

CBL & ASSOCIATES PROPERTIES INC
Form 424B2
August 07, 2003
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Filed Pursuant to Rule 424b(2)

Registration No. 333-104882

PROSPECTUS SUPPLEMENT

(To Prospectus dated June 10, 2003)

4,200,000 Depositary Shares

CBL & Associates Properties, Inc.

**Each Representing $\frac{1}{10}^{\text{th}}$ of a Share of
7.75% Series C Cumulative Redeemable Preferred Stock
(Liquidation Preference \$25.00 per Depositary Share)**

We are offering and selling 4,200,000 depositary shares, each representing a $\frac{1}{10}^{\text{th}}$ fractional interest of a share of our 7.75% Series C cumulative redeemable preferred stock, par value \$.01 per share. 420,000 shares of Series C preferred stock underlying the depositary shares will be deposited with SunTrust Bank, as depositary. As a record holder of depositary shares, you will be entitled to all proportional rights, preferences and privileges of the Series C preferred stock underlying the depositary shares. We will receive all of the net proceeds from the sale of the depositary shares.

We will pay cumulative dividends on the shares of Series C preferred stock underlying the depositary shares, from and including the date of original issuance, in the amount of \$1.9375 per depositary share each year, which is equivalent to 7.75% of the \$25.00 liquidation preference per depositary share. Dividends will be payable quarterly in arrears, beginning on September 30, 2003.

We may not redeem the shares of Series C preferred stock underlying the depositary shares before August 22, 2008, except to preserve our status as a real estate investment trust. On or after August 22, 2008, we may, at our option, redeem the shares of Series C preferred stock, in whole or in part, by paying \$250.00 per share (\$25.00 per depositary share), plus any accrued and unpaid dividends up to and including the date of redemption. The shares of Series C preferred stock have no stated maturity, will not be subject to any sinking fund or mandatory redemption and will not be convertible into any of our other securities. Owners of the depositary shares will generally have no voting rights, but will have limited voting rights if we fail to pay dividends for six or more quarters and under certain

other circumstances.

There is currently no public market for the depositary shares. We will submit an application to list the depositary shares on the New York Stock Exchange under the symbol CBLPrC. If this application is approved, trading in the depositary shares is expected to commence within a 30-day period after the initial delivery of the depositary shares.

Investing in the depositary shares representing interests in our Series C preferred stock involves certain risks. See Risk Factors beginning on page S-8 of this prospectus supplement and on page 3 of the accompanying prospectus.

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

	Per Depositary Share	Total
Public offering price	\$ 25.0000	\$ 105,000,000
Underwriting discount	\$ 0.7875	\$ 3,307,500
Proceeds, before expenses, to us	\$ 24.2125	\$ 101,692,500

The underwriters are severally underwriting the shares being offered. The underwriters have an option to purchase up to an additional 630,000 depositary shares from us to cover over-allotments, if any.

The depositary shares are subject to certain restrictions on ownership and transfer designed to preserve our qualification as a real estate investment trust for federal income tax purposes. See Description of Series C Preferred Stock and Depositary Shares Restrictions on Transfer beginning on page S-16 of this prospectus supplement and Description of Capital Stock Description of Common Stock Restrictions on Transfer beginning on page 14 of the accompanying prospectus for more information about these restrictions.

The underwriters expect that the depositary shares will be ready for delivery in book-entry form through the facilities of The Depositary Trust Company on or about August 22, 2003.

Bear, Stearns & Co. Inc.
Joint Book-Running Manager

Wachovia Securities
Joint Book-Running Manager

A.G. Edwards & Sons, Inc.
Co-Lead Manager

**Legg Mason Wood Walker
Incorporated**

McDonald Investments Inc.

RBC Capital Markets

J.J.B. Hilliard, W.L. Lyons, Inc.

