

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM 10-Q

- Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended September 30, 2023, or
- Transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934
Commission File Number 1-13374



The Monthly Dividend Company®

REALTHY INCOME CORPORATION

(Exact name of registrant as specified in its charter)

Maryland

33-0580106

(State or Other Jurisdiction of Incorporation or Organization)

(IRS Employer Identification Number)

11995 El Camino Real, San Diego, California 92130

(Address of Principal Executive Offices)

Registrant's telephone number, including area code: **(858) 284-5000**

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange On Which Registered
Common Stock, \$0.01 Par Value	O	New York Stock Exchange
1.125% Notes due 2027	O27A	New York Stock Exchange
1.875% Notes due 2027	O27B	New York Stock Exchange
1.625% Notes due 2030	O30	New York Stock Exchange
4.875% Notes due 2030	O30A	New York Stock Exchange
1.750% Notes due 2033	O33A	New York Stock Exchange
5.125% Notes due 2034	O34	New York Stock Exchange
2.500% Notes due 2042	O42	New York Stock Exchange

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

There were 723,923,644 shares of common stock outstanding as of November 3, 2023.

REALTY INCOME CORPORATION
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September 30, 2023

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PART 1. FINANCIAL INFORMATION**Item 1: Financial Statements**

REALTY INCOME CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except per share amounts) (unaudited)

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
ASSETS		
Real estate held for investment, at cost:		
Land	\$ 14,408,324	\$ 12,948,835
Buildings and improvements	33,606,951	29,707,751
Total real estate held for investment, at cost	48,015,275	42,656,586
Less accumulated depreciation and amortization	(5,781,056)	(4,904,165)
Real estate held for investment, net	42,234,219	37,752,421
Real estate and lease intangibles held for sale, net	19,927	29,535
Cash and cash equivalents	344,129	171,102
Accounts receivable, net	678,441	543,237
Lease intangible assets, net	5,089,293	5,168,366
Goodwill	3,731,478	3,731,478
Other assets, net	3,239,433	2,276,953
Total assets	<u>\$ 55,336,920</u>	<u>\$ 49,673,092</u>
LIABILITIES AND EQUITY		
Distributions payable	\$ 187,288	\$ 165,710
Accounts payable and accrued expenses	660,366	399,137
Lease intangible liabilities, net	1,426,264	1,379,436
Other liabilities	786,437	774,787
Line of credit payable and commercial paper	858,260	2,729,040
Term loan, net	1,287,995	249,755
Mortgages payable, net	824,240	853,925
Notes payable, net	17,482,652	14,278,013
Total liabilities	<u>23,513,502</u>	<u>20,829,803</u>
Commitments and contingencies (Note 17)		
Stockholders' equity:		
Common stock and paid in capital, par value \$0.01 per share, 1,300,000 shares authorized, 723,894 and 660,300 shares issued and outstanding as of September 30, 2023, and December 31, 2022, respectively	38,031,829	34,159,509
Distributions in excess of net income	(6,416,534)	(5,493,193)
Accumulated other comprehensive income	41,849	46,833
Total stockholders' equity	<u>31,657,144</u>	<u>28,713,149</u>
Noncontrolling interests	166,274	130,140
Total equity	<u>31,823,418</u>	<u>28,843,289</u>
Total liabilities and equity	<u>\$ 55,336,920</u>	<u>\$ 49,673,092</u>

The accompanying notes to consolidated financial statements are an integral part of these statements.

REALTY INCOME CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME
(in thousands, except per share amounts) (unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
REVENUE				
Rental (including reimbursable)	\$ 1,008,862	\$ 825,946	\$ 2,929,440	\$ 2,426,311
Other	30,242	11,323	73,268	28,720
Total revenue	1,039,104	837,269	3,002,708	2,455,031
EXPENSES				
Depreciation and amortization	495,566	419,016	1,419,321	1,232,215
Interest	184,121	117,409	522,110	333,933
Property (including reimbursable)	70,981	52,719	235,081	157,241
General and administrative	35,525	34,096	106,521	100,934
Provisions for impairment	16,808	1,650	59,801	16,379
Merger and integration-related costs	2,884	3,746	4,532	12,994
Total expenses	805,885	628,636	2,347,366	1,853,696
Gain on sales of real estate	7,572	42,883	19,675	93,611
Foreign currency and derivative (loss) gain, net	(2,813)	(22,893)	4,957	(16,003)
Gain on extinguishment of debt	—	240	—	367
Equity in income and impairment of investment in unconsolidated entities	—	(662)	411	(6,335)
Other income, net	7,235	2,249	12,985	6,907
Income before income taxes	245,213	230,450	693,370	679,882
Income taxes	(11,336)	(10,163)	(36,218)	(35,802)
Net income	233,877	220,287	657,152	644,080
Net income attributable to noncontrolling interests	(404)	(720)	(3,248)	(1,937)
Net income available to common stockholders	\$ 233,473	\$ 219,567	\$ 653,904	\$ 642,143
Amounts available to common stockholders per common share:				
Net income, basic and diluted	\$ 0.33	\$ 0.36	\$ 0.96	\$ 1.06
Weighted average common shares outstanding:				
Basic	709,165	617,512	681,419	604,464
Diluted	709,543	617,957	682,129	604,836
Net income available to common stockholders	\$ 233,473	\$ 219,567	\$ 653,904	\$ 642,143
Total other comprehensive loss				
Foreign currency translation adjustment	(61,401)	(89,231)	(3,605)	(148,929)
Unrealized gain (loss) on derivatives, net	7,193	41,914	(1,379)	119,058
Total other comprehensive loss	\$ (54,208)	\$ (47,317)	\$ (4,984)	\$ (29,871)
Comprehensive income available to common stockholders	\$ 179,265	\$ 172,250	\$ 648,920	\$ 612,272

The accompanying notes to consolidated financial statements are an integral part of these statements.

REALTY INCOME CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EQUITY
(in thousands) (unaudited)

Three months ended September 30, 2023, and 2022

	Shares of common stock	Common stock and paid in capital	Distributions in excess of net income	Accumulated other comprehensive income (loss)	Total stockholders' equity	Noncontrolling interests	Total equity
Balance, June 30, 2023	708,773	\$ 37,149,380	\$ (6,102,226)	\$ 96,057	\$ 31,143,211	\$ 167,932	\$ 31,311,143
Net income	—	—	233,473	—	233,473	404	233,877
Other comprehensive loss	—	—	—	(54,208)	(54,208)	—	(54,208)
Distributions paid and payable	—	—	(547,781)	—	(547,781)	(2,497)	(550,278)
Share issuances, net of costs	15,122	876,253	—	—	876,253	—	876,253
Contributions by noncontrolling interests	—	—	—	—	—	435	435
Share-based compensation, net	(1)	6,196	—	—	6,196	—	6,196
Balance, September 30, 2023	723,894	\$ 38,031,829	\$ (6,416,534)	\$ 41,849	\$ 31,657,144	\$ 166,274	\$ 31,823,418
Balance, June 30, 2022	617,564	\$ 31,303,383	\$ (4,999,150)	\$ 22,379	\$ 26,326,612	\$ 76,267	\$ 26,402,879
Net income	—	—	219,567	—	219,567	720	220,287
Other comprehensive loss	—	—	—	(47,317)	(47,317)	—	(47,317)
Distributions paid and payable	—	—	(461,429)	—	(461,429)	(1,070)	(462,499)
Issuance of common partnership units	—	—	—	—	—	51,221	51,221
Share issuances, net of costs	9,582	694,708	—	—	694,708	—	694,708
Share-based compensation, net	—	4,978	—	—	4,978	—	4,978
Balance, September 30, 2022	627,146	\$ 32,003,069	\$ (5,241,012)	\$ (24,938)	\$ 26,737,119	\$ 127,138	\$ 26,864,257

Nine months ended September 30, 2023 and 2022

	Shares of common stock	Common stock and paid in capital	Distributions in excess of net income	Accumulated other comprehensive income (loss)	Total stockholders' equity	Noncontrolling interests	Total equity
Balance, December 31, 2022	660,300	\$ 34,159,509	\$ (5,493,193)	\$ 46,833	\$ 28,713,149	\$ 130,140	\$ 28,843,289
Net income	—	—	653,904	—	653,904	3,248	657,152
Other comprehensive loss	—	—	—	(4,984)	(4,984)	—	(4,984)
Distributions paid and payable	—	—	(1,577,245)	—	(1,577,245)	(7,108)	(1,584,353)
Share issuances, net of costs	63,348	3,858,347	—	—	3,858,347	—	3,858,347
Contributions by noncontrolling interests	—	—	—	—	—	39,994	39,994
Share-based compensation, net	246	13,973	—	—	13,973	—	13,973
Balance, September 30, 2023	723,894	\$ 38,031,829	\$ (6,416,534)	\$ 41,849	\$ 31,657,144	\$ 166,274	\$ 31,823,418
Balance, December 31, 2021	591,262	\$ 29,578,212	\$ (4,530,571)	\$ 4,933	\$ 25,052,574	\$ 76,826	\$ 25,129,400
Net income	—	—	642,143	—	642,143	1,937	644,080
Other comprehensive loss	—	—	—	(29,871)	(29,871)	—	(29,871)
Distributions paid and payable	—	—	(1,352,584)	—	(1,352,584)	(2,846)	(1,355,430)
Issuance of common partnership units	—	—	—	—	—	51,221	51,221
Share issuances, net of costs	35,715	2,415,281	—	—	2,415,281	—	2,415,281
Share-based compensation, net	169	9,576	—	—	9,576	—	9,576
Balance, September 30, 2022	627,146	\$ 32,003,069	\$ (5,241,012)	\$ (24,938)	\$ 26,737,119	\$ 127,138	\$ 26,864,257

The accompanying notes to consolidated financial statements are an integral part of these statements.

REALTY INCOME CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands) (unaudited)

	Nine months ended September 30,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 657,152	\$ 644,080
Adjustments to net income:		
Depreciation and amortization	1,419,321	1,232,215
Amortization of share-based compensation	20,154	16,742
Non-cash revenue adjustments	(51,272)	(37,538)
Gain on extinguishment of debt	—	(367)
Amortization of net premiums on mortgages payable	(9,597)	(10,418)
Amortization of net premiums on notes payable	(45,647)	(47,185)
Amortization of deferred financing costs	19,498	11,116
(Loss) gain on interest rate swaps	(5,390)	2,181
Foreign currency and unrealized derivative gain, net	10,188	16,003
Gain on sales of real estate	(19,675)	(93,611)
Equity in income and impairment of investment in unconsolidated entities	(411)	6,335
Distributions from unconsolidated entities	—	1,605
Provisions for impairment on real estate	59,801	16,379
Change in assets and liabilities		
Accounts receivable and other assets	(17,538)	207,838
Accounts payable, accrued expenses and other liabilities	161,527	(32,009)
Net cash provided by operating activities	<u>2,198,111</u>	<u>1,933,366</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment in real estate	(6,702,140)	(4,980,159)
Improvements to real estate, including leasing costs	(47,107)	(66,047)
Proceeds from sales of real estate	92,772	414,688
Return of investment from unconsolidated entities	3,927	1,401
Net proceeds from sale of unconsolidated entities	—	107,621
Proceeds from note receivable	—	5,867
Insurance proceeds received	15,177	16,046
Non-refundable escrow deposits	(1,188)	(28,556)
Net cash used in investing activities	<u>(6,638,559)</u>	<u>(4,529,139)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Cash distributions to common stockholders	(1,555,679)	(1,342,695)
Borrowings on line of credit and commercial paper programs	33,021,401	19,644,724
Payments on line of credit and commercial paper programs	(34,909,165)	(19,147,386)
Proceeds from term loan	1,029,383	—
Proceeds from notes payable issued	3,263,294	1,405,570
Principal payments on mortgages payable	(20,842)	(311,083)
Proceeds from common stock offerings, net	3,849,963	2,404,092
Proceeds from dividend reinvestment and stock purchase plan	8,382	8,708
Distributions to noncontrolling interests	(5,585)	(2,658)
Net receipts on derivative settlements	2,191	7,474
Debt issuance costs	(35,014)	(27,732)
Other items, including shares withheld upon vesting	(6,181)	(4,685)
Net cash provided by financing activities	<u>4,642,148</u>	<u>2,634,329</u>
Effect of exchange rate changes on cash and cash equivalents	2,083	(82,012)
Net increase (decrease) in cash, cash equivalents and restricted cash	203,783	(43,456)
Cash, cash equivalents and restricted cash, beginning of period	226,881	332,369
Cash, cash equivalents and restricted cash, end of period	<u>\$ 430,664</u>	<u>\$ 288,913</u>

For supplemental disclosures, see note 15, *Supplemental Disclosures of Cash Flow Information*.

