedules in good faith and without regard to any applicable "materiality" qualifier; *provided*, *however*, that notwithstanding such standard of preparation, nothing contained herein shall limit or otherwise qualify the standard of the representations and warranties contained in Sections 4.1 through 4.7 hereof for the purposes of determining the existence of a breach of any such representation or warranty.

ARTICLE V
CERTAIN COVENANTS AND AGREEMENTS OF THE BUYER, ACQUISITION SUB AND THE COMPANY

Section 5.1 ***Conduct of Business Prior to Closing***.

(a) The Company covenants and agrees that, between the date hereof and the Closing Date, it shall use commercially reasonable efforts to cause the Acquired Companies and the Affiliated Property Owners to operate in the ordinary course of business, consistent with past practice and substantially consistent with the Company's annual budget and business plan for 2002 (the "***Budget***"), which are attached as *Schedule 5.1(a)* hereto, except as otherwise provided in this Agreement.

(b) In furtherance and not in limitation of the foregoing, the Company covenants and agrees that, except as described in *Schedule 5.1(b)*, the Acquired Companies will not, and the Company will use commercially reasonable efforts to cause the Affiliated Property Owners to not, prior to the Closing, without the consent of the Buyer, which consent shall not be unreasonably withheld, take any of the following actions:

(i) Make any purchase, sale or disposition (or trigger any contractual rights with respect to the purchase, sale or disposition) of any property or interest therein (other than easements and similar grants in the ordinary course of business), with a purchase price in excess of $200,000 individually or $2,000,000 in the aggregate, except as provided in the Budget and provided that all proceeds remain in one of the Acquired Companies or Affiliated Property Owners, as the case may be, and are not distributed pursuant to Section 2.8, (other than the proceeds of transactions described in *Schedule 5.1(b*), which will be distributed pursuant to Section 2.8) or mortgage, pledge, subject to a voluntary lien or otherwise voluntarily encumber (except for statutory mechanics', carriers', suppliers' workmen's or repairmen's liens) any of the Properties or other material assets, except for any such Encumbrance which, by its terms, will be terminated or otherwise be extinguished at or prior to the Closing;

(ii) Incur any material contingent liability as a guarantor or otherwise with respect to the obligations of others, or incur any other material contingent or fixed obligations or liabilities, other than in the ordinary course of business and draws on existing commitment facilities;

(iii) Make any change or incur any obligation to make a change to the Company's certificate of limited partnership, the Limited Partnership Agreement or in the rights and obligations of any outstanding Interests or to the partnership agreement, operating agreement or other organizational documents governing any other Acquired Company or any Affiliated Property Owner;

(iv) Make any change in the compensation payable or to become payable to any of the Acquired Companies Employees, agents or independent contractors who receive total annual compensation of $100,000 or more, other than as contemplated in the Budget or otherwise in the ordinary course of business consistent with past practice or in accordance with the existing terms of contracts entered into prior to the date

of this Agreement;

(v) Amend, modify or terminate any contract or agreement disclosed pursuant to Section 3.12(a) hereof except in the ordinary course of business consistent with past practice or as otherwise contemplated by this Agreement;

(vi) Change in any material respect, any accounting principles, policies or practices used by it relating to the Acquired Companies, except for (A) the write-off (if any) of goodwill, and

(B) any change required by reason of a concurrent change in GAAP and notice of which is given in writing by the Company to the Buyer;

(vii) Merge or consolidate with or agree to merge or consolidate with, nor purchase or agree to purchase all or substantially all of the assets of, or otherwise acquire, any other party, or cause a dissolution or terminate the existence of any Acquired Company or Affiliated Property Owner;

(viii) Authorize for issuance, issue, sell or deliver any additional equity of any Acquired Company or any Affiliated Property Owner or any securities or obligations convertible into equity of any Acquired Company or any Affiliated Property Owner or issue or grant any option, warrant or other right to purchase any equity of any Acquired Company or any interest of an Acquired Company in any Affiliated Property Owner, or make any capital call (other than the capital call referenced in Section 3.3 hereof) with respect to any Affiliated Property Owner, unless obligated to do so;

(ix) Assign, transfer, convey or grant an Encumbrance on any equity held by any of the Acquired Companies in any other Acquired Company or any Affiliated Property Owner;

(x) Modify, amend or alter any existing credit facilities in a manner materially adverse to the Company, or increase the amount that can be borrowed under any construction loan, the obligations with respect to which will remain with any Acquired Company or Affiliated Property Owner after the Closing Date;

(xi) Cause a material default by an Acquired Company or Affiliated Property Owner under any existing material agreement or contract of such Acquired Company or Affiliated Property Owner;

(xii) Execute or otherwise enter into any construction or development agreement requiring a payment in excess of $200,000 except as otherwise provided in the Budget;

(xiii) Take any affirmative action, or affirmatively fail to take any action, necessary to maintain in all material respects all material permits, licenses and authorizations required by applicable Law for the operation of the Acquired Companies, the Affiliated Property Owners and the Properties as currently operated;

(xiv) Enter into or modify in any material respect any Lease demising more than 10,000 square feet or any reciprocal easement agreement or similar agreement affecting a Property;

(xv) Agree to any imposition of any Encumbrance on any of the Interests;

(xvi) Take any action that would cause any present employees of any of the Acquired Companies to become unavailable (other than in the ordinary course of business) or that would materially and adversely affect the goodwill of any suppliers or customers of the Acquired Companies or Affiliated Property Owners;

(xvii) Make any new elections with respect to Taxes or change any current elections with respect to Taxes that affect any of the Acquired Companies or Affiliated Property Owners;

(xviii) Settle any litigation or claim involving an uninsured liability in excess of $250,000 (other than the Specified Litigation);

(xix) Enter into any agreement or understanding that would prohibit, restrict or interfere with the transactions contemplated in this Agreement;

(xx) Fail to maintain in full force and effect all insurance coverage listed on Schedule 3.16, except where such failure is caused by default or failure of the insurers;

(xxi) Use the proceeds of any construction loan for any purpose other than the construction of the applicable Property under development, or for tenant allowances for such Property, as provided in the Budget; and

(xxii) Agree or make any commitment to take any of the actions prohibited by this Section 5.1.

Section 5.2 ***Access to Information***.

(a) From the date hereof until the Closing Date, upon reasonable advance notice, the Company shall, and shall cause each Subsidiary and each of their respective Representatives (as hereinafter defined) to, (i) afford the Representatives of the Buyer and Acquisition Sub reasonable access, during normal business hours, to the books and records of the Acquired Companies and to those Representatives of the Acquired Companies who have material, relevant knowledge pertaining to the Properties or the Acquired Companies or the Affiliated Property Owners including, without limitation, access to enter upon and perform the physical and environmental inspections on the Properties contemplated by Section 2.10 hereof,

(ii) provide any addition financial statements that may be required by the Buyer or its Affiliates to comply with the reporting requirements of the SEC under Regulations S-K and S-X, and cause its independent public accountants to cooperate in providing an opinion with respect to the Financial Statements and any additional audited financial statements the Buyer may require for such purposes, and (iii) furnish to the Representatives of the Buyer and Acquisition Sub such additional financial and operating data (which data shall include, subject to clause (D) of the proviso below, monthly financial statements prepared in accordance with GAAP on the same basis as the Financial Statements and such other financial and operating data as is provided to the Company's management on a monthly basis) and such other information regarding the Acquired Companies as the Buyer or Acquisition Sub may from time to time reasonably request; *provided, however,* that (A) such investigation shall not unreasonably interfere with any of the businesses or operations of the Acquired Companies or the Affiliated Property Owners, (B) the Buyer and Acquisition Sub shall not, prior to the Closing Date, have any contact whatsoever with respect to the Acquired Companies or the Affiliated Property Owners or with respect to the transactions contemplated by this Agreement with any partner, lender, ground lessor, tenant (included ground lessees), vendor or supplier of the Acquired Companies, except in consultation with the Company and then only with the express prior approval of the Company, which shall not be unreasonably withheld, (C) all requests by the Buyer and Acquisition Sub for access or information pursuant to this Section 5.2(a) shall be submitted or directed exclusively to an individual or individuals to be designated by the Company, and (D) the Company shall not be required to deliver periodic financial information other than consistent with past practice, which, in the case of any Property, consists of monthly financial statements and, in the case of any Affiliated Property Owner, consists of quarterly financial statements. The Buyer and Acquisition Sub shall not be permitted to conduct any invasive tests on any Property without the Company's prior written consent, which shall not be unreasonably withheld. Each of the Buyer and Acquisition Sub agrees to indemnify the Acquired Companies and the Affiliated Property Owners from and against any and all Losses suffered by the Acquired Companies and the Affiliated Property Owners as a result of any physical or environmental damage or injury to persons caused by the Buyer and Acquisition Sub during the conduct of the investigations and inspections contemplated hereby (it being understood that such indemnity shall not apply to discovery by the Buyer or Acquisition Sub of any existing matters if the discovery thereof imposes liability the Company or any other indemnified party).