**Stifel, Nicolaus & Company
Incorporated**

Wells Fargo Securities, LLC

The date of this prospectus supplement is August 6, 2003

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ABOUT THIS PROSPECTUS SUPPLEMENT

References to we, us or our refer to CBL & Associates Properties, Inc. and unless the context otherwise requires, CBL & Associates Limited Partnership, which we refer to as our operating partnership. We conduct our business and operations through the operating partnership and its subsidiaries. References to CBL refer to CBL & Associates Properties, Inc. The term you refers to a prospective investor. The sole general partner of the operating partnership is CBL Holdings I, Inc., a Delaware corporation and a wholly owned subsidiary of CBL & Associates Properties, Inc.

CAUTIONARY STATEMENTS CONCERNING

FORWARD-LOOKING INFORMATION

Certain information included or incorporated by reference in this prospectus supplement or the accompanying prospectus contains 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, involves 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 use of the words may, will, should, expect, anticipate, estimate, believe, intend, or other similar words or terms. Factors which could materially and adversely affect us include, but are not limited to, changes in economic conditions generally and the real estate market specifically, legislative/regulatory changes including changes to laws governing the taxation of real estate investment trusts, which we call REITs, availability of debt and equity capital, interest rate fluctuations, competition, supply and demand for properties in our current and proposed market areas, accounting principles, policies and guidelines applicable to REITs, environmental risks, tenant bankruptcies and the other matters described under the heading Risk Factors beginning on page S-8 of this prospectus supplement and on page 3 of the accompanying prospectus. All of these factors should be considered in evaluating any forward-looking statements included or incorporated by reference in this prospectus supplement or the accompanying prospectus.

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

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SUMMARY

This summary may not contain all of the information that is important to you. Before making an investment decision, you should carefully read this entire prospectus supplement and the accompanying prospectus, especially the Risk Factors section beginning on page S-8 of this prospectus supplement and on page 3 of the accompanying prospectus and the Available Information section beginning on page S-22 of this prospectus supplement, as well as the documents incorporated by reference in this prospectus supplement and in the accompanying prospectus. Unless otherwise indicated, financial information included in this prospectus supplement is presented on a historical basis.

CBL & Associates Properties, Inc.

We are a self-managed, self-administered, fully integrated real estate company. We own, operate, market, manage, lease, expand, develop, redevelop, acquire and finance regional malls and community and neighborhood shopping centers. We have elected to be taxed as a REIT for federal income tax purposes. We are one of the largest mall REITs in the United States based on our total assets.

We conduct substantially all of our business through our operating partnership, CBL & Associates Limited Partnership, a Delaware limited partnership. We currently own an indirect majority interest in the operating partnership, and one of our wholly owned subsidiaries, CBL Holdings I, Inc., a Delaware corporation, is its sole general partner. To comply with certain technical requirements of the Internal Revenue Code of 1986, as amended, applicable to REITs, our property management and development activities, sales of peripheral land and maintenance operations are carried out through a separate management company, CBL & Associates Management, Inc. Currently, our operating partnership owns 100% of the preferred stock of the management company, which entitles the operating partnership to substantially all of the management company's earnings. Our operating partnership also owns 6% of the management company's common stock. Certain of our executive officers and their children hold the remaining 94% of the management company's common stock.

In order to maintain our qualification as a REIT for federal income tax purposes, we must distribute each year at least 90% of our taxable income, computed without regard to net capital gains or the dividends-paid deduction.

We were organized on July 13, 1993 as a Delaware corporation to acquire substantially all of the real estate properties owned by our predecessor company, CBL & Associates, Inc., and its affiliates. Our principal executive offices are located at CBL Center, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and our telephone number is (423) 855-0001. Our website can be found at www.cblproperties.com. The information contained in our website is not a part of this Prospectus.