The accompanying notes to consolidated financial statements are an integral part of these statements.

REALTY INCOME CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

September 30, 2023

(unaudited)

1. Basis of Presentation

Realty Income Corporation ("Realty Income," the "Company," "we," "our" or "us") was founded in 1969 and is organized as a Maryland corporation. We invest in commercial real estate and have elected to be taxed as a real estate investment trust ("REIT"). We are listed on the New York Stock Exchange ("NYSE") under the symbol "O".

As of September 30, 2023, we owned or held interests in a diversified portfolio of 13,282 properties located in all 50 states of the United States ("U.S."), Puerto Rico, the United Kingdom ("U.K."), Spain, Italy, and Ireland, with approximately 262.6 million square feet of leasable space.

Our accompanying unaudited consolidated financial statements were prepared from our books and records in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). In the opinion of management, all adjustments (consisting of only normal recurring accruals) necessary to present a fair statement of results for the interim periods presented have been included. Operating results for the three and nine months ended September 30, 2023 are not necessarily an indication of the results that may be expected for the entire year. Readers of this quarterly report should refer to our audited consolidated financial statements for the year ended December 31, 2022, which are included in our 2022 Annual Report on [Form 10-K](#), as certain disclosures that would substantially duplicate those contained in the audited financial statements have not been included in this report. The U.S. dollar ("USD") is our reporting currency. Unless otherwise indicated, all dollar amounts are expressed in USD.

For our consolidated subsidiaries whose functional currency is not the USD, we translate their financial statements into USD at the time we consolidate those subsidiaries' financial statements. Generally, assets and liabilities are translated at the exchange rate in effect at the balance sheet date. The resulting translation adjustments are included in 'Accumulated other comprehensive income' ("AOCI") in the consolidated balance sheets. Certain balance sheet items, primarily equity and capital-related accounts, are reflected at the historical exchange rate. Income statement accounts are translated using the average exchange rate for the period.

We and certain of our consolidated subsidiaries have intercompany and third-party debt that is not denominated in our functional currency. When the debt is remeasured to the functional currency of the entity, a gain or loss can result. The resulting adjustment is reflected in 'Foreign currency and derivative (loss) gain, net' in the consolidated statements of income and comprehensive income. Intercompany accounts and transactions are eliminated in consolidation.

Principles of Consolidation. These consolidated financial statements include the accounts of Realty Income and all other entities in which we have a controlling financial interest. We evaluate whether we have a controlling financial interest in an entity in accordance with Accounting Standards Codification ("ASC") 810, *Consolidation*.

Voting interest entities are entities considered to have sufficient equity at risk and which the equity holders have the obligation to absorb losses, the right to receive residual returns and the right to make decisions about the entity's activities. We consolidate voting interest entities in which we have a controlling financial interest, which we typically have through holding of a majority of the entity's voting equity interests.

Variable interest entities ("VIEs") are entities that lack sufficient equity at risk or where the equity holders either do not have the obligation to absorb losses, do not have the right to receive residual returns, do not have the right to make decisions about the entity's activities, or some combination of the above. A controlling financial interest in a VIE is present when an entity has a variable interest, or a combination of variable interests, that provides the entity with (i) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. An entity that meets both conditions above is deemed the primary beneficiary and consolidates the VIE. We reassess our initial evaluation of whether an entity is a VIE when certain reconsideration events occur. We reassess our determination of whether we are the primary beneficiary of a VIE on an ongoing basis based on current facts and circumstances.

At September 30, 2023, Realty Income, L.P. and certain investments, including investments in joint ventures, are considered VIEs in which we were deemed the primary beneficiary based on our controlling financial interests.

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Below is a summary of selected financial data of consolidated VIEs included in the consolidated balance sheets at September 30, 2023, and December 31, 2022 (in thousands):

	September 30, 2023	December 31, 2022
Net real estate	\$ 2,494,915	\$ 920,032
Total assets	\$ 3,161,113	\$ 1,082,346
Total liabilities	\$ 119,552	\$ 60,127

The portion of a consolidated entity not owned by us is recorded as a noncontrolling interest. Noncontrolling interests are reflected on our consolidated balance sheets as a component of equity. Noncontrolling interests that were created or assumed as part of a business combination or asset acquisition were recognized at fair value as of the date of the transaction (see *note 9, Noncontrolling Interests*).

Reclassification. Certain prior period amounts have been reclassified to conform to the current year presentation.

Value-added tax receivable is included in 'Other assets, net', in the consolidated balance sheets. Previously, this was categorized as 'Accounts receivable, net' in the consolidated balance sheets.

Use of Estimates. The consolidated financial statements were prepared in conformity with U.S. GAAP, which requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Segment Reporting. We report our results in a single reportable segment, which reflects how our chief operating decision maker allocates resources and assesses our performance.

Income Taxes. We have elected to be taxed as a REIT, under the Internal Revenue Code of 1986, as amended. We believe we have qualified and continue to qualify as a REIT. Under the REIT operating structure, we are permitted to deduct dividends paid to our stockholders in determining our taxable income. Assuming our dividends equal or exceed our taxable net income in the U.S., we generally will not be required to pay U.S. income taxes on such income. Accordingly, no provision has been made for federal income taxes in the accompanying consolidated financial statements, except for federal income taxes of our taxable REIT subsidiaries ("TRS"). A TRS is a subsidiary of a REIT that is subject to federal, state and local income taxes, as applicable. Our use of TRS entities enables us to engage in certain business activities while complying with the REIT qualification requirements and to retain any income generated by these businesses for reinvestment without the requirement to distribute those earnings. For our international territories, we are liable for taxes in the United Kingdom and Spain. Accordingly, provisions have been made for U.K. and Spain income taxes. Therefore, the income taxes recorded on our consolidated statements of income and comprehensive income represent amounts accrued or paid by Realty Income and its subsidiaries for U.S. income taxes on our TRS entities, city and state income and franchise taxes, and income taxes for the U.K. and Spain.

Earnings and profits that determine the taxability of distributions to stockholders differ from net income reported for financial reporting purposes primarily due to differences in the estimated useful lives and methods used to compute depreciation and the carrying value (basis) of the investments in properties for tax purposes, among other things.

We regularly analyze our various international, federal and state filing positions and only recognize the income tax effect in our financial statements when certain criteria regarding uncertain income tax positions have been met. We believe that our income tax positions would more likely than not be sustained upon examination by all relevant taxing authorities. Therefore, no provisions for uncertain tax positions have been recorded on our consolidated financial statements.

Lease Revenue Recognition and Accounts Receivable. The majority of our leases are accounted for as operating leases. Under this method, leases that have fixed and determinable rent increases are recognized on a straight-line basis over the lease term. Any rental revenue contingent upon our client's sales, or percentage rent, is recognized only after our client exceeds their sales breakpoint. Rental increases based upon changes in the consumer price indexes are recognized only after the changes in the indexes have occurred and are then applied according to the lease agreements. Contractually obligated rental revenue from our clients for recoverable real estate taxes and operating expenses are included in contractually obligated reimbursements by our clients, a component of rental revenue, in the period when such costs are incurred. Taxes and operating expenses paid directly by our clients are recorded on a net basis.

Other revenue includes certain property-related revenue not included in rental revenue and interest income recognized on financing receivables for certain leases with above-market terms.

We assess the probability of collecting substantially all of the lease payments to which we are entitled under the original lease contract as required under Topic 842, *Leases*. We assess the collectability of our future lease payments based on an analysis of creditworthiness, economic trends and other facts and circumstances related to the applicable clients. If we conclude the collection of substantially all lease payments under a lease is less than probable, rental revenue recognized for that lease is limited to cash received going forward, existing operating lease receivables, including those related to straight-line rental revenue, must be written off as an adjustment to rental revenue, and no further operating lease receivables are recorded for that lease until such future determination is made that substantially all lease payments under that lease are now considered probable. If we subsequently conclude that the collection of substantially all lease payments under a lease is probable, a reversal of lease receivables previously written off is recognized.

Concentration of Credit Risk. There were no clients who accounted for more than more than 10% of our total revenue for each of the nine months ended September 30, 2023, and 2022.

Recent Accounting Pronouncements. The Company reviewed all recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact on our consolidated financial statements.

2. Supplemental Detail for Certain Components of Consolidated Balance Sheets (in thousands):

A. Accounts receivable, net, consist of the following at:	September 30, 2023	December 31, 2022
Straight-line rent receivables, net	\$ 484,423	\$ 363,993
Client receivables, net	194,018	179,244
	<u>\$ 678,441</u>	<u>\$ 543,237</u>
B. Lease intangible assets, net, consist of the following at:	September 30, 2023	December 31, 2022
In-place leases	\$ 5,680,498	\$ 5,324,565
Accumulated amortization of in-place leases	(1,857,044)	(1,409,878)
Above-market leases	1,820,105	1,697,367
Accumulated amortization of above-market leases	(554,266)	(443,688)
	<u>\$ 5,089,293</u>	<u>\$ 5,168,366</u>
C. Other assets, net, consist of the following at:	September 30, 2023	December 31, 2022
Financing receivables	\$ 1,638,967	\$ 933,116
Right of use asset - financing leases	675,512	467,920
Right of use asset - operating leases, net	595,148	603,097
Value-added tax receivable	95,462	24,726
Impounds related to mortgages payable	45,224	18,152
Derivative assets and receivables – at fair value	44,753	83,100
Prepaid expenses	42,220	28,128
Restricted escrow deposits	41,311	37,627
Credit facility origination costs, net	13,497	17,196
Corporate assets, net	13,407	12,334
Investment in sales type lease	6,030	5,951
Non-refundable escrow deposits	1,188	5,667
Other items	26,714	39,939
	<u>\$ 3,239,433</u>	<u>\$ 2,276,953</u>

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D. Accounts payable and accrued expenses consist of the following at:	September 30, 2023	December 31, 2022
Notes payable - interest payable	\$ 182,603	\$ 129,202
Accrued costs on properties under development	87,672	26,559
Property taxes payable	87,316	45,572
Derivative liabilities and payables – at fair value	78,344	64,724
Value-added tax payable	64,197	23,375
Accrued income taxes	46,378	22,626
Accrued property expenses	42,366	25,290
Mortgages, term loans, and credit line - interest payable	8,188	5,868
Other items	63,302	55,921
	<u>\$ 660,366</u>	<u>\$ 399,137</u>
E. Lease intangible liabilities, net, consist of the following at:	September 30, 2023	December 31, 2022
Below-market leases	\$ 1,737,936	\$ 1,617,870
Accumulated amortization of below-market leases	(311,672)	(238,434)
	<u>\$ 1,426,264</u>	<u>\$ 1,379,436</u>
F. Other liabilities consist of the following at:	September 30, 2023	December 31, 2022
Lease liability - operating leases, net	\$ 426,575	\$ 440,096
Rent received in advance and other deferred revenue	296,567	269,645
Lease liability - financing leases	42,251	49,469
Security deposits	21,044	15,577
	<u>\$ 786,437</u>	<u>\$ 774,787</u>

3. Investments in Real Estate

A. Acquisitions of Real Estate

Below is a summary of our acquisitions for the nine months ended September 30, 2023:

	Number of Properties	Leasable Square Feet (in thousands)	Investment (\$ in millions)	Weighted Average Lease Term (Years)	Initial Weighted Average Cash Lease Yield ⁽¹⁾
Acquisitions - U.S.	802	14,730	\$ 3,708.9	15.9	6.9 %
Acquisitions - Europe	80	8,608	2,191.6	15.6	7.1 %
Total acquisitions	882	23,338	\$ 5,900.5	15.8	7.0 %
Properties under development ⁽²⁾	305	7,269	910.0	16.2	6.7 %
Total ⁽³⁾	1,187	30,607	\$ 6,810.5	15.8	6.9 %

⁽¹⁾ The initial weighted average cash lease yield for a property is generally computed as estimated contractual first year cash net operating income, which, in the case of a net leased property, is equal to the aggregate cash base rent for the first full year of each lease, divided by the total cost of the property. Since it is possible that a client could default on the payment of contractual rent (defined as the monthly aggregate cash amount charged to clients, inclusive of monthly base rent receivables), we cannot provide assurance that the actual return on the funds invested will remain at the percentages listed above. Contractual net operating income used in the calculation of initial weighted average cash lease yield includes approximately \$3.7 million received as settlement credits as reimbursement of free rent periods for the nine months ended September 30, 2023.