(b) In order to facilitate the resolution of any claims made by or against or incurred by the Partners after the Closing in respect of their ownership of the Acquired Companies or for any

other reasonable purpose, for a period of seven (7) years following the Closing, the Buyer and Acquisition Sub shall, and shall cause the Acquired Companies and the Affiliated Property Owners to, (i) retain the books and records of the Buyer, Acquisition Sub, the Acquired Companies or the Affiliated Property Owners, as the case may be, and their operations for periods prior to the Closing and which shall not otherwise have been retained by the Partners and (ii) upon reasonable notice, afford the Representatives of any Partner reasonable access (including the right to make photocopies, at the expense of such Partner), during normal business hours, following reasonable notice thereof, to such books and records.

Section 5.3 ***Confidentiality.*** Subject to the requirements of applicable Law and the requirements of any securities exchange on which a party's securities may be listed, and except as may be disclosed in a press release consented to in writing by both parties in accordance with Section 5.6, until the Closing, the parties hereto will, and will instruct each of their respective Affiliates, associates, partners, employees, directors, officers, agents, counsel, auditors, investment bankers, representatives and advisors (the "***Representatives***") to, (a) hold in strict confidence all such information as is confidential or proprietary, (b) use such information only in connection with the consummation of the transactions contemplated by this Agreement and, (c) if this Agreement is terminated in accordance with its terms, will deliver promptly to the party initially providing such confidential information (or destroy and certify to such other party the destruction of) all copies of such information (and any copies, compilations or extracts thereof or based thereon) then in their possession or under their control. Each party hereto agrees that money damages would not be a sufficient remedy for any breach of this Section 5.3 by the other party hereto or any of its Representatives, and that, in addition to all other remedies, such non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and each such party further agrees to waive and to use its best efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with any such remedy. Each party agrees to be responsible for any breach of this Section 5.3 by any of its Representatives. Nothing contained in this Section 5.3 shall affect, modify or otherwise limit the respective agreements and other obligations of the Buyer, on the one hand, and the Company, on the other, contained in that certain Confidentiality Agreement dated as of March 4, 2002 or any other agreement of a party with respect to the confidentiality of information relating to the Acquired Companies or the Properties (collectively, the "***Confidentiality Agreement***"), which Confidentiality Agreement shall remain in full force and effect.

Section 5.4 ***Regulatory and Other Authorizations; Consents***.

(a) The Company shall use its reasonable best efforts to obtain (or cause the Acquired Companies or Affiliated Property Owners, as applicable, to obtain) the authorizations, consents, orders and approvals listed on *Schedule 3.6*, and the Buyer shall cooperate fully with the Company in promptly seeking to obtain all such authorizations, consents, orders and approvals.

(b) The Buyer shall use its commercially reasonable efforts to assist the Company in obtaining the consents of third parties listed in *Schedule 3.6*, including (i) providing to such third parties such financial statements and other financial information as such third parties may reasonably request, and (ii) executing agreements to effect the assumption of such agreements on or before the Closing Date effective from and after the Closing Date.

Section 5.5 ***Further Action.*** Each of the parties hereto shall use its respective reasonable best efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement.

Section 5.6 ***Press Releases.*** The parties hereto will, and will cause each of their Affiliates to, maintain this Agreement confidential and will not, and will cause each of their Affiliates not to, issue or cause the publication of any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld; *provided, however,* that nothing herein will prohibit the Company or the Buyer from issuing or causing publication of any such press release or public announcement to the extent that such party reasonably determines, after consultation with outside legal counsel, such action to be required by Law or the rules of any applicable self-regulatory organization, in which event such party will use its reasonable best efforts to allow the other party reasonable time to comment on such release or announcement in advance of its issuance.

Section 5.7 ***No Solicitation***

(a) Unless and until this Agreement shall have been terminated in accordance with its terms, the Company agrees and covenants that the Company shall not, and shall direct and use its reasonable best efforts to cause its Representatives not to, directly or indirectly, initiate, solicit or encourage any inquiries or the making or implementation of any proposal or offer, or negotiate or enter into any agreement (or provide any information that would facilitate any such proposal or offer) with respect to a merger, acquisition or similar transaction involving the purchase of the Acquired Companies or the Acquired Companies interests in Affiliated Property Owners, all or substantially all of the Properties or all or substantially all of the Interests, or any other transaction that would prevent, frustrate or make impossible the consummation of the transactions contemplated by this Agreement. Upon receiving any such proposal or offer, or any request for information, the Company shall promptly notify the Buyer.

(b) From the date of this Agreement until the earlier of the Closing or one year from the date of this Agreement, the Buyer shall not, and use its reasonable best efforts to ensure that its Representatives do not, directly or indirectly, (i) solicit for employment or employ any officer, employee or consultant of any of the Acquired Companies or the Affiliated Property Owners, (ii) encourage, induce or attempt to induce any officer, employee or consultant of any of the Acquired Companies or the Affiliated Property Owners to terminate his or her employment or consulting relationship with any of the Acquired Companies or Affiliated Property Owners, as applicable, (iii) interfere with the business or operations of any of the Acquired Companies or Affiliated Property Owners, or (iv) take or fail to take any actions that would reasonably be expected to adversely affect the Acquired Companies' or Affiliated Property Owners' business, tenants or joint venture partners relationships with its tenants or joint venture partners or goodwill.

Section 5.8 ***Tax Returns***.

(a) Subject to Section 5.8(b) hereof, the Buyer shall timely and properly prepare and file, or cause to be prepared and filed, on or before the due date or any extension thereof all Tax Returns required to be filed by the Company with respect to taxable periods ending on or before the Closing Date. The parties agree that the amounts payable to the employees by the Company or the Partners pursuant to Section 5.9(d) hereof shall be a compensation deduction by the Company with respect to the period ending on the Closing Date as specified in the instructions with respect to such payments delivered by the Company or the Partners pursuant to Section 5.9(d) hereof. Any Taxes due by the Acquired Companies shown on such returns attributable to periods ending on or before the Closing Date, to the extent that sufficient cash to pay such liability has not been retained by the Company pursuant to an accrued tax liability, shall be subject to Section 7.2. The income of the Acquired Companies will be apportioned to the period up to and including the Closing Date and the period after the

Closing Date by closing the books of the Acquired Companies as of the end of the Closing Date.

(b) Treasury Form 1065 for the Company and each of its Subsidiaries for calendar year 2002, or any portion of such year up to the Closing Date, shall be prepared by the Buyer substantially in accordance with past methods and practices of the Company and its Subsidiaries by no later than thirty (30) days prior to the due date for such return (including any extension of such due date). A draft of such return shall be submitted to each of the Partners holding Class A Interests and a representative of the Partners holding Class B Interests for review and comment, which comments must be submitted to the Buyer no later than ten (10) days prior to the due date for such return (including any extension of such due date). The Buyer shall take into consideration any comments received in finalizing such returns but shall not be bound to adopt any such comments. After the Closing, the Partners shall, and shall cause their respective Affiliates to, cooperate fully with the Buyer in connection with any tax investigation or audit relating to the Acquired Companies. Any information obtained pursuant to this Section 5.8 or pursuant to any other Section hereof providing for the sharing of information or the review of any Tax Return or other schedule relating to taxes shall be subject to Section 5.3 hereof.