Recent Developments

On July 24, 2003, we released our earnings for the quarter ended June 30, 2003. For the quarter ended June 30, 2003, net income available to holders of our common stock increased by 11.2% to \$21,022,000, from \$18,911,000 for the quarter ended June 30, 2002. For the quarter ended June 30, 2003, net income available to holders of our common stock on a diluted per share basis increased by 7.9% to \$0.68, from \$0.63 for the quarter ended June 30, 2002. Our total revenues for the quarter ended June 30, 2003 increased by 11.7% to \$165,019,000, from \$147,718,000 for the quarter ended June 30, 2002. Additionally, for the quarter ended June 30, 2003, income from operations increased by 12.5% to \$77,884,000, from \$69,211,000 for the quarter ended June 30, 2002.

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On July 25, 2003, we announced that we entered into purchase agreements to acquire four regional shopping malls owned by affiliates of Faison Enterprises: Cross Creek Mall in Fayetteville, North Carolina, River Ridge Mall in Lynchburg, Virginia, Southpark Mall in Colonial Heights, Virginia and Valley View Mall in Roanoke, Virginia. The total purchase price for the four malls is \$340,000,000 which includes our assumption of approximately \$170,000,000 of nonrecourse debt with an average annual fixed rate of interest of 7.71%. The four malls comprise an aggregate of 3.25 million square feet and as of April 1, 2003, had a weighted average occupancy rate of 90.3%. We expect to close the acquisitions of the four malls in our third and fourth quarters of 2003.

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THE OFFERING

Issuer	CBL & Associates Properties, Inc.
Securities offered	4,200,000 depositary shares, each representing a 1/10 th fractional interest of a share of our 7.75% Series C cumulative redeemable preferred stock, par value \$.01 per share (4,830,000 depositary shares if the underwriters' over-allotment option is exercised in full).
Dividends	Dividends on the offered shares are cumulative from the date of the original issue by us of shares of Series C preferred stock underlying the depositary shares and are payable quarterly in arrears on the 30th day of March, June, September and December of each year, when, as and if declared by our board of directors. We will pay cumulative dividends on the shares of Series C preferred stock underlying the depositary shares, from and including the date of original issuance, in the amount of \$1.9375 per depositary share each year, which is equivalent to 7.75% of the \$25.00 liquidation preference per depositary share. We will pay the first dividend on September 30, 2003. Such first dividend (which will reflect a partial dividend period) and any other dividend payable on the shares of Series C preferred stock underlying the depositary shares for any partial dividend period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends on shares of Series C preferred stock underlying the depositary shares will continue to accrue even if we do not have earnings or funds legally available to pay such dividends or we do not declare the payment of dividends.
Liquidation preference	\$250.00 per share of Series C preferred stock (\$25.00 per depositary share), plus an amount equal to accrued and unpaid dividends, whether or not declared.
Optional redemption	We may not redeem the Series C preferred stock underlying the depositary shares before August 22, 2008, except in order to preserve our status as a real estate investment trust. On or after August 22, 2008, we may, at our option, redeem the shares of Series C preferred stock, in whole or in part, by paying \$250.00 per share (\$25.00 per depositary share), plus any accrued and unpaid dividends up to and including the date of redemption.
No Maturity	The depositary shares and the underlying shares of Series C preferred stock have no maturity date and we are not required to redeem such shares at any time. Accordingly, the depositary shares and the underlying shares of Series C preferred stock will remain outstanding indefinitely, unless we decide, at our option on or after August 22, 2008, to exercise our redemption right. We are not required to set aside funds to redeem the depositary shares and the underlying shares of Series C preferred stock.
Ranking	The Series C preferred stock underlying the depositary shares will rank senior to our common shares and on a parity with (i) our 2,675,000 outstanding shares of 9.0% Series A preferred stock

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(\$25.00 liquidation preference) which we refer to as our Series A preferred stock, (ii) our 2,000,000 outstanding shares of 8.75% Series B preferred stock (\$50.00 liquidation preference) which we refer to as our Series B preferred stock, and (iii) any other parity securities that we may issue in the future. Such ranking applies to the payment of distributions and amounts upon liquidation, dissolution or winding up.