In the case of a property under development or expansion, the contractual lease rate is generally fixed such that rent varies based on the actual total investment in order to provide a fixed rate of return. When the lease does not provide for a fixed rate of return on a property under development or expansion, the initial weighted average cash lease yield is computed as follows: estimated cash net operating income (determined by the lease) for the first full year of each lease, divided by our projected total investment in the property, including land, construction and capitalized interest costs.

⁽²⁾ Includes £32.6 million of investments in four U.K. development properties and €25.9 million of investment in two Spain development properties, converted at the applicable exchange rates on the funding dates.

⁽³⁾ Our clients occupying the new properties are 89.7% retail, 10.0% industrial, and 0.3% other property types based on annualized contractual rent. Approximately 25% of the annualized contractual rent generated from acquisitions during the nine months ended September 30, 2023 is from investment grade rated clients, their subsidiaries, or affiliated companies.

The aggregate purchase price of the assets acquired during the nine months ended September 30, 2023 has been allocated as follows (in millions):

	Acquisitions - USD	Acquisitions - Sterling	Acquisitions - Euro
Land ⁽¹⁾	\$ 727.7	£ 434.7	€ 17.3
Buildings and improvements	2,640.0	824.8	24.2
Lease intangible assets ⁽²⁾	371.9	122.2	15.6
Other assets ⁽³⁾	560.3	326.1	1.6
Lease intangible liabilities ⁽⁴⁾	(110.2)	(11.0)	(0.8)
Other liabilities ⁽⁵⁾	(8.7)	(1.8)	—
	\$ 4,181.0	£ 1,695.0	€ 57.9

⁽¹⁾ Sterling-denominated land includes £3.2 million of right of use assets under long-term ground leases.

⁽²⁾ The weighted average amortization period for acquired lease intangible assets is 9.7 years.

⁽³⁾ USD-denominated other assets consist entirely of financing receivables with above-market terms. Sterling-denominated other assets consist of £135.3 million of financing receivables with above-market terms and £190.8 million of right-of-use assets accounted for as finance leases.

⁽⁴⁾ The weighted average amortization period for acquired lease intangible liabilities is 11.1 years.

⁽⁵⁾ USD-denominated other liabilities consist entirely of deferred rent on certain below-market leases.

The properties acquired during the nine months ended September 30, 2023 generated total revenues of \$174.4 million and net income of \$91.6 million during the nine months ended September 30, 2023.

B. Investments in Existing Properties

During the nine months ended September 30, 2023, we capitalized costs of \$43.6 million on existing properties in our portfolio, consisting of \$36.5 million for non-recurring building improvements, \$6.9 million for re-leasing costs, and \$0.2 million for recurring capital expenditures. In comparison, during the nine months ended September 30, 2022, we capitalized costs of \$70.6 million on existing properties in our portfolio, consisting of \$63.7 million for non-recurring building improvements, \$3.9 million for re-leasing costs, and \$3.0 million for recurring capital expenditures.

C. Properties with Existing Leases

The value of the in-place and above-market leases is recorded to 'Lease intangible assets, net' on our consolidated balance sheets, and the value of the below-market leases is recorded to 'Lease intangible liabilities, net' on our consolidated balance sheets.

The values of the in-place leases are amortized as depreciation and amortization expense. The amounts amortized to expense for all of our in-place leases, for the nine months ended September 30, 2023, and 2022 were \$489.2 million and \$476.8 million, respectively.

The values of the above-market and below-market leases are amortized over the term of the respective leases, including any bargain renewal options, as an adjustment to rental revenue in the consolidated statements of income and comprehensive income. The amounts amortized as a net decrease to rental revenue for capitalized above-market and below-market leases for the nine months ended September 30, 2023 and 2022 were \$48.6 million and \$41.2 million, respectively. If a lease was to be terminated prior to its stated expiration, all unamortized amounts relating to that lease would be recorded to revenue or expense, as appropriate.

The following table presents the estimated impact during the next five years and thereafter related to the amortization of the above-market and below-market lease intangibles and the amortization of the in-place lease intangibles at September 30, 2023 (dollars in thousands):

	Net increase (decrease) to rental revenue	Increase to amortization expense
2023	\$ (15,270)	\$ 159,999
2024	(55,582)	580,180
2025	(48,736)	499,404
2026	(41,027)	444,691
2027	(32,426)	385,298
Thereafter	353,466	1,753,882
Totals	\$ 160,425	\$ 3,823,454

D. Gain on Sales of Real Estate

The following table summarizes our properties sold during the periods indicated below (dollars in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Number of properties	24	35	79	139
Net sales proceeds	\$ 32.3	\$ 142.4	\$ 92.8	\$ 414.7
Gain on sales of real estate	\$ 7.6	\$ 42.9	\$ 19.7	\$ 93.6

4. Revolving Credit Facility and Commercial Paper Programs

A. Credit Facility

We have a \$4.25 billion unsecured revolving multicurrency credit facility that matures in June 2026, includes two six-month extensions that can be exercised at our option, and allows us to borrow in up to 14 currencies, including USD. Our revolving credit facility also has a \$1.0 billion expansion option, which is subject to obtaining lender commitments. Under our revolving credit facility, our current investment grade credit ratings provide for USD borrowings at the Secured Overnight Financing Rate ("SOFR"), plus 0.725% with a SOFR adjustment charge of 0.10% and a revolving credit facility fee of 0.125%, for all-in pricing of 0.95% over SOFR, British Pound Sterling at the Sterling Overnight Indexed Average ("SONIA"), plus 0.725% with a SONIA adjustment charge of 0.0326% and a revolving credit facility fee of 0.125%, for all-in pricing of 0.8826% over SONIA, and Euro Borrowings at one-month Euro Interbank Offered Rate ("EURIBOR"), plus 0.725%, and a revolving credit facility fee of 0.125%, for all-in pricing of 0.85% over one-month EURIBOR.

As of September 30, 2023, we had a borrowing capacity of \$3.8 billion available on our revolving credit facility (subject to customary conditions to borrowing) and an outstanding balance of \$481.5 million, comprised of £372.0 million Sterling and €26.0 million Euro borrowings, as compared to an outstanding balance at December 31, 2022 of \$2.0 billion, comprised of €1.8 billion Euro and £70.0 million Sterling borrowings.

The weighted average interest rate on outstanding borrowings under our revolving credit facility was 4.8% and 1.7% during the nine months ended September 30, 2023, and 2022, respectively. At September 30, 2023, our weighted average interest rate on borrowings outstanding under our revolving credit facility was 5.9%. Our revolving credit facility is subject to various leverage and interest coverage ratio limitations, and at September 30, 2023, we were in compliance with the covenants under our revolving credit facility.

As of September 30, 2023, credit facility origination costs of \$13.5 million are included in other assets, net, as compared to \$17.2 million at December 31, 2022, on our consolidated balance sheets. These costs are being amortized over the remaining term of our revolving credit facility.

B. Commercial Paper Programs

We have a USD-denominated unsecured commercial paper program, under which we may issue unsecured commercial paper notes up to a maximum aggregate amount outstanding of \$1.5 billion, as well as a Euro-denominated unsecured commercial paper program, which permits us to issue additional unsecured commercial notes up to a maximum aggregate amount of \$1.5 billion (or foreign currency equivalent). Our Euro-denominated unsecured commercial paper program may be issued in USD or various foreign currencies, including but not limited to, Euros, Sterling, Swiss Francs, Yen, Canadian Dollars, and Australian Dollars, in each case, pursuant to customary terms in the European commercial paper market.

The commercial paper ranks on a parity in right of payment with all of our other unsecured senior indebtedness outstanding from time to time, including borrowings under our revolving credit facility, our term loans and our outstanding senior unsecured notes. Proceeds from commercial paper borrowings are used for general corporate purposes.

As of September 30, 2023, the balance of borrowings outstanding under our commercial paper programs was \$376.8 million, consisting entirely of Euro borrowings, as compared to \$701.8 million outstanding commercial paper borrowings, including €361.0 million of Euro-denominated borrowings, at December 31, 2022. The weighted average interest rate on outstanding borrowings under our commercial paper programs was 4.7% and 1.3% for the nine months ended September 30, 2023, and 2022, respectively. As of September 30, 2023, our weighted average interest rate on outstanding borrowings under our commercial paper programs was 4.0%. We use our \$4.25 billion revolving credit facility as a liquidity backstop for the repayment of the notes issued under the commercial paper programs. The commercial paper borrowings generally carry a term of less than a year.

5. Term Loans

In January 2023, we entered into a term loan agreement, permitting us to incur multicurrency term loans, up to an aggregate of \$1.5 billion in total borrowings. As of September 30, 2023, we had \$1.0 billion in multicurrency borrowings, including \$90.0 million, £705.0 million, and €85.0 million in outstanding borrowings. The 2023 term loans initially mature in January 2024 and include two 12-month maturity extensions that can be exercised at our option, with an anticipated repayment date of January 2026. Our A3/A- credit ratings provide for a borrowing rate of 80 basis points over the applicable benchmark rate, which includes adjusted SOFR for USD-denominated loans, adjusted SONIA for Sterling-denominated loans, and EURIBOR for Euro-denominated loans. In conjunction with our 2023 term loans, we entered into interest rate swaps which fix our per annum interest rate. As of September 30, 2023, the effective interest rate, after giving effect to the interest rate swaps, was 5.0%.

We also have a \$250.0 million senior unsecured term loan, which matures in March 2024. In conjunction with this term loan, we also entered into an interest rate swap. As of September 30, 2023, the effective interest rate on this term loan, after giving effect to the interest rate swap, was 3.8%.

At September 30, 2023, deferred financing costs of \$2.3 million are included net of the term loans principal balance, as compared to \$0.2 million related to our \$250.0 million term loan at December 31, 2022, on our consolidated balance sheets. These costs are being amortized over the remaining term of the term loans. As of September 30, 2023, we were in compliance with the covenants contained in the term loans.