(c) The Buyer and the Company shall agree, on or prior to the Closing Date, on the allocation of the total consideration being paid by the Buyer (including the assumption of liabilities) among all of the Properties and other assets of the Acquired Companies and Affiliated Property Owners.

Section 5.9 ***Employee Matters***.

(a) *Employees*.

(i) The Buyer shall ensure that all persons who were employed by the Acquired Companies immediately preceding the Closing Date, including those on vacation, leave of absence or disability (the "***Acquired Companies Employees***"), will remain employed in a comparable position on and immediately after the Closing Date for such period of time as determined by the Buyer, at not less than the same base rate of pay and bonus opportunity.

(ii) To the extent permissible under applicable law and to the extent that service is relevant for purposes of eligibility and vesting under any employee benefit plan, program or arrangement established or maintained by the Buyer (other than benefit accrual under any defined benefit pension plan) following the Closing Date for the benefit of Acquired Companies Employees, at such time as any employee benefit plan, program or arrangement is made available to Acquired Companies Employees, such plan, program or arrangement shall credit such employees for service on or prior to the Closing Date that was recognized by the Acquired Companies for purposes of employee benefit plans, programs or arrangements (including vacation policies) maintained by any of them. In addition, with respect to any welfare benefit plan (as defined in Section 3(1) of ERISA) established or maintained by the Buyer following the Closing Date for the benefit of Acquired Companies Employees, the Buyer shall use reasonable best efforts to request its insurer to waive any pre-existing condition exclusions and provide that any covered expenses incurred during the 2002 plan year on or before the Closing Date by an Acquired Company Employee or by a covered dependent shall be taken into account for purposes of satisfying applicable deductible coinsurance and maximum out-of-pocket provisions after the Closing Date.

(iii) The Buyer agrees that either the Buyer or the Acquired Companies will make COBRA continuation coverage available to individuals who are COBRA qualified beneficiaries under the Benefit Plans immediately prior to the Closing Date.

(b) *Employee Benefits*. Following the Closing Date, the Buyer shall provide the Acquired Companies Employees with benefits that are no less favorable, in the aggregate, to the benefits provided under the Benefit Plans as in effect immediately prior to the Closing Date, except to the extent described in (c) below.

(c) *Other Employee Benefits*. From and after the Closing Date, the Buyer shall and will cause the Acquired Companies to honor in accordance with their terms (i) all of the Employment Agreements, including without limitation all obligations to make severance payments provided in such employment agreements; and (ii) all of the severance agreements or arrangements between any of the Acquired Companies and the Acquired Companies Employees in effect as of the date hereof and listed on *Schedule 3.12*; and the Buyer will not, and will not cause any of the Acquired Companies to, challenge the validity of any obligation of any of the Acquired Companies under any such severance agreements or arrangements and employment agreements. The Buyer and the Acquired Companies acknowledge and agree that the Merger constitutes a "Change in Control" as defined in the Employment Agreements, the Westcor Realty Limited Partnership 1998 Management Incentive Compensation Plan, as amended (the "***1998 Incentive Plan***") and the Westcor Realty Limited Partnership 1998 Phantom Equity Participation Plan (the "***1998 Equity Plan***").

(d) *Management Plans*. With respect to the 1998 Equity Plan and the 1998 Incentive Plan, the parties acknowledge and agree that, as a result of the Merger, all Awards (as defined in the 1998 Equity Plan and the 1998 Incentive Plan) will be fully earned, subject to the following sentence. At or prior to the Closing, the Company or Westcor Partners, L.L.C. shall make adequate provision (including, without limitation, appropriately funding the Holdback Escrow pursuant to Section 2.7(f)) for the payment of each Award (as calculated under the 1998 Equity Plan with reference to a Change in Control transaction) to each Participant (as defined in the 1998 Equity Plan and the 1998 Incentive Plan) such that payment of such Awards shall occur as soon as practicable following the Closing and a verification of financial results. Payment for all such Awards shall be funded through an escrow account established by the Partners (the "***Holdback Escrow***"), and the Partners agree that, as between the Partners and the Buyer, the Partners shall be liable for such payment. The Buyer agrees to grant the Partners and their Representatives reasonable access following the Closing (upon reasonable notice) to the books and records of the Company relating to pre-Closing periods solely for the purpose of conducting the verification of financial results necessary prior to payment of the Awards. Solely as a matter of administrative convenience, the Buyer agrees that, upon the receipt of notice from the Indemnification Representative, the payment of all or a portion of such Awards (as specified in such notice) shall be processed through the Buyer's payroll as compensation payments following the Closing, and the Partners shall severally, but not jointly, indemnify the Buyer for any Losses that the Buyer incurs with respect to the payment or non-payment of, or any claim related to, any Award, which indemnification obligation shall not be subject to any threshold or limitation in amount or time otherwise provided in this Agreement. The Indemnification Representative shall provide to the escrow agent responsible for the Holdback Escrow, which shall then provide to the Buyer, information as to the amount of the Award payable to each Participant, including the amount of all required tax withholdings, and Buyer's sole responsibility is to process such payments pursuant to the instructions.

(e) *Indemnity*. Anything in this Agreement to the contrary notwithstanding, the Buyer hereby agrees to indemnify the Partners and their respective Affiliates against and hold the Partners

and their respective Affiliates harmless from any and all Losses arising out of or otherwise in respect of (i) any claim made or arising after the Closing by any Acquired Companies Employee against the Partners or any of their respective Affiliates for any severance or termination benefits pursuant to the provisions of the severance arrangements and employment agreements disclosed on *Schedule 3.12*, (ii) any action taken after the Closing by the Buyer with respect to any plan (including any Benefit Plan), (iii) any claim for payments or benefits by Acquired Companies Employees or their beneficiaries under any Benefit Plan arising after the Closing, and (iv) any failure of the Buyer to discharge its obligations under this Article V (but excluding the Partners' several obligations to fund and pay the Awards in accordance with Section 5.9(d) hereof, and to indemnify the Buyer for any claims with respect to such Awards).

(f) *No Third Party Beneficiaries*. No provision contained in this Agreement shall create any third party beneficiary rights in any employee or former employee (including any beneficiary or dependent thereof) of any Acquired Company in respect of continued employment (or resumed employment) for any specified period of any nature or kind whatsoever.

Section 5.10 ***Conveyance Taxes; Costs.*** The Buyer shall be liable for and shall hold the Company and the Partners harmless against any transfer, value added, excise, stamp, recording, registration and any similar Taxes that become payable in connection with the transactions contemplated hereby. Notwithstanding the foregoing, the Partners severally, and not jointly, shall be liable for and hold the Buyer harmless against certain city, county, municipal or local conveyance Taxes (the ***"Municipal Taxes"***) to the extent such Municipal Taxes are actually incurred; provided that the Buyer (a) shall timely prepare, or cause to be prepared, any Tax Returns with respect to such Municipal Taxes (or any transaction giving rise or purportedly giving rise to such Municipal Taxes) required to be filed by applicable Law, in each case, in form and substance reasonably satisfactory to the Company and the Indemnification Representative, on behalf of the Partners, and otherwise cooperate in good faith with the Company and the Indemnification Representative, as the case may be, in such preparation of such Tax Returns, (b) shall timely file, or cause to be filed, such Tax Returns with the appropriate Governmental Authorities, and (c) shall otherwise cooperate in good faith with the Company and the Indemnification Representative in the preparation and filing of such Tax Returns; provided further that (1) the Buyer shall promptly notify the Indemnification Representative of any notice of a proposed assessment or claim in an administrative, judicial or other proceeding that, if determined adversely to the taxpayer, would be grounds for indemnification under this sentence, and (2) the Indemnification Representative (on behalf of the Partners), at its option, shall have the right to defend any administrative, judicial or other proceeding in such manner as it may deem appropriate with respect to such claimed Municipal Taxes. Without limiting the parties' rights set forth in the preceding sentences, the Buyer and the Company agree to use good faith efforts to agree upon and establish a mutually acceptable escrow arrangement that will be in addition to any other escrow arrangement provided for hereunder and will serve as the sole remedy for satisfying the Partners' obligations under this Section 5.10. The Buyer's right to indemnification pursuant to this Section 5.10 is and shall be deemed to be a right to indemnification under Article VII hereof. Notwithstanding the foregoing, this Section 5.10 shall terminate and be of no further force and effect to the extent that the Company, prior to the Closing Date, pays amounts due pursuant to or obtains estoppels or other releases from the Governmental Authorities applicable to such Municipal Taxes. The inclusion of this Section 5.10 is not an admission by any party hereto that any Acquired Company, Affiliated Property Owner, Property or any party hereto, or the Merger or any other transaction contemplated hereunder, is subject to any Municipal Tax or to any other Tax liability related thereto.