Voting rights

Record holders of the depositary shares representing interests in our Series C preferred stock will generally have no voting rights. However, if dividends on any outstanding Series C preferred stock are in arrears for six or more quarterly periods (whether or not consecutive), owners of the depositary shares representing interests in the Series C preferred stock, voting together as a class with the holders of all other classes or series of our equity securities ranking on parity with the Series C preferred stock which are entitled to similar voting rights, will be entitled at the next annual meeting of stockholders to elect two additional directors to our board of directors, to serve until all unpaid dividends have been paid or declared and set apart for payment. In addition, the affirmative vote of at least two-thirds of the shares of Series C preferred stock, voting together as a class with the holders of all other classes or series of our equity securities ranking on parity with the Series C preferred stock which are entitled to similar voting rights, is required to authorize, create or increase capital stock ranking senior to the Series C preferred stock or to amend our certificate of incorporation in a manner that materially and adversely affects the rights of the holders of the Series C preferred stock underlying the depositary shares.

Listing

We will submit an application to list the depositary shares on the New York Stock Exchange under the symbol CBLPrC. If this application is approved, we expect that trading on the New York Stock Exchange will commence within a 30-day period after the initial delivery of the depositary shares.

Settlement Date

Delivery of the depositary shares will be made against payment therefor on or about August 22, 2003, which will be the twelfth business day following the date of pricing of the depositary shares and the underlying shares of Series C preferred stock (this settlement cycle being referred to as T+12 business days). Accordingly, purchasers who wish to trade the depositary shares on the date of pricing or the next twelve succeeding business days will be required, by virtue of the fact that the depositary shares and the underlying shares of Series C preferred stock initially will settle in T+12 business days, to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement and should consult their own advisor.

Form

The depositary shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company.

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Restrictions on Ownership	For us to qualify as a REIT under the Internal Revenue Code, transfer of depositary shares (and shares of our Series C preferred stock) is restricted so that not more than 50% in value of our outstanding capital stock is owned, directly or constructively, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities, during the last half of any taxable year. See Description of Series C Preferred Stock and Depositary Shares Restrictions on Transfer beginning on page S-16 of this prospectus supplement and Description of Capital Stock Description of Common Stock Restrictions on Transfer beginning on page 14 of the accompanying prospectus.
Conversion	The depositary shares (and the shares of Series C preferred stock) are not convertible into, or exchangeable for, any other property or securities.
Use of proceeds	We intend to use the net proceeds from this offering to partially finance our acquisition of four regional malls as described under Recent Developments on page S-1 of this prospectus supplement and the balance for our general corporate purposes, including funding future developments, expansions and acquisitions.
Risk factors	See Risk Factors beginning on page S-8 of this prospectus supplement and on page 3 of the accompanying prospectus and other information contained herein for a discussion of factors you should carefully consider before deciding to invest in depositary shares.

For additional information regarding the terms of the depositary shares and the Series C preferred stock underlying the depositary shares, see [Description of Series C Preferred Stock and Depositary Shares](#) beginning on page S-10 of this prospectus supplement.

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**RATIOS OF EBITDA TO COMBINED FIXED CHARGES
AND PREFERRED STOCK DIVIDENDS AND EBITDA TO INTEREST EXPENSE**

The ratio of EBITDA to combined fixed charges and preferred stock dividends was computed by dividing EBITDA by combined fixed charges and preferred stock dividends. The ratio of EBITDA to interest expense was computed by dividing EBITDA by interest expense. Earnings before Interest, Taxes, Depreciation and Amortization, or EBITDA, is a widely used performance measure. We compute EBITDA as the sum of net income before preferred dividends, equity in earnings of unconsolidated affiliates, minority interest in earnings, interest expense, depreciation and amortization, loss on extinguishment of debt, gains (losses) on discontinued operations and abandoned projects expense. We then add our proportionate share of EBITDA in unconsolidated affiliates and exclude EBITDA attributable to minority investors in consolidated affiliates. This method of computing EBITDA is in accordance with how EBITDA is determined under the applicable financial covenants of our largest credit facility, which represents 70% of the borrowing capacity under all of our credit facilities. Because continued compliance under this credit facility has a significant impact on our liquidity, we believe EBITDA determined in accordance with the provisions of this credit facility provides a meaningful performance measure, particularly as it relates to our ability to meet our fixed charges and preferred stock dividend requirements for the stated period.