6. Mortgages Payable

During the nine months ended September 30, 2023, we made \$20.8 million in principal payments, including the full repayment of two mortgages for \$17.4 million. No mortgages were assumed during the nine months ended September 30, 2023. Assumed mortgages are secured by the properties on which the debt was placed and are considered non-recourse debt with limited customary exceptions which vary from loan to loan.

Our mortgages contain customary covenants, such as limiting our ability to further mortgage each applicable property or to discontinue insurance coverage without the prior consent of the lender. At September 30, 2023, we were in compliance with these covenants.

The balance of our deferred financing costs, which are classified as part of 'Mortgages payable, net', on our consolidated balance sheets, was \$0.6 million at September 30, 2023 and \$0.8 million at December 31, 2022. These costs are being amortized over the remaining term of each mortgage.

The following table summarizes our mortgages payable as of September 30, 2023 and December 31, 2022 (dollars in millions):

As Of	Number of Properties ⁽¹⁾	Weighted Average Stated Interest Rate ⁽²⁾	Weighted Average Effective Interest Rate ⁽³⁾	Weighted Average Remaining Years Until Maturity	Remaining Principal Balance	Unamortized Premium and Deferred Financing Costs Balance, net	Mortgage Payable Balance
September 30, 2023	131	4.8 %	3.3 %	0.7	\$ 822.0	\$ 2.3	\$ 824.2
December 31, 2022	136	4.8 %	3.3 %	1.4	\$ 842.3	\$ 11.6	\$ 853.9

⁽¹⁾ At September 30, 2023, there were 16 mortgages on 131 properties and at December 31, 2022, there were 18 mortgages on 136 properties. With the exception of one Sterling-denominated mortgage which is paid quarterly, the mortgages require monthly payments with principal payments due at maturity. At September 30, 2023 and December 31, 2022, all mortgages were at fixed interest rates.

⁽²⁾ Stated interest rates ranged from 3.0% to 6.9% at September 30, 2023 and December 31, 2022, respectively.

⁽³⁾ Effective interest rates ranged from 1.3% to 6.6% and 2.7% to 6.6% at September 30, 2023 and December 31, 2022, respectively.

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The following table summarizes the maturity of mortgages payable as of September 30, 2023, excluding \$2.3 million related to unamortized net premiums and deferred financing costs (dollars in millions):

Year of Maturity		Principal
2023	\$	1.3
2024		740.5
2025		42.4
2026		12.0
2027		22.3
Thereafter		3.5
Totals	\$	822.0

7. Notes Payable

A. General

At September 30, 2023, our senior unsecured notes and bonds are USD-denominated, Sterling-denominated, and Euro-denominated. Foreign-denominated notes are converted at the applicable exchange rate on the balance sheet date. The following are sorted by maturity date (in thousands):

	Maturity Dates	Principal (Currency Denomination)	Carrying Value (USD) as of	
			September 30, 2023	December 31, 2022
4.600% Notes due 2024	February 6, 2024	\$ 499,999	\$ 499,999	\$ 499,999
3.875% Notes due 2024	July 15, 2024	\$ 350,000	350,000	350,000
3.875% Notes due 2025	April 15, 2025	\$ 500,000	500,000	500,000
4.625% Notes due 2025	November 1, 2025	\$ 549,997	549,997	549,997
5.050% Notes due 2026	January 13, 2026	\$ 500,000	500,000	—
0.750% Notes due 2026	March 15, 2026	\$ 325,000	325,000	325,000
4.875% Notes due 2026	June 1, 2026	\$ 599,997	599,997	599,997
4.125% Notes due 2026	October 15, 2026	\$ 650,000	650,000	650,000
1.875% Notes due 2027 ⁽¹⁾	January 14, 2027	£ 250,000	305,075	301,225
3.000% Notes due 2027	January 15, 2027	\$ 600,000	600,000	600,000
1.125% Notes due 2027 ⁽¹⁾	July 13, 2027	£ 400,000	488,120	481,960
3.950% Notes due 2027	August 15, 2027	\$ 599,873	599,873	599,873
3.650% Notes due 2028	January 15, 2028	\$ 550,000	550,000	550,000
3.400% Notes due 2028	January 15, 2028	\$ 599,816	599,816	599,816
2.200% Notes due 2028	June 15, 2028	\$ 499,959	499,959	499,959
4.700% Notes due 2028	December 15, 2028	\$ 400,000	400,000	—
3.250% Notes due 2029	June 15, 2029	\$ 500,000	500,000	500,000
3.100% Notes due 2029	December 15, 2029	\$ 599,291	599,291	599,291
4.850% Notes due 2030	March 15, 2030	\$ 600,000	600,000	—
3.160% Notes due 2030	June 30, 2030	£ 140,000	170,842	168,686
4.875% Notes due 2030 ⁽¹⁾	July 6, 2030	€ 550,000	582,120	—
1.625% Notes due 2030 ⁽¹⁾	December 15, 2030	£ 400,000	488,120	481,960
3.250% Notes due 2031	January 15, 2031	\$ 950,000	950,000	950,000
3.180% Notes due 2032	June 30, 2032	£ 345,000	421,004	415,691
5.625% Notes due 2032	October 13, 2032	\$ 750,000	750,000	750,000
2.850% Notes due 2032	December 15, 2032	\$ 699,655	699,655	699,655
1.800% Notes due 2033	March 15, 2033	\$ 400,000	400,000	400,000
1.750% Notes due 2033 ⁽¹⁾	July 13, 2033	£ 350,000	427,105	421,715
4.900% Notes due 2033	July 15, 2033	\$ 600,000	600,000	—
2.730% Notes due 2034	May 20, 2034	£ 315,000	384,395	379,544
5.125% Notes due 2034 ⁽¹⁾	July 6, 2034	€ 550,000	582,120	—
5.875% Bonds due 2035	March 15, 2035	\$ 250,000	250,000	250,000
3.390% Notes due 2037	June 30, 2037	£ 115,000	140,335	138,563
2.500% Notes due 2042 ⁽¹⁾	January 14, 2042	£ 250,000	305,075	301,225
4.650% Notes due 2047	March 15, 2047	\$ 550,000	550,000	550,000
Total principal amount			\$ 17,417,897	\$ 14,114,156
Unamortized net premiums, deferred financing costs, and cumulative basis adjustment on fair value hedge ⁽²⁾			64,755	163,857
			\$ 17,482,652	\$ 14,278,013

⁽¹⁾ Interest paid annually. Interest on the remaining senior unsecured notes and bond obligations included in the table is paid semi-annually.

⁽²⁾ In January 2023, in conjunction with the pricing of these senior unsecured notes due January 2026, we entered into three-year, fixed-to-variable interest rate swaps, which are accounted for as fair value hedges. See *Note 11, Derivative Instruments* for further details.

The following table summarizes the maturity of our notes and bonds payable as of September 30, 2023, excluding \$64.8 million related to unamortized net premiums, deferred financing costs, and basis adjustment on interest rate swaps designated as fair value hedges (dollars in millions):

Year of Maturity	Principal
2023	\$ —
2024	850.0
2025	1,050.0
2026	2,075.0
2027	1,993.1
Thereafter	11,449.8
Totals	\$ 17,417.9

As of September 30, 2023, the weighted average interest rate on our notes and bonds payable was 3.7%, and the weighted average remaining years until maturity was 6.6 years.

Interest incurred on all of the notes and bonds was \$159.7 million and \$107.9 million for the three months ended September 30, 2023, and 2022, respectively, and \$434.1 million and \$314.0 million for the nine months ended September 30, 2023, and 2022, respectively.

Our outstanding notes and bonds are unsecured; accordingly, we have not pledged any assets as collateral for these or any other obligations.

All of these notes and bonds contain various covenants, including: (i) a limitation on incurrence of any debt which would cause our debt to total adjusted assets ratio to exceed 60%; (ii) a limitation on incurrence of any secured debt which would cause our secured debt to total adjusted assets ratio to exceed 40%; (iii) a limitation on incurrence of any debt which would cause our debt service coverage ratio to be less than 1.5 times; and (iv) the maintenance at all times of total unencumbered assets not less than 150% of our outstanding unsecured debt. At September 30, 2023, we were in compliance with these covenants.

B. Note Issuances

During the nine months ended September 30, 2023, we issued the following notes and bonds (in millions):

	Date of Issuance	Maturity Date	Principal amount	Price of par value	Effective yield to maturity
5.050% Notes	January 2023	January 2026	\$ 500.0 ⁽¹⁾	99.618 %	5.189 %
4.850% Notes	January 2023	March 2030	\$ 600.0	98.813 %	5.047 %
4.700% Notes	April 2023	December 2028	\$ 400.0	98.949 %	4.912 %
4.900% Notes	April 2023	July 2033	\$ 600.0	98.020 %	5.148 %
4.875% Notes	July 2023	July 2030	€ 550.0	99.421 %	4.975 %
5.125% Notes	July 2023	July 2034	€ 550.0	99.506 %	5.185 %

⁽¹⁾ In January 2023, we issued \$500 million of 5.05% senior unsecured notes due January 13, 2026, which are callable at par on January 13, 2024.

8. Issuances of Common Stock

A. *At-the-Market ("ATM") Program*

In August 2023, we replaced our prior ATM program with a new ATM program, pursuant to which we may offer and sell up to 120.0 million shares of common stock (1) by us to, or through, a consortium of banks acting as our sales agents or (2) by a consortium of banks acting as forward sellers on behalf of any forward purchasers contemplated thereunder, in each case by means of ordinary brokers' transactions on the NYSE under the ticker symbol "O" at prevailing market prices or at negotiated prices. Upon settlement, subject to certain exceptions, we may elect, in our sole discretion, to cash settle or net share settle all or any portion of our obligations under any forward sale agreement, in which cases we may not receive any proceeds (in the case of cash settlement) or will not receive any proceeds (in the case of net share settlement), and we may owe cash (in the case of cash settlement) or shares of our common stock (in the case of net share settlement) to the relevant forward purchaser. Of the 120.0 million shares of our common stock available for sale under the prior ATM program at its inception, a total of 101.8 million of those shares were sold, the remainder of which were terminated. As of September 30, 2023, we had 102.7 million shares remaining for future issuance under our new ATM program. We anticipate maintaining the availability of our ATM program in the future, including the replenishment of authorized shares issuable thereunder.

The following table outlines common stock issuances pursuant to our ATM programs (dollars in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Shares of common stock issued under the ATM program ⁽¹⁾	15,070,342	9,532,853	63,209,973	35,506,034
Gross proceeds	\$ 883.0	\$ 696.6	\$ 3,880.4	\$ 2,424.1
Sales agents' commissions and other offering expenses	(9.7)	(5.2)	(30.4)	(20.0)
Net proceeds	\$ 873.3	\$ 691.4	\$ 3,850.0	\$ 2,404.1

⁽¹⁾ During the three and nine months ended September 30, 2023, 23.5 million and 69.7 million shares were sold, respectively, and 15.1 million and 63.2 million shares were settled pursuant to forward sale confirmations, respectively. In addition, as of September 30, 2023, 13.3 million shares of common stock subject to forward sale confirmations have been executed, but not settled, at a weighted average initial gross price of \$56.61 per share. We currently expect to fully settle forward sale agreements outstanding by December 31, 2023, representing \$749.3 million in net proceeds, for which the weighted average forward price at September 30, 2023 was \$56.47 per share.

B. *Dividend Reinvestment and Stock Purchase Plan ("DRSPP")*

Our DRSPP, provides our common stockholders, as well as new investors, with a convenient and economical method of purchasing our common stock and reinvesting their distributions. Our DRSPP also allows our current stockholders to buy additional shares of common stock by reinvesting all or a portion of their distributions. Our DRSPP authorizes up to 26.0 million common shares to be issued. At September 30, 2023, we had 11.0 million shares remaining for future issuance under our DRSPP program.