Section 5.11 ***Existing Partnership Indemnification Rights***. Subject to applicable Law and the rules of any securities exchange on which the Buyer's securities may be listed, the Buyer agrees to honor and to continue in full force and effect all rights to exculpation and indemnification existing in favor of, and

all limitations on the personal liability of, the general partner, the limited partners and the members of the "management committee" (as such term is used in the Limited Partnership Agreement) of the Company and each of their respective Representatives as of the Closing (the "***Indemnified Persons***") provided for in the Limited Partnership Agreement as in effect as of the date hereof, including without limitation the provisions of Sections 8.4 and 8.5 of the Limited Partnership Agreement, with respect to matters occurring prior to and through the Closing, and specifically including the transactions contemplated hereby, for a period of six (6) years from the Closing; *provided*, *however*, that all rights to indemnification in respect of any claims (each, a "***Claim***") asserted or made within such period shall continue until the disposition of such Claim. Following the Closing, the Buyer shall not, and shall not permit the Surviving Partnership to, amend or modify the certificate of limited partnership or limited partnership agreement of the Surviving Partnership if the effect of such amendment or modification would be to lessen or otherwise adversely affect the exculpation or indemnification rights of such Indemnified Persons or limitation of liability of such Indemnified Persons as provided therein. In the event that the Surviving Partnership transfers all or substantially all of its properties and assets to any Person or Persons in one or a series of transactions (whether by merger, sale of equity interests, sale of assets or other legal structure), then and in each such case, proper provision shall be made so that the transferee of such properties or assets shall assume the obligations of the Surviving Partnership under this Section 5.11**.** This Section 5.11 is intended to benefit each of the Indemnified Persons and their respective heirs, successors, assigns and personal representatives, each whom shall be entitled to enforce the provisions hereof and, notwithstanding anything in this Agreement to the contrary, each of whom shall be deemed and is expressly made third party beneficiaries under and with respect to this Agreement.

Section 5.12 ***Notice of Certain Facts.*** From the date of this Agreement until the Closing, each party shall promptly notify and inform the other of any material variance or incorrect statement in the representations and warranties contained in Article III of this Agreement discovered by such party or its Representatives, and shall use commercially reasonable efforts to remedy the same. Upon reasonable notice to the other party, either party may supplement its schedules to this Agreement from time to time prior to the Closing with respect to any matter that, if existing or occurring at or prior to the Closing Date, would have been required to be set forth on such party's schedules or that is necessary to complete or correct any information contained in any representation or warranty made by such party, provided that any such supplement shall not serve to cure any breach of or inaccuracy in a representation or warranty previously made by the disclosing party, and shall not be deemed or construed as a waiver of the non-disclosing party's rights with respect to any such breach or inaccuracy.

Section 5.13 ***Resolution of Certain Litigation.*** The Partners shall severally, and not jointly, indemnify the Buyer against Losses incurred by the Buyer following Closing that are related to and arise out of that certain litigation matter referenced in Item A.1. on *Schedule 3.7* (the "***Specified Litigation***"). Without limiting the foregoing, the parties hereto agree to use good faith efforts to agree upon and establish an escrow arrangement, which will be in addition to any other escrow arrangement provided for hereunder, and will serve as the sole remedy for satisfying the Partners' obligations under this Section 5.13. The Buyer's right to indemnification pursuant to this Section 5.13 is and shall be deemed to be a right to indemnification under Article VII hereof. Notwithstanding the foregoing, this Section 5.13 (and the Partners' obligations hereunder) shall terminate and be of no further force and effect in the event that the Company, prior to the Closing Date, settles the Specified Litigation without ongoing obligations of any Acquired Company or Affiliated Property Owner or the Specified Litigation is dismissed with prejudice by, or the subject of a final non-appealable order of, a court of competent jurisdiction. The inclusion of this Section 5.13 is not an admission by any party hereto that any Acquired Company, Affiliated Property Owner, Property or any party hereto, is subject to any liability to any third party whatsoever with respect to the Specified Litigation.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.1 ***Conditions to the Obligations of Each Party.*** The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver (in writing), at or prior to the Closing, of each of the following conditions, any or all of which may be waived, in whole or in part by the parties hereto (but only to the extent that such matter is a precondition to the obligations of such waiving party), to the extent permitted by applicable law:

(a) *Governmental Approval*. The Buyer, Acquisition Sub and the Company shall have timely obtained from each Governmental Authority all approvals, waivers and consents listed on *Schedule 6.1* hereto (the "***Required Approvals***"); and

(b) *No Order.* No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) that is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting consummation of such transactions, or that would reasonably be expected to have a Material Adverse Effect. In the event an injunction or other order shall have been issued, each party agrees to use its reasonable best efforts to have such injunction or other order lifted.

Section 6.2 ***Conditions to Obligations of the Company.*** The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) *Representations and Warranties*. Each of the representations and warranties of the Buyer and Acquisition Sub contained in this Agreement that are qualified as to materiality shall be true and correct in all respects and all other representations and warranties of the Buyer and Acquisition Sub contained in this Agreement shall be true and correct in all material respects, in each case on and as of the Closing Date, with the same effect as though made on and as of the Closing Date, except to the extent such representations and warranties are specifically made as of a particular date or as of the date of this Agreement (in which case such representations and warranties shall be true and correct as of such date), in all cases without giving effect to any supplement to the Buyer Disclosure Schedules; and the Company shall have received a certificate dated as of the Closing Date executed by a duly authorized officer of the Buyer and the general partner of Acquisition Sub certifying to such effect, although such certificate shall give full effect to any supplement to the Buyer Disclosure Schedules;

(b)

Covenants. All covenants contained in this Agreement to be performed or complied with by the Buyer or Acquisition Sub on or before the Closing shall have been performed or complied with in all material respects, and the Company shall have received a certificate dated as of the Closing Date executed by duly authorized officer of the Buyer and the general partner of Acquisition Sub certifying to such effect, although such certificate shall give full effect to any supplement to the Buyer Disclosure Schedules;

(c) *Consents*. The Buyer and Acquisition Sub, as applicable, shall have received those material consents to the transactions contemplated hereby listed on *Schedule 6.2* hereto;

(d) *Legal Opinion*. The Company shall have received from counsel to the Buyer and Acquisition Sub an opinion substantially in the form of *Exhibit E* attached hereto addressed to the Company and dated as of the Closing Date;

(e) *Secretary's and General Partner's Certificates*. The Company shall have received a certificate from each of the secretary of the Buyer and the general partner of Acquisition Sub, dated as of the Closing Date, certifying as to such entity's respective organization documents, the incumbency of its respective officers or other signatories and the resolutions adopted by, with respect to the Buyer, the board of directors and stockholders, if applicable, and with respect to Acquisition Sub, the general partner and limited partners, if applicable.

(f) *Indemnification Escrow Agreement*. The Buyer shall have entered into the Indemnification Escrow Agreement.

(g) *Deposit*. The Buyer and the Company shall have delivered joint written instructions to the Escrow Agent directing it to deliver the Deposit into the Indemnification Escrow Amount and the Escrow Agent shall have complied with such instructions.

(h) *Pre-Closing Distribution*. Pre-Closing Distributions shall have occurred in accordance with Section 2.8 hereof.