EBITDA should not be considered as an alternative measure of operating results or cash flow from operations as determined in accordance with generally accepted accounting principles. EBITDA as presented may not be comparable to other similarly titled measures used by other companies.

Fixed charges consist of interest expense (including interest cost capitalized), amortization of debt costs and the portion of rent expense representing an interest factor.

Ratio of EBITDA to Combined Fixed Charges and Preferred Stock Dividends

Six Months Ended June 30,		Years Ended December 31,				
2003	2002	2002	2001	2000	1999	1998
2.51	2.46	2.40	2.16	2.28	2.21	2.19

Ratio of EBITDA to Interest Expense

Six Months Ended June 30,		Years Ended December 31,				
2003	2002	2002	2001	2000	1999	1998
2.83	2.64	2.66	2.32	2.57	2.55	2.45

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(in thousands)

	Six Months Ended						
	June 30,		Year Ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
Net income before preferred dividends	\$ 51,182	\$ 39,922	\$ 84,906	\$ 60,908	\$ 65,722	\$ 54,595	\$ 40,499
Adjustments:							
Depreciation and amortization	54,002	46,127	94,373	83,877	58,268	51,977	42,295
Depreciation and amortization from unconsolidated affiliates	2,019	1,772	4,490	3,765	1,511	1,619	1,427
Depreciation and amortization from discontinued operations	10	465	586	1,065	805	735	711
Minority investors' share of depreciation and amortization in shopping center properties	(541)	(694)	(1,348)	(1,096)	(981)	(920)	(875)
Interest expense	75,319	70,837	143,164	156,707	95,989	83,197	67,693
Interest expense from unconsolidated affiliates	4,019	4,448	10,389	7,028	4,133	4,303	3,898
Interest expense from discontinued operations		47	47	451	183	147	177
Minority investors' share of interest expense in shopping center properties	(726)	(863)	(1,579)	(1,552)	(1,583)	(1,613)	(1,653)
Loss on extinguishment of debt	167	3,187	3,930	13,558	367		799
Income taxes	1,540	353	992	812	974	697	385
Abandoned projects expense	107	57	236	2,031	127	1,674	122
Minority interest in earnings - operating partnership	38,616	32,532	64,251	49,643	28,507	23,264	16,258
Gain on discontinued operations	(2,935)	(1,406)	(372)				
EBITDA	\$ 222,779	\$ 196,784	\$ 404,065	\$ 377,197	\$ 254,022	\$ 219,675	\$ 171,736

**RATIO OF EARNINGS TO COMBINED FIXED CHARGES
AND PREFERRED STOCK DIVIDENDS**

We compute the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by combined fixed charges and preferred stock dividends. For this purpose, earnings is the sum of net income before discontinued operations, equity in earnings of unconsolidated affiliates, minority interest in earnings (excluding those that have not incurred fixed charges) and fixed charges (excluding capitalized interest), plus distributed income from unconsolidated affiliates. Fixed charges consist of interest expense (including interest cost capitalized), amortization of debt costs and the portion of rent expense representing an interest factor.

Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends

Years Ended December 31,

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Six Months Ended						
June 30,						
2003	2002	2002	2001	2000	1999	1998
1.90	1.85	1.82	1.57	1.74	1.64	1.62

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RISK FACTORS

Before you consider investing in our depositary shares representing shares of our Series C preferred stock, you should be aware that there are risks in making this investment. You should carefully consider these risk factors, as well as Risk Factors beginning on page 3 of the accompanying prospectus, together with all of the information included or incorporated by reference in this prospectus supplement and the accompanying prospectus before you decide to invest in our depositary shares representing shares of our Series C preferred stock.