The following table outlines common stock issuances pursuant to our DRSPP program (dollars in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Shares of common stock issued under the DRSPP program	51,951	43,430	137,732	128,061
Gross proceeds	\$ 3.0	\$ 3.0	\$ 8.4	\$ 8.7

9. Noncontrolling Interests

As of September 30, 2023, we have seven entities with noncontrolling interests that we consolidate, consisting of our operating partnership, (Realty Income, L.P.), a joint venture formed in July 2023 in connection with the acquisition of properties, a joint venture acquired in December 2019, and four development joint ventures (one acquired in December 2020, one acquired in May 2021, one acquired in April 2023, and one acquired in September 2023).

The following table represents the change in the carrying value of all noncontrolling interests through September 30, 2023 (in thousands):

	Realty Income, L.P. units ⁽¹⁾	Other Noncontrolling Interests	Total
Carrying value at December 31, 2022	\$ 115,801	\$ 14,339	\$ 130,140
Contributions ⁽²⁾	—	39,994	39,994
Distributions ⁽³⁾	(4,243)	(2,865)	(7,108)
Allocation of net income	2,812	436	3,248
Carrying value at September 30, 2023	<u>\$ 114,370</u>	<u>\$ 51,904</u>	<u>\$ 166,274</u>

⁽¹⁾ 1,795,167 units were outstanding as of both September 30, 2023 and December 31, 2022.

⁽²⁾ Includes contributions of \$39.2 million for the issuance of a 5.0% joint venture interest as partial consideration paid on property acquisitions, contributions of \$0.4 million related to a 5.0% interest in a development joint venture, and contributions of \$0.4 million related to a 3.0% interest in a development joint venture.

⁽³⁾ Includes a non-cash reduction of noncontrolling interest of \$1.5 million from our partner's responsibility to absorb construction cost overages for a development joint venture during the nine months ended September 30, 2023.

10. Fair Value Measurements

Fair value is defined as the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (the exit price).

ASC 820, *Fair Value Measurements and Disclosures*, sets forth a fair value hierarchy that categorizes inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and lowest priority to unobservable inputs. Categorization within this hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

- Level 1 – Quoted market prices in active markets for identical assets and liabilities
- Level 2 – Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other market-corroborated inputs
- Level 3 – Inputs that are unobservable and significant to the overall fair value measurement

The following tables present the carrying values and estimated fair values of financial instruments as of September 30, 2023 and December 31, 2022 (in millions):

	September 30, 2023			
	Carrying Value	Hierarchy Level		
		Level 1	Level 2	Level 3
Assets:				
Derivative assets	\$ 44.8	\$ —	\$ 44.8	\$ —
Total assets	<u>\$ 44.8</u>	<u>\$ —</u>	<u>\$ 44.8</u>	<u>\$ —</u>
Liabilities:				
Mortgages payable	\$ 822.0	\$ —	\$ —	\$ 806.1
Notes and bonds payable	17,417.9	—	15,478.2	—
Derivative liabilities	78.3	—	78.3	—
Total liabilities	<u>\$ 18,318.2</u>	<u>\$ —</u>	<u>\$ 15,556.5</u>	<u>\$ 806.1</u>

	December 31, 2022			
	Carrying Value	Hierarchy Level		
		Level 1	Level 2	Level 3
Assets:				
Derivative assets	\$ 83.1	\$ —	\$ 83.1	\$ —
Total assets	\$ 83.1	\$ —	\$ 83.1	\$ —
Liabilities:				
Mortgages payable	\$ 842.3	\$ —	\$ —	\$ 810.4
Notes and bonds payable	14,114.2	—	12,522.8	—
Derivative liabilities	64.7	—	64.7	—
Total liabilities	\$ 15,021.2	\$ —	\$ 12,587.5	\$ 810.4

A. Financial Instruments Not Measured at Fair Value on our Consolidated Balance Sheets

The fair value of short-term financial instruments such as cash and cash equivalents, accounts receivable, escrow deposits, loans receivable, accounts payable, distributions payable, line of credit payable and commercial paper borrowings, and other liabilities approximate their carrying value in the accompanying consolidated balance sheets, due to their short-term nature. The aggregate fair value of our term loans approximates carrying value due to the frequent repricing of the variable interest rate charged on the borrowing.

The following table reflects the carrying amounts and estimated fair values of our financial instruments not measured at fair value on our consolidated balance sheets (in millions):

	September 30, 2023		December 31, 2022	
	Carrying value	Fair value	Carrying value	Fair value
Mortgages payable ⁽¹⁾	\$ 822.0	\$ 806.1	\$ 842.3	\$ 810.4
Notes and bonds payable ⁽²⁾	\$ 17,417.9	\$ 15,478.2	\$ 14,114.2	\$ 12,522.8

⁽¹⁾ Excludes non-cash net premiums recorded on the mortgages payable. The unamortized balance of these net premiums was \$2.8 million at September 30, 2023, and \$12.4 million at December 31, 2022. Also excludes deferred financing costs of \$0.6 million at September 30, 2023, and \$0.8 million at December 31, 2022.

⁽²⁾ Excludes non-cash net premiums recorded on notes payable. The unamortized balance of the net premiums was \$147.5 million at September 30, 2023, and \$224.6 million at December 31, 2022. Also excludes deferred financing costs of \$78.4 million and basis adjustment on interest rate swaps designated as fair value hedges of \$4.4 million at September 30, 2023, and \$60.7 million of deferred financing costs at December 31, 2022.

The estimated fair values of our mortgages payable and private senior notes payable have been calculated by discounting the future cash flows using an interest rate based upon the relevant forward interest rate curve, plus an applicable credit-adjusted spread. Because this methodology includes unobservable inputs that reflect our own internal assumptions and calculations, the measurement of estimated fair values related to our mortgages payable is categorized as level three on the three-level valuation hierarchy.

The estimated fair values of our publicly-traded senior notes and bonds payable are based upon indicative market prices and recent trading activity of our senior notes and bonds payable. Because this methodology includes inputs that are less observable by the public and are not necessarily reflected in active markets, the measurement of the estimated fair values related to our notes and bonds payable is categorized as level two on the three-level valuation hierarchy.

B. Financial Instruments Measured at Fair Value on a Recurring Basis

For derivative assets and liabilities, we may utilize interest rate swaps, interest rate swaptions, and forward-starting swaps to manage interest rate risk, and cross-currency swaps, currency exchange swaps, and foreign currency forwards to manage foreign currency risk. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves, spot and forward rates, as well as option volatility.

Derivative fair values also include credit valuation adjustments to appropriately reflect both our own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. In adjusting the fair value of our derivative contracts for the effect of nonperformance risk, we have considered the impact of netting and any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees.

Although we have determined that the majority of the inputs used to value our derivatives fall within level two on the three-level valuation hierarchy, the credit valuation adjustments associated with our derivatives utilize level three inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by ourselves and our counterparties. However, at September 30, 2023, and December 31, 2022, we assessed the significance of the impact of the credit valuation adjustments on the overall valuation of our derivative positions and determined that the credit valuation adjustments are not significant to the overall valuation of our derivatives. As a result, we determined that our derivative valuations in their entirety are classified as level two. For more details on our derivatives, see *note 11, Derivative Instruments*.

C. Items Measured at Fair Value on a Non-Recurring Basis

Impairment of Real Estate Investments

Certain financial and nonfinancial assets and liabilities are measured at fair value on a non-recurring basis and are subject to fair value adjustments only under certain circumstances, such as when an impairment write-down occurs.

Depending on impairment triggering events during the applicable period, impairments are typically recorded for properties sold, in the process of being sold, vacant, in bankruptcy, or experiencing difficulties with collection of rent.

The following table summarizes our provisions for impairment on real estate investments during the periods indicated below (in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Carrying value prior to impairment	\$ 37.5	\$ 48.1	\$ 161.4	\$ 107.0
Less: total provisions for impairment	(16.8)	(1.7)	(59.8)	(16.4)
Carrying value after impairment	\$ 20.7	\$ 46.4	\$ 101.6	\$ 90.6

The valuation of impaired assets is determined using valuation techniques including discounted cash flow analysis, analysis of recent comparable sales transactions and purchase offers received from third parties, which are Level 3 inputs. We may consider a single valuation technique or multiple valuation techniques, as appropriate, when estimating the fair value of its real estate. Estimating future cash flows is highly subjective and estimates can differ materially from actual results.

11. Derivative Instruments

In the normal course of business, our operations are exposed to economic risks from interest rates and foreign currency exchange rates. We may enter into derivative financial instruments to offset these underlying economic risks.

Derivative Designated as Hedging Instruments - Cash Flow Hedges

In order to hedge the foreign currency risk associated with interest payments on intercompany loans denominated in British Pound Sterling ("GBP") and Euro ("EUR"), we have a hedging strategy to enter into foreign currency forward contracts to sell GBP, USD, and EUR and buy EUR, USD, and GBP. These foreign currency forwards are designated as cash flow hedges. Forward points on the forward contracts are included in the assessment of hedge effectiveness. Amounts reported in other comprehensive income related to foreign currency derivative contracts will be reclassified to other gain and (loss) in the same period during which the hedged forecasted transactions affect earnings.

To add stability to interest expense and to manage our exposure to interest rate movements associated with our term loans, we executed variable-to-fixed interest rate swaps. These interest rate swaps are designated as cash flow hedges. The interest rate swaps are recorded on the consolidated balance sheets at fair value. Changes to fair value are recorded to accumulated other comprehensive income, or AOCI, and subsequently reclassified into interest expense in the same periods during which the hedged transaction affects earnings.

To mitigate the impact of fluctuating interest rates, we have also entered into interest rate swaption agreements, structured as a swaption corridor, in anticipation of issuing USD denominated bonds. Interest rate swaption corridors are a combination of two swaption positions, whereby we purchase a payer swaption, which is an option that allows us to enter into a swap where we will pay the fixed rate and receive the floating rate of the swap, and sell a payer swaption, which is an option that provides the counterparty with the right to enter into a swap where we will receive the fixed rate and pay the floating rate of the swap. For the swaption corridor entered into during March 2023, the combination of purchasing the payer swaption and selling the swaption resulted in a premium being paid of \$7.6 million. The interest rate swaptions are designated as cash flow hedges. Changes in fair value of the swaptions have been recorded in AOCI.

Derivative Designated as Hedging Instruments - Fair Value Hedges

Periodically, we enter into and designate fixed-to-floating interest rate swaps as fair value hedges. The purpose of these swaps is to manage interest rate risk by managing our mix of fixed-rate and variable-rate debt. These swaps involve the receipt of fixed-rate amounts for variable interest rate payments over the life of the swaps without exchange of the underlying principal amount.

We also designate some of our cross-currency swaps as fair value hedges. The purpose of these contracts is to hedge foreign currency risk associated with changes in spot rates on foreign-denominated debt. For these hedges, we have elected to exclude the change in fair value of the cross-currency swaps related to both time value and cross-currency basis spread from the assessment of hedge effectiveness (the "excluded component"). Changes in the fair value of the cross-currency swaps attributable to changes in the spot rates on the final notional exchanges and changes in the value of the hedged assets due to changes in the spot rates are recorded in 'Foreign currency and derivative (loss) gain, net'. Changes in the fair value of the cross-currency swaps attributable to the excluded components are recorded to other comprehensive income and will be recognized in 'Foreign currency and derivative (loss) gain, net' on a systematic and rational basis, as net cash settlements and interest accruals on the respective cross currency swaps occur, over the remaining life of the hedging instruments.

Derivatives Not Designated as Hedging Instruments

We enter into foreign currency exchange swap agreements to reduce the effects of currency exchange rate fluctuations between the USD, our reporting currency, and GBP and EUR. These derivative contracts generally mature within one year and are not designated as hedge instruments for accounting purposes. As the currency exchange swap is not accounted for as a hedging instrument, the change in fair value is recorded in earnings through the caption entitled 'Foreign currency and derivative (loss) gain, net' in the consolidated statements of income and comprehensive income.