Section 6.3 ***Conditions to Obligations of the Buyer and Acquisition Sub.*** The obligations of the Buyer and Acquisition Sub to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by the Buyer or Acquisition Sub, at or prior to the Closing, of each of the following conditions:

(a) *Representations and Warranties*. Each of the representations and warranties of the Company contained in this Agreement that are qualified as to materiality shall be true and correct in all respects and all other representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects, in each case on and as of the Closing Date, with the same effect as though made on and as of the Closing Date, except to the extent such representations and warranties are specifically made as of a particular date or as of the date of this Agreement (in which case such representations and warranties shall be true and correct as of such date), in all cases without giving effect to any supplement to the Company Disclosure Schedules; and the Buyer shall have received a certificate dated as of the Closing Date executed by the general partner of the Company certifying to such effect, although such certificate shall give full effect to any supplement to the Company Disclosure Schedules.

(b) *Covenants*. All covenants contained in this Agreement to be performed or complied with by the Company on or before the Closing shall have been performed or complied with in all material respects, and the Buyer shall have received a certificate dated as of the Closing Date executed by the general partner of the Company certifying to such effect, although such certificate shall give full effect to any supplement to the Company Disclosure Schedules.

(c) *Consents*. The Company shall have received those material consents to the transactions contemplated hereby listed on *Schedule 6.3* hereto.

(d) *Legal Opinion*. The Buyer and Acquisition Sub shall have received from counsel to the Company an opinion substantially in the form of *Exhibit F* attached hereto addressed to the Buyer and Acquisition Sub dated as of the Closing Date.

(e) *Secretary's Certificate*. The Buyer and Acquisition Sub shall have received a certificate from the Secretary of the Company, dated as of the Closing Date, certifying as to the Company's organization documents, the incumbency of its officers or other signatories and the resolutions adopted by the management committee.

(f) *Indemnification Escrow Agreement*. The Company shall have entered into the Indemnification Escrow Agreement.

(g) *Deposit*. The Buyer and the Company shall have delivered joint written instructions to the Escrow Agent directing it to deliver the Deposit into the Indemnification Escrow Amount and the Escrow Agent shall have complied with such instructions.

(h) *No MAE*. No event or occurrence shall have occurred that individually or in the aggregate shall have had or would reasonably be expected to have a Material Adverse Effect.

(i) *Funding of Awards*. After giving effect to any transfer to the Holdback Escrow pursuant to Section 2.7(f) hereof, funds sufficient to pay all Awards under the 1998 Equity Plan and the 1998 Incentive Plan shall be in escrow and available for disbursement to participants of each such plan in accordance with Section 5.9 hereof.

(j) *Termination of Contracts with Interested Persons*. The Company and the Partners shall have terminated, without further liability or obligation to any Acquired Company, the contracts and agreements with Affiliates listed on Schedule 6.3(j).

ARTICLE VII
INDEMNIFICATION

Section 7.1 ***Survival***

(a) Subject to the limitations and other provisions of this Agreement, the representations and warranties of the parties hereto contained herein, as the case may be, shall survive the Closing and shall remain in full force and effect, until the close of business on the date that is one year from the Closing Date. There shall be no limitation as to time for any claims (i) based on fraud or intentional misrepresentation, or (ii) with respect to Section 2.8, 5.9(d), 5.10 and 5.13.

(b) Subject to the limitations and other provisions of this Agreement, each covenant and agreement of the parties hereto contained herein shall survive the Closing and shall remain in full force and effect until (i) the close of business on the date that is one year from the Closing Date, or (ii) if specified herein, until the end of the applicable period specified elsewhere in this Agreement with respect to such covenant or agreement.

Section 7.2 ***Indemnification by the Partners***.

(a) The Partners agree, subject to the other terms and conditions of this Agreement, to severally (pro rata in accordance with their Interests), but not jointly**,** indemnify the Buyer and its Affiliates, officers, directors, employees, agents, successors and assigns (each a "***Buyer Indemnified Party***") against and hold them harmless from all Losses arising out of (i) the breach of, or inaccuracy in, any representation or warranty of the Company contained in this Agreement or in any certificate, instrument or other document or agreement delivered by or

on behalf of the Company to the Buyer pursuant to Section 6.3 of this Agreement, and (ii) any breach of or failure to perform any covenant or agreement of the Company contained herein or in any such certificate, instrument, document or agreement. Notwithstanding anything to the contrary contained in this Article VII, but subject to the last sentence of this Section 7.2(a), no claim may be asserted nor any action commenced against the Partners for breach of any representation, warranty or covenant by the Company contained herein, unless written notice of such claim or action (a "***Claim Notice***") is received by the Indemnification Representative on or prior to the date on which the representation, warranty or covenant on which such claim or action is based ceases to survive in accordance with Section 7.1 (the "***Indemnification Cut-Off Date***"), and such claim or action arose on or prior to the Indemnification Cut-Off Date, in which case such representation, warranty or covenant, and the Buyer's right to indemnification hereunder will survive as to such claim until such claim has been finally resolved in accordance with the terms of this Article VII. Such Claim Notice shall contain (A) a description and the amount (the "***Claimed Amount***") of any Losses incurred or reasonably expected to be incurred by the Buyer Indemnified Party, (B) a statement that the Buyer Indemnified Party is entitled to indemnification under this Article VII for such Losses and a reasonable explanation of the basis therefor and (C) a demand for payment in the amount of such Losses. The Buyer Indemnified Party must also deliver a copy of such Claim Notice to the Escrow Agent simultaneously with delivery of the Claim Notice to the Indemnification Representative. The Partners shall severally, and not jointly, indemnify the Buyer Indemnified Parties pursuant to this Section 7.2(a) notwithstanding any investigation made at any time or on behalf of any party hereto; provided that the Partners shall not be obligated to indemnify the Buyer with respect to a breach of, or inaccuracy in, a representation or warranty to the extent that a Buyer Knowledge Party had actual knowledge of the existence of such breach or inaccuracy on or before the Closing Date.

(b) The indemnification obligations of the Partners pursuant to Section 7.2(a) shall not be effective until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 7.2(a) exceeds Five Million Dollars ($5,000,000) (the "***Threshold Amount***") and then the Partners shall be liable for Losses from the first dollar, without regard to the Threshold Amount; provided that the Threshold Amount shall not apply to any claim arising under Section 2.8(d), 2.9(a)(ii), 5.9(d), 5.10 or 5.13 hereof. The indemnification obligations of the Partners pursuant to Section 7.2(a) shall be effective only until the aggregate dollar amount paid in respect of the Losses indemnified against under Section 7.2(a) equals Twenty Million Dollars ($20,000,000) (the "***Maximum Amount***") for all Losses; provided that the Maximum Amount shall not apply to any Losses based on any claim of fraud or intentional misrepresentation, or arising under Section 2.8(d), 5.9(d), 5.10 or 5.13 hereof; provided further that the Maximum Amount for Losses based on any claim under Section 2.9(a)(ii) shall be Two Million Dollars ($2,000,000).

For purposes of this Section 7.2(b), in computing such individual or aggregate amounts of claims, the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Buyer Indemnified Parties from any third party with respect thereto shall be deducted from each such claim. A Buyer Indemnified Party shall exhaust all of its remedies against applicable insurers, indemnitors or contributors prior to seeking indemnification hereunder. The amount of Losses otherwise recoverable under this Section 7.2 shall be adjusted to the extent to which any federal, state, local or foreign tax liabilities or benefits are realized by the Buyer Indemnified Parties primarily by reason of any Loss or indemnity payment hereunder.