The depositary shares do not have an established trading market, which may negatively affect their market value and your ability to transfer or sell your shares; the Series C preferred stock represented by the depositary shares has no stated maturity date.

The depositary shares representing interests in the Series C preferred stock are a new issue of securities with no established trading market. Because neither the depositary shares nor the underlying shares of Series C preferred stock have a stated maturity date, investors seeking liquidity will be limited to selling them in the secondary market. We will apply to list the depositary shares on the NYSE; however, we cannot assure you that the depositary shares will be approved for listing. If approved, trading of the depositary shares on the NYSE is not expected to begin until a 30-day period after the date of initial delivery of the depositary shares, and, in any event, an active trading market on the NYSE for the shares may not develop or, even if it develops, may not last, in which case the trading price of the shares could be adversely affected. We have been advised by the underwriters that they intend to make a market in the depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

The market value of the depositary shares could be substantially affected by various factors.

As with other publicly traded securities, the trading price of the depositary shares will depend on many factors, which may change from time to time, including:

prevailing interest rates, increases in which may have a negative effect on the trading value of the depositary shares;

the market for similar securities;

additional issuances of other series or classes of preferred stock;

general economic and financial market conditions; and

our financial condition, performance and prospects.

The depositary shares have not been rated and are subordinated to our existing and future debt; no restriction on issuance of parity preferred securities.

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Neither the depositary shares nor the Series C preferred stock represented by the depositary shares has been rated by any nationally recognized statistical rating organization. Furthermore, payment of amounts due thereunder will be subordinated to all of our existing and future debt and will be structurally subordinated to the payment to our third-party joint venture partners of distributions from such third-party joint ventures in which we invest. In addition, we may issue additional Series C preferred stock and/or shares of another class or series of preferred stock ranking on a parity with (or, upon the affirmative vote or consent of the holders of two-thirds of the outstanding Series C preferred stock and each other class or series of preferred stock ranking on a parity with the Series C preferred stock which are entitled to similar voting rights, voting as a single class, senior to) the Series C preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up. These factors may affect the trading price of the depositary shares.

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Adverse Legislative or Regulatory Tax Changes

The federal income tax laws governing REITs or the administrative interpretations of those laws may be amended. Any of those new laws or interpretations may take effect retroactively and could adversely affect us or you as a shareholder. Recently enacted legislation reduces individual tax rates applicable to certain corporate dividends. REIT dividends generally would not be eligible for the reduced rates because a REIT's income generally is not subject to corporate level tax. As a result, investment in non-REIT corporations may be relatively more attractive than investments in REITs. This could adversely affect the market price of the depositary shares.

USE OF PROCEEDS

The net proceeds to us from the sale of the depositary shares offered by this prospectus supplement and the accompanying prospectus, after deducting estimated fees and expenses related to this offering, will be approximately \$101,342,500 (\$116,596,375 if the underwriters over-allotment option is exercised in full). We intend to use the net proceeds from this offering to partially finance our acquisition of four regional shopping malls as described under Recent Developments on page S-1 of this prospectus supplement and the balance for our general corporate purposes, including funding future developments, expansions and acquisitions.

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**DESCRIPTION OF SERIES C PREFERRED STOCK
AND DEPOSITARY SHARES**

The following description of the material terms and provisions of the Series C preferred stock and depositary shares is only a summary and is qualified in its entirety by reference to our certificate of incorporation and the certificate of designations creating the Series C preferred stock, each of which is incorporated by reference in this prospectus supplement and the accompanying prospectus.

Our certificate of incorporation authorizes our board of directors to issue up to 15,000,000 shares of our preferred stock, par value \$.01 per share. We currently have outstanding 2,675,000 shares of Series A preferred stock and 2,000,000 shares of Series B preferred stock.