The following table summarizes the terms and fair values of our derivative financial instruments at September 30, 2023 and December 31, 2022 (dollars in millions):

Derivative Type	Number of Instruments ⁽¹⁾	Notional Amount as of		Weighted Average Strike Rate ⁽²⁾	Maturity Date ⁽³⁾	Fair Value - asset (liability) as of	
		September 30, 2023	December 31, 2022			September 30, 2023	December 31, 2022
Derivatives Designated as Hedging Instruments							
Interest rate swaps	9	\$ 1,630.0	\$ 250.0	4.26%	Jan 2024 - Jan 2026	\$ 1.3	\$ 5.6
Interest rate swaptions	6	1,000.0	—	(4)	Feb 2034	21.7	—
Cross-currency swaps	3	320.0	320.0	(5)	Oct 2032	(38.6)	(33.3)
Foreign currency forwards	26	160.7	185.5	(6)	Oct 2023 - Dec 2024	10.1	16.1
		<u>\$ 3,110.7</u>	<u>\$ 755.5</u>			<u>\$ (5.5)</u>	<u>\$ (11.6)</u>
Derivatives not Designated as Hedging Instruments							
Currency exchange swaps	6	\$ 1,650.6	\$ 2,427.7	(7)	Oct 2023	\$ 6.6	\$ 58.8
Cross-currency swaps	3	280.0	280.0	(5)	Oct 2032	(34.7)	(29.5)
		<u>\$ 1,930.6</u>	<u>\$ 2,707.7</u>			<u>\$ (28.1)</u>	<u>\$ 29.3</u>
Total of all Derivatives		<u>\$ 5,041.3</u>	<u>\$ 3,463.2</u>			<u>\$ (33.6)</u>	<u>\$ 17.7</u>

⁽¹⁾ This column represents the number of instruments outstanding as of September 30, 2023.

⁽²⁾ Weighted average strike rate is calculated using the notional value as of September 30, 2023.

⁽³⁾ This column represents maturity dates for instruments outstanding as of September 30, 2023.

⁽⁴⁾ Represent purchased payer swaptions with a strike rate of 3.75% and sold payer swaptions with a strike rate of 4.25%.

⁽⁵⁾ USD fixed rate of 5.625% and EUR weighted average fixed rate of 4.697%.

⁽⁶⁾ Weighted average forward GBP-USD exchange rate of 1.31.

⁽⁷⁾ Weighted average EUR-GBP exchange rates each of 0.86.

We measure our derivatives at fair value and include the balances within other assets and accounts payable as well as accrued expenses on our consolidated balance sheets.

We have agreements with each of our derivative counterparties containing provisions under which we could be declared in default on our derivative obligations if repayment of our indebtedness is accelerated by the lender due to our default.

The following table summarizes the amount of unrealized gain (loss) on derivatives in other comprehensive income (in thousands):

Derivatives in Cash Flow Hedging Relationships	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Cross-currency swaps	\$ —	\$ —	\$ —	\$ (5,091)
Interest rate swaps	(7,172)	30,838	(5,328)	100,229
Foreign currency forwards	3,156	11,076	(6,039)	23,920
Interest rate swaptions	15,126	—	18,679	—
Total derivatives in cash flow hedging relationships	<u>\$ 11,110</u>	<u>\$ 41,914</u>	<u>\$ 7,312</u>	<u>\$ 119,058</u>
Derivatives in Fair Value Hedging Relationships				
Cross-currency swaps	\$ (3,917)	\$ —	\$ (8,691)	\$ —
Total derivatives in fair value hedging relationships	<u>\$ (3,917)</u>	<u>\$ —</u>	<u>\$ (8,691)</u>	<u>\$ —</u>
Total unrealized gain (loss) on derivatives	<u>\$ 7,193</u>	<u>\$ 41,914</u>	<u>\$ (1,379)</u>	<u>\$ 119,058</u>

The following table summarizes the amount of gain (loss) on derivatives reclassified from AOCI (in thousands):

Derivatives in Cash Flow Hedging Relationships	Location of Gain (Loss) Recognized in Income	Three months ended September 30,		Nine months ended September 30,	
		2023	2022	2023	2022
Cross-currency swaps	Foreign currency and derivative (loss) gain, net	\$ —	\$ 2,784	\$ —	\$ 30,425
Interest rate swaps	Interest expense	5,316	(1,286)	10,055	(5,969)
Foreign currency forwards	Foreign currency and derivative (loss) gain, net	1,662	—	3,985	—
Interest rate swaptions	Interest expense	(2,250)	—	(4,609)	—
Total derivatives in cash flow hedging relationships		\$ 4,728	\$ 1,498	\$ 9,431	\$ 24,456
Derivatives in Fair Value Hedging Relationships					
Cross-currency swaps	Foreign currency and derivative (loss) gain, net	\$ 570	\$ —	\$ 1,054	\$ —
Total derivatives in fair value hedging relationships		\$ 570	\$ —	\$ 1,054	\$ —
Net increase to net income		\$ 5,298	\$ 1,498	\$ 10,485	\$ 24,456

We expect to reclassify \$9.8 million from AOCI as a decrease to interest expense relating to interest rate swaps and interest rate swaptions and \$11.4 million from AOCI to foreign currency gain relating to foreign currency forwards within the next twelve months.

The following table details our foreign currency and derivative gains (losses), net included in income (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Realized foreign currency and derivative gain (loss), net:				
Gain on the settlement of undesignated derivatives	\$ 11,432	\$ 4,050	\$ 10,106	\$ 80,677
Gain on the settlement of designated derivatives reclassified from AOCI	2,233	2,784	5,039	30,425
Gain (loss) on the settlement of transactions with third parties	410	(111)	1,685	(41)
Total realized foreign currency and derivative gain, net	\$ 14,075	\$ 6,723	\$ 16,830	\$ 111,061
Unrealized foreign currency and derivative gain (loss), net:				
Gain (loss) on the change in fair value of undesignated derivatives	\$ 12,910	\$ (24,488)	\$ 4,734	\$ 35,506
Loss on remeasurement of certain assets and liabilities	(29,798)	(5,128)	(16,607)	(162,570)
Total unrealized foreign currency and derivative loss, net	\$ (16,888)	\$ (29,616)	\$ (11,873)	\$ (127,064)
Total foreign currency and derivative (loss) gain, net	\$ (2,813)	\$ (22,893)	\$ 4,957	\$ (16,003)

12. Lessor Operating Leases

At September 30, 2023, we owned or held interests in 13,282 properties. Of the 13,282 properties, 13,032, or 98.1%, are single-client properties, and the remaining are multi-client properties. At September 30, 2023, 159 properties were available for lease or sale. The majority of our leases are accounted for as operating leases.

Substantially all of our leases are net leases where our client pays or reimburses us for property taxes and assessments and carries insurance coverage for public liability, property damage, fire, and extended coverage.

Rent based on a percentage of our client's gross sales, or percentage rent, for the three months ended September 30, 2023, and 2022 was \$2.2 million, and \$2.3 million, respectively. Percentage rent for the nine months ended September 30, 2023, and 2022 was \$8.0 million, and \$8.3 million, respectively.

13. Distributions Paid and Payable

We pay monthly distributions to our common stockholders. The following is a summary of monthly distributions paid per common share for the periods indicated below:

	2023	2022
January	\$ 0.2485	\$ 0.2465
February	0.2485	0.2465
March	0.2545	0.2465
April	0.2550	0.2470
May	0.2550	0.2470
June	0.2550	0.2470
July	0.2555	0.2475
August	0.2555	0.2475
September	0.2555	0.2475
Total	\$ 2.2830	\$ 2.2230

At September 30, 2023, a distribution of \$0.2560 per common share was payable and was paid in October 2023.

14. Net Income per Common Share

Basic net income per common share is computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding during each period. Diluted net income per common share is computed by dividing net income available to common stockholders, plus income attributable to dilutive shares and convertible common units for the period, by the weighted average number of common shares that would have been outstanding assuming the issuance of common shares for all potentially dilutive common shares outstanding during the reporting period.

The following is a reconciliation of the denominator of the basic net income per common share computation to the denominator of the diluted net income per common share computation (shares in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Weighted average shares used for the basic net income per share computation	709,165	617,512	681,419	604,464
Incremental shares from share-based compensation	378	355	360	342
Dilutive effect of forward ATM offerings	—	90	350	30
Weighted average shares used for diluted net income per share computation	709,543	617,957	682,129	604,836
Unvested shares from share-based compensation that were anti-dilutive	309	68	243	37
Weighted average partnership common units convertible to common shares that were anti-dilutive	1,795	1,244	1,795	1,123
Weighted average forward ATM offerings that were anti-dilutive	535	563	460	188

15. Supplemental Disclosures of Cash Flow Information

The following table summarizes our supplemental cash flow information during the periods indicated below (in thousands):

	Nine months ended September 30,	
	2023	2022
Supplemental disclosures:		
Cash paid for interest	\$ 501,162	\$ 363,518
Cash paid for income taxes	\$ 11,462	\$ 42,225
Non-cash activities:		
Net (decrease) increase in fair value of derivatives	\$ (51,386)	\$ 146,310
Increase in noncontrolling interests from property acquisitions	\$ 39,156	\$ —
Mortgages assumed at fair value	\$ —	\$ 45,079
Issuance of common partnership units of Realty Income, L.P.	\$ —	\$ 51,221

The following table provides a reconciliation of cash and cash equivalents reported within the consolidated balance sheets to the total of the cash, cash equivalents, and restricted cash reported within the consolidated statements of cash flows (in thousands):

	September 30, 2023	September 30, 2022
Cash and cash equivalents shown in the consolidated balance sheets	\$ 344,129	\$ 187,745
Restricted escrow deposits ⁽¹⁾	41,311	90,639
Impounds related to mortgages payable ⁽¹⁾	45,224	10,529
Total cash, cash equivalents, and restricted cash shown in the consolidated statements of cash flows	\$ 430,664	\$ 288,913

⁽¹⁾ Included within other assets, net on the consolidated balance sheets (see *note 2, Supplemental Detail for Certain Components of Consolidated Balance Sheets*). These amounts consist of cash that we are legally entitled to, but that is not immediately available to us. As a result, these amounts were considered restricted as of the dates presented.

16. Common Stock Incentive Plan

In March 2021, our Board of Directors adopted, and in May 2021, stockholders approved, the Realty Income 2021 Incentive Award Plan, or 2021 Plan. This note should be read in conjunction with the more complete discussion of our 2021 Plan included in note 17 to our consolidated financial statements in our Annual Report on [Form 10-K](#) for the year ended December 31, 2022.

The amount of share-based compensation costs recognized in 'General and administrative' in the consolidated statements of income and comprehensive income was \$6.2 million and \$5.1 million during the three months ended September 30, 2023, and 2022, respectively, and \$20.2 million and \$16.7 million during the nine months ended September 30, 2023, and 2022, respectively.

A. Restricted Stock and Restricted Stock Units

During the nine months ended September 30, 2023, we granted 220,970 shares of common stock under the 2021 Plan. This included 40,000 total shares of restricted stock granted to the independent members of our Board of Directors in connection with our annual awards in May 2023, 20,000 shares of which vested immediately and 20,000 shares of which vest in equal parts over a three-year service period. Our restricted stock awards granted to employees vest over a service period not exceeding four-years.

During the nine months ended September 30, 2023, we also granted 15,065 restricted stock units, all of which vest over a four-year service period.

As of September 30, 2023, the remaining unamortized share-based compensation expense related to restricted stock awards and units totaled \$18.7 million, which is being amortized on a straight-line basis over the service period of each applicable award. The amount of share-based compensation is based on the fair value of the stock at the grant date.