(c) A Buyer Indemnified Party shall give the Person or Persons designated as the representative or representatives of the Partners with respect to post-closing matters under Article II and this Article VII hereof (the "***Indemnification Representative***") written notice of any claim, assertion,

event or proceeding by or in respect of a third party as to which such Buyer Indemnified Party may request indemnification hereunder or as to which the Threshold Amount may be applied as soon as is practicable and in any event within thirty (30) days of the time that such Buyer Indemnified Party learns of such claim, assertion, event or proceeding and such notice shall describe in reasonable detail (to the extent known by the Buyer Indemnified Party) the facts constituting the basis for such suit or proceeding and the amount of the claimed damages; *provided, however,* that any delay in notifying the Indemnification Representative shall not affect rights to indemnification hereunder except to the extent that the Partners are materially prejudiced by such failure or incur additional costs or liability as a result. The Indemnification Representative shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such claim or proceeding at the expense of the Partners. If the Indemnification Representative elects to cause the Partners to assume the defense of any such claim or proceeding, the Indemnification Representative shall keep the Buyer Indemnified Party advised as to the status of such suit or proceeding and defense thereof and shall consider in good faith recommendations made by the Buyer Indemnified Party with respect thereto. The Buyer Indemnified Party may participate in such defense, but in such case the expenses of the Buyer Indemnified Party shall be paid by the Buyer Indemnified Party. The Buyer Indemnified Party shall provide the Indemnification Representative with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with and assist the Indemnification Representative in the defense or settlement thereof. If the Indemnification Representative elects to direct the defense of any such claim or proceeding, the Buyer Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability unless the Indemnification Representative consents in writing to such payment or unless the Indemnification Representative, subject to the last sentence of this Section 7.2(c), withdraws from the defense of such asserted liability or unless a final judgment from which no appeal may be taken by or on behalf of the Partners is entered against the Buyer Indemnified Party for such liability. If the Indemnification Representative fails to defend or if, after commencing or undertaking any such defense, the Indemnification Representative fails to prosecute or withdraws from such defense, the Buyer Indemnified Party

shall have the right to undertake the defense or settlement thereof, at the Partner's expense. If the Buyer Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 7.2(c) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Buyer Indemnified Party shall give the Indemnification Representative prompt written notice thereof, and the Indemnification Representative shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding. Notwithstanding the foregoing, the Partners shall not be bound by any determination of a proceeding so defended or any compromise or settlement effected without the consent of the Indemnification Representative (which consent may not be unreasonably withheld or delayed).

(d) Within twenty (20) Business Days after delivery of a Claim Notice by a Buyer Indemnified Party, the Indemnification Representative shall deliver to the Buyer Indemnified Party a written response (the "***Response***") in which the Indemnification Representative shall: (i) agree that the Buyer Indemnified Party is entitled to receive all of the Claimed Amount (in which case, the Indemnification Representative and the Buyer Indemnified Party shall deliver to the Escrow Agent, within three (3) Business Days following the delivery of the Response, a written notice executed by both parties instructing the Escrow Agent to distribute to the Buyer an amount of cash out of the Indemnification Escrow Amount, to the extent available, equal to the Claimed Amount), (ii) agree that the Buyer Indemnified Party is entitled to receive part, but not all, of the Claimed Amount (the "***Agreed Amount***") (in which case, the

Indemnification Representative and the Buyer Indemnified Party shall deliver to the Escrow Agent, within three (3) Business Days following the delivery of the Response, a written notice executed by both parties instructing the Escrow Agent to distribute to the Buyer an amount of cash out of the Indemnification Escrow Amount, to the extent available, equal to the Agreed Amount) or (iii) dispute that the Buyer Indemnified Party is entitled to receive any of the Claimed Amount. If, in the Response, the Indemnification Representative disputes its liability for all or part of the Claimed Amount, the Indemnification Representative and the Buyer Indemnified Party shall follow the procedures set forth below for the resolution of such dispute (a "***Dispute***").

During the fifteen (15) day period following the delivery of a Response that reflects a Dispute, the Indemnification Representative and the Buyer Indemnified Party shall use good faith efforts to resolve the Dispute. If the Buyer Indemnified Party and the Indemnification Representative should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum as joint instructions and shall distribute the amount of cash specified in such memorandum out of the Indemnification Escrow Amount in accordance with the terms thereof.

(e) The Indemnification Representative shall have full power and authority on behalf of the Partners to take any and all actions on behalf of, execute any and all instruments on behalf of, and execute or waive any and all rights of, the Partners under this Article VII or with respect to each Partner's interest in the Indemnification Escrow Amount. The Indemnification Representative shall initially be a committee comprised of Robert G. Gifford and Russ Lyon, Jr. (with Alison Husid and Robert L. Ward also authorized to act in Mr. Gifford's and Mr. Lyon's place, respectively) and may be changed by the holders of a majority in interest of the Interests from time to time upon not less than ten (10) days' prior written notice to the Buyer. The Indemnification Representative may resign upon thirty (30) days' notice to the parties to this Agreement. No bond shall be required of the Indemnification Representative, and the Indemnification Representative, and shall receive no compensation for his services. Notices or communications to or from the Indemnification Representative shall constitute notice to or from the Partners. The Indemnification Representative shall be given reasonable access to information about the Buyer and the reasonable assistance of the Buyer's officers and employees for purposes of performing its duties and exercising its rights hereunder, provided that the Indemnification Representative shall treat confidentially and not disclose any nonpublic information from or about the Buyer to anyone (except on a need to know basis to individuals who agree to treat such information confidentially or in connection with any legal proceeding). Notwithstanding anything in this Agreement to the contrary, the Indemnification Representative shall incur no liability with respect to any action taken or suffered by him in connection with the execution of his duties hereunder, except for liability resulting from his own gross negligence or willful misconduct.

(f) The Buyer hereby acknowledges and agrees that, from and after the Closing, its sole and exclusive remedy with respect to any and all claims relating to this Agreement, the Merger and any other transaction contemplated by this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VII and its sole and exclusive source for the satisfaction of such obligations shall be the Indemnification Escrow Amount, except for any claims based on fraud or intentional misrepresentation or arising under Section 2.8(d), 5.9(d), 5.10 or 5.13 hereof.

(g) The Partners shall have no liability under any provision of this Agreement for any consequential, exemplary or punitive damages or any multiple of damages or diminution in value**.** The Buyer shall take all commercially reasonable steps to mitigate Losses for which

indemnification may be claimed pursuant to this Agreement upon and after becoming aware of any event that would reasonably be expected to give rise to any such Losses.

(h) The Buyer hereby acknowledges and agrees that the Partners are not jointly liable under this Section 7.2 and that each Partner is liable only for damages, in the aggregate, up to, but not exceeding, the percentage of the Indemnification Escrow Amount to which such Partner would be entitled if the entire Indemnification Escrow Amount were distributed to the Partners, and such Indemnification Escrow Amount shall serve as the sole and exclusive remedy for satisfaction of such Partner's obligations pursuant to this Article VII, subject to Section 7.2(f) hereof. There shall be no right of contribution between and among the Partners with respect to their indemnification obligations under this Article VII.

Any liability for indemnification under this Section 7.2 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement.

Section 7.3 ***Indemnification by the Buyer***.

(a) The Buyer agrees, subject to the other terms and conditions of this Agreement to indemnify the Partners and their respective Affiliates, officers, directors, employees, agents, successors and assigns (each a "***Partners Indemnified Party***") against and hold them harmless from all Losses arising out of (i) the breach of, or inaccuracy in, any representation or warranty of the Buyer contained in this Agreement or in any certificate,

instrument or other document or agreement delivered by or on behalf of the Buyer to the Company pursuant to Section 6.2 of this Agreement, and (ii) any breach of or failure to perform any covenant or agreement of the Buyer contained herein, or in any such certificate, instrument, document or agreement delivered by or on behalf of the Buyer pursuant to this Agreement. Anything in Section 7.1 to the contrary notwithstanding, no claim may be asserted nor may any action be commenced against the Buyer for breach of any representation, warranty or covenant contained herein, unless a Claim Notice is received by the Buyer on or prior to the Indemnification Cut-Off Date relating to the representation, warranty or covenant on which such claim or action is based and such claim or action arose on or prior to such Indemnification Cut-Off Date, in which case such representation, warranty or covenant will survive as to such claim until such claim has been finally resolved. Such Claim Notice shall contain (A) a description and the Claimed Amount of any Losses incurred or reasonably expected to be incurred by the Partners Indemnified Party, (B) a statement that the Partners Indemnified Party is entitled to indemnification under this Article VII for such Losses and a reasonable explanation of the basis therefor and (C) a demand for payment in the amount of such Losses. The Buyer shall be obligated to indemnify the Partners Indemnified Parties pursuant to this Section 7.3(a) notwithstanding any investigation made at any time or on behalf of any party hereto; provided that the Buyer shall not be obligated to indemnify the Partners with respect to a breach of, or inaccuracy in, a representation or warranty to the extent that a Company Knowledge Party had actual knowledge of the existence of such breach or inaccuracy on or before the Closing Date.