Subject to the limitations prescribed by the certificate of incorporation, the board of directors is authorized to establish the number of shares constituting each series of preferred stock and to fix the designations, powers, preferences and rights of the shares of each of those series and the qualifications, limitations and restrictions of each of those series, all without any further vote or action by our stockholders. The Series C preferred stock is a series of preferred stock. When issued, the shares of Series C preferred stock will be validly issued, fully paid and non-assessable.

Each depositary share represents a $\frac{1}{10^{\text{th}}}$ fractional interest of a share of Series C preferred stock. The Series C preferred stock underlying the depositary shares will be deposited with SunTrust Bank, as depositary, under a deposit agreement among us, the depositary and the holders from time to time of the depositary receipts issued by the depositary under the deposit agreement. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Subject to the terms of the deposit agreement, each record holder of depositary receipts evidencing depositary shares will be entitled, proportionately, to all the rights and preferences of, and subject to all of the limitations of, the interest in the Series C preferred stock underlying the depositary shares (including dividend, voting, redemption and liquidation rights and preferences). See [Description of Depositary Shares](#) on page 17 of the accompanying prospectus.

We will apply to list the depositary shares on the NYSE. If this application is approved, we expect trading in the depositary shares to commence within a 30-day period after the initial delivery of the depositary shares. The Series C preferred stock underlying the depositary shares will not be listed and we do not expect that there will be any trading market for the Series C preferred stock except as represented by the depositary shares.

Rank

The Series C preferred stock represented by the depositary shares will, with respect to dividend rights and rights upon our liquidation, dissolution or winding-up, rank (a) senior to our common stock and to all equity securities ranking junior to the Series C preferred stock; (b) on a parity with our outstanding Series A preferred stock and Series B preferred stock and other classes or series of our equity securities that we issue, the terms of which specifically provide that these equity securities rank on a parity with the Series C preferred stock; and (c) junior to all equity securities that we issue in accordance with the certificate of designations, the terms of which specifically provide that those equity securities rank senior to the Series C preferred stock. The term "equity securities" does not include convertible debt securities for this purpose.

Dividends

The depositary will distribute to the record holders of the depositary shares cumulative preferential cash dividends of \$1.9375 per depositary share each year, which is equivalent to 7.75% of the \$25.00 liquidation preference per depositary share. Dividends will be distributed when, as and if declared by the board of directors and will be payable out of the assets legally available therefor. Dividends will be cumulative from and including the date of original issue by us of the shares of Series C preferred stock underlying the depositary shares and will

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be payable quarterly in arrears on the 30th day of March, June, September and December of each year or, if not a business day, the next succeeding business day. We will pay the first dividend on September 30, 2003. Such first dividend (which will reflect a partial dividend period) and any other dividend payable on the shares of Series C preferred stock underlying the depositary shares for any partial dividend period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to record holders of depositary shares as they appear in the depositary's records at the close of business on the applicable record date, which will be the 15th day of the calendar month in which the applicable due date for the dividend payment falls or on such other date designated by the board of directors for the payment of dividends that is not more than 30 nor less than 10 days before the due date for the dividend payment.

We will not declare dividends on the Series C preferred stock, or pay or set apart for payment dividends on the Series C preferred stock at any time if the terms and provisions of any agreement, including any agreement relating to our indebtedness, prohibits the declaration, payment or setting apart for payment or provides that the declaration, payment or setting apart for payment would constitute a breach of the agreement or a default under the agreement, or if the declaration or payment is restricted or prohibited by law.

Notwithstanding the foregoing, dividends on the Series C preferred stock underlying the depositary shares will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of those dividends, and whether or not those dividends are declared. Accrued but unpaid dividends on the Series C preferred stock will accumulate as of the due date for the dividend payment on which they first become payable. Except as described in the next sentence, we will not declare or pay or set a