B. Performance Shares

During the nine months ended September 30, 2023, we granted 193,868 performance shares, as well as dividend equivalent rights, to our executive officers. The performance shares are earned based on our Total Shareholder Return (TSR) performance relative to select industry indices and peer groups as well as achievement of certain operating metrics, and vest 50% on the first and second January 1 after the end of the three-year performance period, subject to continued service.

As of September 30, 2023, the remaining share-based compensation expense related to the performance shares totaled \$20.9 million. The performance shares are being recognized on a tranche-by-tranche basis over the service period. The fair value of the performance shares was estimated on the date of grant using a Monte Carlo Simulation model.

17. Commitments and Contingencies

In the ordinary course of business, we are party to various legal actions which we believe are routine in nature and incidental to the operation of our business. We believe that the outcome of the proceedings will not have a material adverse effect upon our consolidated financial position or results of operations.

At September 30, 2023, we had commitments of \$19.5 million, which primarily relate to re-leasing costs, recurring capital expenditures, and non-recurring building improvements. In addition, as of September 30, 2023, we had committed \$903.6 million under construction contracts related to development projects, which have estimated rental revenue commencement dates between October 2023 and October 2024.

18. Subsequent Events

A. Dividends

In October 2023, we declared a dividend of \$0.2560 per share to our common stockholders, which will be paid in November 2023.

B. Agreement and Plan of Merger

On October 29, 2023, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with Saints MD Subsidiary, Inc., a Maryland corporation and our direct wholly owned subsidiary ("Merger Sub"), and Spirit Realty Capital, Inc., a Maryland corporation ("Spirit"). Pursuant to the terms and conditions of the Merger Agreement, upon the closing, Spirit will be merged with and into Merger Sub, with Merger Sub continuing as the surviving corporation (the "Merger").

Pursuant to the terms and subject to the conditions of the Merger Agreement, at the date and time the Merger becomes effective, (i) each outstanding share of Spirit common stock, par value \$0.05 per share (other than the Excluded Common Shares (as defined in the Merger Agreement)) will automatically be converted into 0.762 of a newly issued share our common stock, subject to adjustment as set forth in the Merger Agreement, and cash in lieu of fractional shares, and (ii) each outstanding share of Spirit's 6.000% Series A Cumulative Redeemable Preferred

Stock, par value \$0.01 per share, will be converted into the right to receive one share of newly issued Realty Income 6.000% Series A Cumulative Redeemable Preferred Stock, having substantially the same terms as the Spirit Series A Preferred Stock.

The Merger Agreement contains customary covenants, representations, and warranties, as well as certain termination rights for us and Spirit, in each case, as more fully described in the Merger Agreement. The consummation of the Merger is also subject to certain customary closing conditions, including receipt of the approval by the stockholders of Spirit, and certain customary termination rights.

C. Investment in Joint Venture

In October 2023, we completed our previously announced \$950.0 million acquisition of common and preferred interests from Blackstone Real Estate Trust, Inc. in a new joint venture that owns a 95% interest in the real estate of The Bellagio Las Vegas. The investment included approximately \$300.0 million of common equity in the joint venture in exchange for an indirect interest of 21.9% in the property and a \$650.0 million preferred equity interest in the joint venture with an expected rate of return of 8.1%.

Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, including the documents incorporated by reference, contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act of 1934, as amended. When used in this quarterly report, the words "estimated," "anticipated," "expect," "believe," "intend," "continue," "should," "may," "likely," "plans," and similar expressions are intended to identify forward-looking statements. Forward-looking statements include discussions of our business and portfolio (including growth strategies and intentions to acquire or dispose of properties including the timing and terms), re-leases, re-development and speculative development of properties and expenditures related thereto; future operations and results; the announcement of operating results, strategy, plans, and the intentions of management; and trends in our business, including trends in the market for long-term net leases of freestanding, single-client properties. Forward-looking statements are subject to risks, uncertainties, and assumptions about Realty Income Corporation which may cause our actual future results to differ materially from expected results. Some of the factors that could cause actual results to differ materially are, among others, our continued qualification as a real estate investment trust; general domestic and foreign business, economic, or financial conditions; competition; fluctuating interest and currency rates; inflation and its impact on our clients and us; access to debt and equity capital markets and other sources of funding; continued volatility and uncertainty in the credit markets and broader financial markets; other risks inherent in the real estate business including our clients' defaults under leases, increased client bankruptcies, potential liability relating to environmental matters, illiquidity of real estate investments, and potential damages from natural disasters; impairments in the value of our real estate assets; changes in domestic and foreign income tax laws and rates; our clients' solvency; property ownership through joint ventures and partnerships which may limit control of the underlying investments; current or future epidemics or pandemics, measures taken to limit their spread, the impacts on us, our business, our clients (including those in the theater and fitness industries), and the economy generally; the loss of key personnel; the outcome of any legal proceedings to which we are a party or which may occur in the future; acts of terrorism and war; and the structure, timing and completion of the announced merger between us and Spirit Realty Capital, Inc., a Maryland corporation ("Spirit") and any effects of the announcement, pendency or completion of the announced merger, including the anticipated benefits therefrom.

Additional factors that may cause risks and uncertainties include those discussed in the sections entitled "Business", "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on [Form 10-K](#) for the year ended December 31, 2022.

Readers are cautioned not to place undue reliance on forward-looking statements. Forward-looking statements are not guarantees of future plans and performance and speak only as of the date this quarterly report was filed with the Securities and Exchange Commission ("SEC"). Actual plans and operating results may differ materially from what is expressed or forecasted in this quarterly report and forecasts made in the forward-looking statements discussed in this quarterly report might not materialize. We do not undertake any obligation to update forward-looking statements or publicly release the results of any forward-looking statements that may be made to reflect events or circumstances after the date these statements were made.

OVERVIEW

Realty Income, The Monthly Dividend Company[®], is an S&P 500 company and member of the S&P 500 Dividend Aristocrats[®] index for having increased its dividend every year for over 25 consecutive years. We invest in people and places to deliver dependable monthly dividends that increase over time. The Company is structured as a real estate investment trust ("REIT"), requiring us annually to distribute at least 90% of our taxable income (excluding net capital gains) in the form of dividends to its stockholders. The monthly dividends are supported by the cash flow generated from real estate owned under long-term net lease agreements with our commercial clients.

Realty Income was founded in 1969 and listed on the New York Stock Exchange ("NYSE") in 1994 under the trading symbol "O". Over the past 54 years, Realty Income has been acquiring and managing freestanding commercial properties that generate rental revenue under long-term net lease agreements with our commercial clients.

As of September 30, 2023, we owned or held interests in 13,282 properties located in all 50 U.S. states, Puerto Rico, the United Kingdom ("U.K."), Spain, Italy, and Ireland, with approximately 262.6 million square feet of leasable space leased to clients doing business in 85 separate industries. Of the 13,282 properties in our portfolio as of September 30, 2023, 13,032, or 98.1%, were single-client properties, of which 12,875 were leased, and the remaining were multi-client properties. Our total portfolio of 13,282 properties as of September 30, 2023 had a weighted average remaining lease term (excluding rights to extend a lease at the option of the client) of

approximately 9.7 years. Total portfolio annualized contractual rent (defined as the monthly aggregate cash amount charged to clients, inclusive of monthly base rent receivables) on our leases as of September 30, 2023 was \$3.87 billion.

As of September 30, 2023, approximately 39.0% of our total portfolio annualized contractual rent comes from properties leased to our investment grade clients, their subsidiaries or affiliated companies. As of September 30, 2023, our top 20 clients (based on percentage of total portfolio annualized contractual rent) represented approximately 40.9% of our annualized rent and 10 of these clients have investment grade credit ratings or are subsidiaries or affiliates of investment grade companies. Approximately 93% of our annualized retail contractual rent as of September 30, 2023, is derived from our clients with a service, non-discretionary, and/or low price point component to their business.

Unless otherwise specified, references to rental revenue in the Management's Discussion and Analysis of Financial Condition and Results of Operations are exclusive of reimbursements from clients for recoverable real estate taxes and operating expenses totaling \$61.3 million and \$44.1 million for the three months ended September 30, 2023, and 2022, respectively, and \$208.6 million and \$129.0 million during the nine months ended September 30, 2023, and 2022, respectively.

RECENT DEVELOPMENTS

Increases in Monthly Dividends to Common Stockholders

We have continued our 54-year history of paying monthly dividends. In addition, we increased the dividend five times during 2023. As of October 2023, we have paid 104 consecutive quarterly dividend increases and increased the dividend 122 times since our listing on the NYSE in 1994.

The following table summarizes our dividend increases in 2023:

2023 Dividend increases	Month Declared	Month Paid	Dividend per share	Increase per share
1st increase	Dec 2022	Jan 2023	\$0.2485	\$0.0005
2nd increase	Feb 2023	Mar 2023	\$0.2545	\$0.0060
3rd increase	Mar 2023	Apr 2023	\$0.2550	\$0.0005
4th increase	Jun 2023	Jul 2023	\$0.2555	\$0.0005
5th increase	Sep 2023	Oct 2023	\$0.2560	\$0.0005

The dividends paid per share during the nine months ended September 30, 2023, totaled approximately \$2.2830, as compared to approximately \$2.2230 during the nine months ended September 30, 2022, an increase of \$0.06, or 2.7%.

The monthly dividend of \$0.2560 per share represents a current annualized dividend of \$3.072 per share, and an annualized dividend yield of 6.2% based on the last reported sale price of our common stock on the NYSE of \$49.94 on September 30, 2023. Although we expect to continue our policy of paying monthly dividends, we cannot guarantee that we will maintain our current level of dividends, that we will continue our pattern of increasing dividends per share, or what our actual dividend yield will be in any future period.

Acquisitions During the Three and Nine Months Ended September 30, 2023

During the three months ended September 30, 2023, we invested \$2.0 billion in 289 properties and properties under development or expansion at an initial weighted average cash lease yield of 6.9%. Of such properties, as of September 30, 2023, approximately 20% of the total annualized contractual rent of such properties was attributable to properties leased to investment grade clients.

During the nine months ended September 30, 2023, we invested \$6.8 billion in 1,187 properties and properties under development or expansion at an initial weighted average cash lease yield of 6.9%. Of such properties, as of September 30, 2023, approximately 25% of the total annualized contractual rent of such properties was attributable to properties leased to investment grade clients.

See note 3, *Investments in Real Estate*, to the consolidated financial statements for further details.

Equity Capital Raising

In August 2023, we replaced our prior At-The-Market (ATM) program with a new ATM program, pursuant to which we may offer and sell up to 120.0 million shares of common stock.

During the three months ended September 30, 2023, we raised \$0.9 billion of net proceeds from the sale of common stock, primarily through our ATM program, with a weighted average price of \$58.58. As of September 30, 2023, 13.3 million shares of common stock subject to forward sale confirmations have been executed but not settled. See note 8, *Issuances of Common Stock*, for further details.

Note Issuances

In July 2023, we issued €550.0 million of 4.875% senior unsecured notes due July 2030 and €550.0 million of 5.125% senior unsecured notes due July 2034.

In April 2023, we issued \$400.0 million of 4.70% senior unsecured notes due December 2028 and \$600.0 million of 4.90% senior unsecured notes due July 2033.

In January 2023, we issued \$500.0 million of 5.050% senior unsecured notes due January 2026 and \$600.0 million of 4.85% senior unsecured notes due March 2030.