(b) The indemnification obligations of the Buyer pursuant to Section 7.3(a) shall not be effective until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 7.3(a) exceeds the Threshold Amount, and then only to the extent such aggregate amount exceeds the Threshold Amount. The indemnification obligations of the Buyer pursuant to Section 7.3(a) shall be effective only until the aggregate dollar amount paid in respect of the Losses indemnified against under Section 7.3(a) equals the Maximum Amount for all Losses; provided that the Maximum Amount shall not apply to any Losses based on any claim of fraud or intentional misrepresentation. For purposes of this

Section 7.3(b), in computing such individual or aggregate amounts of claims, the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually recovered by the Partners Indemnified Parties from any third party with respect thereto shall be deducted from each such claim. The amount of Losses otherwise recoverable under this Section 7.3 shall be adjusted to the extent any federal, state, local or foreign tax liabilities or benefits are realized by the Partners Indemnified Parties primarily by reason of any Loss or indemnity payment hereunder.

(c) A Partners Indemnified Party shall give the Buyer written notice of any claim, assertion, event or proceeding by or in respect of a third party as to which such Partners Indemnified Party may request indemnification hereunder or as to which the Threshold Amount may be applied as soon as is practicable and in any event within thirty (30) days of the time that such Partners Indemnified Party learns of such claim, assertion, event or proceeding and such notice shall describe in reasonable detail (to the extent known by the Partners Indemnified Party) the facts constituting the basis for such suit or proceeding and the amount of the claimed damages; *provided*, *however*, that any delay in notifying the Buyer shall not affect rights to indemnification hereunder except to the extent that the Buyer is materially prejudiced by such failure or incurs additional costs or liability as a result. The Buyer shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such claim or proceeding at its own expense. If the Buyer elects to assume the defense of any such claim or proceeding, the Buyer shall keep the Partners Indemnified Party advised as to the status of such suit or proceeding and defense thereof and shall consider in good faith recommendations made by the Partners Indemnified Party with respect thereto. The Partners Indemnified Party may participate in such defense, but in such case the expenses of the Partners Indemnified Party shall be paid by the Partners Indemnified Party. The Partners Indemnified Party shall provide the Buyer with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with and assist the Buyer in the defense or settlement thereof. If the Buyer elects to direct the defense of any such claim or proceeding, the Partners Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability, unless the Buyer consents in writing to such payment or unless the Buyer, subject to the last sentence of this Section 7.3(c), withdraws from the defense of such asserted liability, or unless a final judgment from which no appeal may be taken by or on behalf of the Buyer is entered against the Partners Indemnified Party for such liability. If the Buyer fails to defend or if, after commencing or undertaking any such defense, the Buyer fails to prosecute or withdraws from such defense, the Partners Indemnified Party shall have the right to undertake the defense or settlement thereof, at the Buyer's expense. If the Partners Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 7.3(c) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego appeal with respect thereto, then such Partners Indemnified Party shall give the Buyer prompt written notice thereof and the Buyer shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding. Notwithstanding the foregoing, the Buyer shall not be bound by any determination of a proceeding so defended or any compromise or settlement effected without its consent (which consent may not be unreasonably withheld or delayed).

(d) Within twenty (20) Business Days after delivery of a Claim Notice by a Partners Indemnified Party, the Buyer shall deliver to the Indemnification Representative a Response in which the Buyer shall: (i) agree that the Partners Indemnified Party is entitled to receive all of the Claimed Amount (in which case, the Buyer shall, within three (3) Business Days following the delivery of the Response, distribute to the Partners Indemnified Party an amount of cash equal to the Claimed Amount), (ii) agree that the Partners Indemnified Party is entitled to

receive the Agreed Amount (in which case, the Buyer shall, within three (3) Business Days following the delivery of the Response, distribute to the Partners Indemnified Party an amount of cash equal to the Agreed Amount) or (iii) dispute that the Partners Indemnified Party is entitled to receive any of the Claimed Amount. If, in the Response, the Buyer disputes its liability for all or part of the Claimed Amount, the Buyer and the Partners Indemnified Party shall follow the procedures set forth below for the resolution of such Dispute.

During the fifteen (15) day period following the delivery of a Response that reflects a Dispute, the Buyer and the Partners Indemnified Party shall use good faith efforts to resolve the Dispute. If the Partners Indemnified Party and the Buyer should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and the Buyer shall, within three (3) Business Days, distribute the amount of cash specified in such memorandum in accordance with the terms thereof.

(e) From and after the Closing, the Partners' sole and exclusive remedy with respect to any and all claims relating to this Agreement shall be pursuant to the indemnification provisions set forth in this Article VII, except for any claims based on fraud or intentional misrepresentation.

(f)

The Buyer shall have no liability under any provision of this Agreement for any consequential, exemplary or punitive damages or any multiple of damages or diminution in value. The Partners shall take all reasonable steps to mitigate Losses for which indemnification may be claimed pursuant to this Agreement upon and after becoming aware of any event that could reasonably be expected to give rise to any such Losses.

Any liability for indemnification under this Section 7.3 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement.

ARTICLE VIII
TERMINATION, AMENDMENT AND WAIVER

Section 8.1 ***Termination.*** This Agreement may be terminated:

(a) at any time prior to the Closing, by the mutual written consent of the Company, the Buyer and Acquisition Sub;

(b) by the Company, if the Closing shall not have occurred on or prior to October 31, 2002; *provided, however,* that the Company is not then in breach of any representation, warranty or covenant or other agreement contained herein that would cause the Company to be unable to satisfy the conditions to the Buyer's or Acquisition Sub's performance set forth in Section 6.3 hereof;

(c) by the Buyer, if the Closing shall not have occurred on or prior to October 31, 2002; *provided, however,* that the Buyer or Acquisition Sub is not then in breach of any representation, warranty, covenant or other agreement contained herein that would cause the Buyer or Acquisition Sub to be unable to satisfy the conditions to the Company's performance set forth in Section 6.2 hereof;

(d) by the Company (provided that the Company is not then in breach of any representation, warranty, covenant or other agreement contained herein that would cause the Company to be unable to satisfy the conditions to the Buyer's or Acquisition Sub's performance set forth in Section 6.3 hereof), upon written notice to the Buyer and Acquisition Sub, upon a material breach of any representation, warranty or covenant of the Buyer or Acquisition Sub, as the case may be, contained in this Agreement, provided that such breach is not capable of being

cured within thirty (30) days after the giving of notice thereof by the Company to the Buyer or Acquisition Sub, as the case may be;

(e) by the Buyer (provided that the Buyer is not then in breach of any representation, warranty, covenant or other agreement contained herein that would cause the Buyer or Acquisition Sub to be unable to satisfy the conditions to the Company's performance set forth in Section 6.2 hereof), upon written notice to the Company, upon a material breach of any representation, warranty or covenant of the Company contained in this Agreement, provided that such breach is not capable of being cured within thirty (30) days after the giving of notice thereof by the Buyer or Acquisition Sub to the Company; or

(f) by the Buyer upon delivery of the Termination Notice in accordance with Section 2.10 hereof.

Section 8.2 ***Effect of Termination***.

(a) In the event of termination of this Agreement as provided in Section 8.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto to any other party hereto with respect to the matters contained herein, except that (i) the Company shall be entitled to receive the Signing Deposit from the Escrow Agent and (ii) as set forth in Sections 3.17, 4.6 and 5.3, and Articles VII and VIII, *provided, however,* that nothing herein shall relieve either party from liability for any willful breach hereof, except as provided in Section 8.2(b).

(b) Upon termination of this Agreement by the Company pursuant to Section 8.1(b) or 8.1(d), (i) there shall be no liability on the part of any party hereto except as set forth in Sections 3.17, 4.6 and 5.3, and Article VIII, and (ii) the Company shall deliver a copy of its written termination notice to the Escrow Agent and the Escrow Agent shall deliver the Physical Inspection Deposit and any income actually earned on the Physical Inspection Deposit to the Company in accordance with the Deposit Escrow Agreement. Notwithstanding anything to the contrary contained herein or in the Deposit Escrow Agreement, the parties hereto hereby acknowledge and agree that the release of the Signing Deposit pursuant to Section 8.2(a) and the Physical Inspection Deposit pursuant to this Section 8.2(b) is intended to be, and shall be construed as, liquidated damages for a breach, and shall serve as the Company's sole and exclusive remedy at law or in equity, except for any obligations of the Buyer and Acquisition Sub (or either of them) to indemnify the Company pursuant to the final sentence of Section 5.2(a). The parties have agreed that, other than for any such indemnification of the Company by the Buyer and Acquisition Sub, the Company's actual damages in the event of a termination of this Agreement would be extremely difficult or impracticable to determine. After negotiation, the parties have agreed that, considering all of the circumstances existing on the date of this Agreement, the amount of the Deposits is a reasonable estimate of the damages that the Company would incur in the event of a termination of this Agreement, other than for any Loss for which the Buyer and Acquisition Sub have expressly agreed to indemnify of the Company pursuant to the final sentence of Section 5.2(a).

(c) Upon termination by the parties pursuant to Section 8.1(a), or upon termination of the Buyer pursuant to Section 8.1(c), 8.1(e) or 8.1(f), the Buyer shall deliver a copy of a termination notice to the Escrow Agent and the Escrow Agent shall deliver the Physical Inspection Deposit and any income actually earned on the Deposits to the Buyer. Notwithstanding anything to the contrary contained herein or in the Deposit Escrow Agreement, the parties hereby acknowledges and agree that the release of the Physical Inspection Deposit pursuant to this Section 8.2(c) is not intended to be, and shall not be construed as, liquidated damages for a breach, and that such remedy is cumulative and shall not prevent the assertion by the Buyer of any other rights or the seeking of any other remedies against the Company for such breach.

(d) Upon termination of this Agreement for any reason, the party terminating the Agreement shall deliver a copy of such termination notice to the Escrow Agent and the Escrow Agent shall deliver the Signing Deposit.

Section 8.3 ***Waiver.*** At any time prior to the Closing, the Buyer, Acquisition Sub, on the one hand, and the Company, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other party or parties hereto, (b) waive any inaccuracies in the representations and warranties of the other party or parties contained herein or in any document delivered by such other party pursuant hereto or (c) waive compliance with any of the agreements of such other party or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 ***Notices.*** Except as otherwise specifically provided herein, all notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given upon delivery if delivered personally or one Business Day after it is sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as specified by like notice):

If to the Company:

Westcor Realty Limited Partnership
11411 North Tatum Boulevard
Phoenix, AZ 85028
Attention: Robert G. Mayhall

With a copy to:

AEW Capital Management, L.P.
World Trade Center East
Two Seaport Lane
Boston, MA 02210-2021
Attention: Jay Finnegan
Robert Gifford

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attention: Laura C. Hodges Taylor, P.C.
Christopher B. Barker, P.C.

If to the Buyer or Acquisition Sub:

Richard A. Bayer, Esq.
The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401

With a copy to:

Frederick B. McLane, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles California 90071

If to the Indemnification Representative:

Management Committee
c/o AEW Capital Management, L.P.
World Trade Center East
Two Seaport Lane
Boston, MA 02210-2021
Attention: Jay Finnegan
Robert Gifford

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attention: Laura C. Hodges Taylor, P.C.
Christopher B. Barker, P.C.

With a copy to:

Westcor Realty Limited Partnership
11411 North Tatum Boulevard

Phoenix, AZ 85028
Attention: Robert Ward

Any party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

Section 9.2 ***Interpretation.*** When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference will be to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate, agreement or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 9.3 ***Counterparts.*** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 9.4 ***Entire Agreement; No Third-Party Beneficiaries; Severability.*** This Agreement (including the documents and instruments referred to herein), together with the Confidentiality Agreement, the Deposit Escrow Agreement and the Indemnification Escrow Agreement, constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. Except as set forth in Section 5.11 hereof, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

Section 9.5 ***Amendment.*** This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, the Company, the Buyer and Acquisition Sub or (b) by a waiver in accordance with Section 8.3.

Section 9.6 ***Governing Law.*** This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflict of laws.

Section 9.7 ***Consent to Jurisdiction.*** Each of the Company, the Buyer and Acquisition Sub hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware (the "***Delaware Courts***") for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives an objection to the laying of venue of any such litigation in the Delaware Courts and agrees not to plead or claim in any Delaware Court that such litigation brought therein has been brought in an inconvenient forum. Each of the parties hereto agrees, (a) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process, and (b) that service of process may also be made on such party by prepaid certified mail with a proof of mailing receipt validated by the United States Postal Service constituting evidence of valid service. Service made pursuant to (a) or (b) above shall have the same legal force and effect as if served upon such party personally within the State of Delaware.

Section 9.8 ***Assignment.*** Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other party. Any assignment in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

Section 9.9 ***Expenses.*** Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however,* that, in the event a filing or filings pursuant to the HSR Act is required, any filing fee or fees due in connection therewith shall be shared equally by the Company on the one hand and the Buyer on the other hand.

Section 9.10 ***Execution by Officer of the Company.*** This Agreement is executed on behalf of the Company by an officer of the general partner of the Company, acting in his or her capacity as such officer, and not individually. The Buyer, Acquisition Sub and each person dealing with the Company, or claiming any rights or interests herein or hereunder, agrees to look solely to the assets of the Company for satisfaction of any obligations of the Company prior to the Closing, and they further agree that no advisor, manager, employee, officer, director or agent of the Company (in their capacity as such), shall have any personal liability hereunder or otherwise.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, the Buyer and Acquisition Sub have caused this Agreement to be signed as of the date first written above.

THE COMPANY:

WESTCOR REALTY LIMITED PARTNERSHIP

By: Eastrich No. 128 Corp., its General Partner

By: /s/ ROBERT GIFFORD

Name: Robert Gifford
Title: President

THE BUYER:

THE MACERICH PARTNERSHIP, L.P.

By: The Macerich Company, its General Partner

By: /s/ ARTHUR M. COPPOLA

Name: Arthur M. Coppola
Title: President

MACERICH GALAHAD LP

By: Macerich Galahad GP Corp., its General Partner

By: /s/ ARTHUR M. COPPOLA

Name: Arthur M. Coppola
Title: President

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Amendment #1 to the Registration Statement on Form S-3 of our reports dated February 13, 2002 relating to the financial statements and financial statement schedules of The Macerich Company and Pacific Premier Retail Trust, which appear in The Macerich Company's Annual Report on Form 10-K for the year ended December 31, 2001. We also consent to the reference to us under the heading "Experts" in such registration statement.

PricewaterhouseCoopers LLP

Los Angeles, California
June 5, 2002

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EXHIBIT 23.2

CONSENT OF INDEPENDENT AUDITORS

The Partners
SDG Macerich Properties, L.P.
and
The Board of Directors
The Macerich Company

We consent to the incorporation by reference in the Amendment No. 1 to the registration statement on Form S-3 (Number 333-88718), of The Macerich Company of our report dated February 8, 2002 relating to the balance sheets of SDG Macerich Properties, L.P. as of December 31, 2001 and 2000 and the related consolidated statements of operations, cash flows, and partners' equity, for each of the years in the three-year period ended December 31, 2001 and the related financial statement schedule, which report appears in the December 31, 2001 Annual Report on Form 10-K of The Macerich Company. Our report refers to a change in the method of accounting for overage rents in 2000. We also consent to the reference to our firm under the heading "Experts" in the registration statement.

/s/ KPMG LLP
Indianapolis, Indiana
June 5, 2002

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EXHIBIT 23.2

CONSENT OF INDEPENDENT AUDITORS