Portfolio DiscussionLeasing Results

At September 30, 2023, we had 159 properties available for lease or sale out of 13,282 properties in our portfolio, representing a 98.8% occupancy rate based on the number of properties in the portfolio. Our property-level occupancy rates exclude properties with ancillary leases only, such as cell towers and billboards, and properties with possession pending. Below is a summary of our portfolio activity for the period indicated below:

Three months ended September 30, 2023

Properties available for lease at June 30, 2023	137
Lease expirations ⁽¹⁾	310
Re-leases to same client	(257)
Re-leases to new client	(11)
Vacant dispositions	(20)
Properties available for lease at September 30, 2023	159

Nine months ended September 30, 2023

Properties available for lease at December 31, 2022	126
Lease expirations ⁽¹⁾	718
Re-leases to same client	(586)
Re-leases to new client	(25)
Vacant dispositions	(74)
Properties available for lease at September 30, 2023	159

⁽¹⁾ Includes scheduled and unscheduled expirations (including leases rejected in bankruptcy), as well as future expirations resolved in the periods indicated above.

During the three months ended September 30, 2023, the new annualized contractual rent on re-leases was \$57.6 million, as compared to the previous annual rent of \$53.9 million on the same units, representing a rent recapture rate of 106.9% on the units re-leased. We re-leased three units to new clients without a period of vacancy, and 10 units to new clients after a period of vacancy.

During the nine months ended September 30, 2023, the new annualized contractual rent on re-leases was \$145.4 million, as compared to the previous annual rent of \$139.4 million on the same units, representing a rent recapture rate of 104.3% on the units re-leased. We re-leased seven units to new clients without a period of vacancy, and 27 units to new clients after a period of vacancy.

As part of our re-leasing costs, we pay leasing commissions to unrelated, third-party real estate brokers consistent with the commercial real estate industry standard, and sometimes provide rent concessions to our clients. We do not consider the collective impact of the leasing commissions or rent concessions to our clients to be material to our financial position or results of operations.

Agreement and Plan of Merger

On October 29, 2023, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with Saints MD Subsidiary, Inc., a Maryland corporation and our direct wholly owned subsidiary ("Merger Sub"), and Spirit Realty Capital, Inc., a Maryland corporation ("Spirit"). Pursuant to the terms and conditions of the Merger Agreement, upon the closing, Spirit will be merged with and into Merger Sub, with Merger Sub continuing as the surviving corporation (the "Merger").

Pursuant to the terms and subject to the conditions of the Merger Agreement, at the date and time the Merger becomes effective, (i) each outstanding share of Spirit common stock, par value \$0.05 per share (other than the Excluded Common Shares (as defined in the Merger Agreement)) will automatically be converted into 0.762 of a newly issued share of our common stock, subject to adjustment as set forth in the Merger Agreement, and cash in lieu of fractional shares, and (ii) each outstanding share of Spirit's 6.000% Series A Cumulative Redeemable Preferred Stock, par value \$0.01 per share, will be converted into the right to receive one share of newly issued Realty Income 6.000% Series A Cumulative Redeemable Preferred Stock, having substantially the same terms as the Spirit Series A Preferred Stock.

The Merger Agreement contains customary covenants, representations, and warranties, as well as certain termination rights for us and Spirit, in each case, as more fully described in the Merger Agreement. The consummation of the Merger is also subject to certain customary closing conditions, including receipt of the approval by the stockholders of Spirit, and certain customary termination rights.

Investment in Bellagio Las Vegas

In October 2023, we completed our previously announced \$950 million acquisition of common and preferred interests from Blackstone Real Estate Trust, Inc. in a new joint venture that owns a 95% interest in the real estate of The Bellagio Las Vegas. The investment included approximately \$300 million of common equity in the joint venture in exchange for an indirect interest of 21.9% in the property and a \$650 million preferred equity interest in the joint venture with an expected rate of return of 8.1%.

Cineworld Bankruptcy Resolution

As previously disclosed, Cineworld Group plc and its affiliates ("Cineworld") commenced Chapter 11 reorganization proceedings during September 2022, at which time we owned 41 properties leased to Cineworld. In the second quarter of 2023, Cineworld rejected 6 leases as part of the bankruptcy process. On July 31, 2023, Cineworld emerged from Chapter 11 bankruptcy. As of September 30, 2023, we owned 35 properties leased to Cineworld, which represented 1.1% of our total portfolio's annual contractual rent.

On October 1, 2023, we entered into a comprehensive restructuring agreement with Cineworld on the 35 properties we own. Pursuant to this agreement, Cineworld committed to long-term leases on 28 of the properties, with a weighted average lease term of approximately 10 years, while remaining on short-term leases with terms of one year or less on 7 of the properties. Of the 28 properties with long-term leases, the base rent recapture rate is 75%, which does not include percentage rent that was added to all properties and there were no tenant improvements or additional capital commitments made.

In addition, the restructuring agreement amended certain terms on deferred rent obligations owed to us, including both full and partial forgiveness of deferred rent for certain properties. As these deferrals were accounted for on a cash basis or fully reserved for, there was no impact to our overall Cineworld receivables, net of reserves, as a result of these amendments and any recoveries beyond this will be recognized upon collection.

Impact of Inflation

Leases generally provide for limited increases in rent as a result of fixed increases, increases in the consumer price index, or retail price index in the case of certain leases in the U.K. (typically subject to ceilings), or increases in the clients' sales volumes. We expect that inflation will cause these lease provisions to result in rent increases over time. During times when inflation is greater than increases in rent, as provided for in the leases, rent increases may not keep up with the rate of inflation and other costs (including increases in employment and other fees and expenses).

Moreover, our strategic focus on the use of net lease agreements reduces our exposure to rising property expenses due to inflation because the client is responsible for property expenses. Even though the utilization of net leases reduces our exposure to rising property expenses due to inflation, substantial inflationary pressures and increased costs may have an adverse impact on our clients if increases in their operating expenses exceed increases in revenue, which may adversely affect our clients' ability to pay rent. Additionally, inflationary periods may cause us to

experience increased costs of financing, make it difficult to refinance debt at attractive rates or at all, and may adversely affect the properties we can acquire if the cost of financing an acquisition is in excess of our anticipated earnings from such property, thereby limiting the properties that can be acquired.

Impact of Real Estate and Credit Markets

In the commercial real estate market, property prices generally continue to fluctuate. Likewise, during certain periods, including the current market, the global credit markets have experienced significant price volatility, dislocations, and liquidity disruptions, which may impact our access to and cost of capital. We continually monitor the commercial real estate and global credit markets carefully and, if required, will make decisions to adjust our business strategy accordingly.

LIQUIDITY AND CAPITAL RESOURCES

As of September 30, 2023, we had \$4.5 billion of liquidity, which consists of cash and cash equivalents of \$344.1 million, including £93.1 million denominated in Sterling and €47.9 million denominated in Euro, unsettled ATM forward equity of \$749.3 million, and \$3.4 billion of availability under our \$4.25 billion unsecured revolving credit facility, after deducting \$376.8 million in commercial paper borrowings under our commercial paper programs. We use our unsecured revolving credit facility as a liquidity backstop for the repayment of the notes issued under these programs.

Our primary cash obligations, for the current year and subsequent years, are included in the “Material Cash Requirements” table, which is presented later in this section. We expect to fund our operating expenses and other short-term liquidity requirements, including property acquisitions and development costs, payment of principal and interest on our outstanding indebtedness, property improvements, re-leasing costs, and cash distributions to common stockholders, primarily through cash provided by operating activities, borrowings under our revolving credit facility, short-term term loans, and under our commercial paper programs, and through public securities offerings.

We expect to fund the next twelve months of obligations through a combination of the following:

- Cash and cash equivalents;
- Future cash flows from operations;
- Issuances of common stock or debt; and
- Additional borrowings under our revolving credit facility and our term loan (after deducting outstanding borrowings under our commercial paper programs).

We believe that our cash and cash equivalents on hand, cash provided from operating activities, and borrowing capacity is sufficient to meet our liquidity needs for the next twelve months. We intend, however, to use permanent or long-term capital to fund property acquisitions and to repay future borrowings under our credit facility and commercial paper programs.

Long-Term Liquidity Requirements

Our goal is to deliver dependable monthly dividends to our stockholders that increase over time. Historically, we have met our principal short-term and long-term capital needs, including the funding of high-quality real estate acquisitions, investments in loans, property development, and capital expenditures by issuing common stock, preferred stock, long-term unsecured notes, and term loan borrowings. Over the long term, we believe that common stock should be the majority of our capital structure. We may issue common stock when we believe our share price is at a level that allows for the proceeds of an offering to be accretively invested into additional properties or to permanently finance properties that were initially financed by our revolving credit facility, commercial paper programs, or shorter-term debt securities. However, we cannot assure you that we will have access to the capital markets at all times and at terms that are acceptable to us.

Capitalization

As of September 30, 2023, our total market capitalization was \$56.6 billion. Total market capitalization consisted of \$36.2 billion of common equity (based on the September 30, 2023 closing price on the NYSE of \$49.94 and assuming the conversion of common units of Realty Income, L.P.) and total outstanding borrowings of \$20.4 billion on our senior unsecured notes and bonds, term loans, mortgages payable, revolving credit facility and commercial paper (excluding unamortized deferred financing costs, discounts, and premiums). Our total debt to market capitalization was 36.0% at September 30, 2023.

ATM Program

As of September 30, 2023, there were approximately 13.3 million shares of unsettled common stock subject to forward sale confirmations through our ATM program, representing approximately \$749.3 million in expected net proceeds, which have been executed at a weighted average price of \$56.47 per share (assuming full physical settlement of all outstanding shares of common stock, subject to such forward sale agreements and certain assumptions made with respect to settlement dates). During the nine months ended September 30, 2023, we settled approximately 63.2 million shares of common stock previously sold pursuant to forward sale agreements through our ATM program for approximately \$3.9 billion of net proceeds. As of September 30, 2023, we had 102.7 million shares remaining for future issuance under our ATM program. We anticipate maintaining the availability of our ATM program in the future, including the replenishment of authorized shares issuable thereunder.

Debt and Financing Activities

At September 30, 2023, our total outstanding borrowings of senior unsecured notes and bonds, term loans, mortgages payable, revolving credit facility and commercial paper were \$20.4 billion, with a weighted average maturity of 5.8 years and a weighted average interest rate of 3.8%. As of September 30, 2023, approximately 93% of our total debt was fixed rate debt. See notes 4 through 7 to the consolidated financial statements for additional information about our outstanding debt, along with our debt financing activities during the nine months ended September 30, 2023 below.

Note Issuances

During the nine months ended September 30, 2023, we issued the following notes and bonds (in millions):

Note Issuance	Date of Issuance	Maturity Date	Principal amount	Price of par value	Effective yield to maturity
5.050% Notes	January 2023	January 2026	\$ 500.0	99.618 %	5.189 %
4.850% Notes	January 2023	March 2030	\$ 600.0	98.813 %	5.047 %
4.700% Notes	April 2023	December 2028	\$ 400.0	98.949 %	4.912 %
4.900% Notes	April 2023	July 2033	\$ 600.0	98.020 %	5.148 %
4.875% Notes	July 2023	July 2030	€ 550.0	99.421 %	4.975 %
5.125% Notes	July 2023	July 2034	€ 550.0	99.506 %	5.185 %

Term Loan

In January 2023, we entered into a term loan agreement, permitting us to incur multicurrency term loans, up to an aggregate of \$1.5 billion in total borrowings. As of September 30, 2023, we had \$1.0 billion in multicurrency borrowings, including \$90.0 million, £705.0 million, and €85.0 million in outstanding borrowings. The 2023 term loans initially mature in January 2024 and include two 12-month maturity extensions that can be exercised at our option. In conjunction with our 2023 term loans, we entered into interest rate swaps which fix our per annum interest rate. As of September 30, 2023, the effective interest rate, after giving effect to the interest rate swaps, was 5.0%.

Covenants

The following is a summary of the key financial covenants for our senior unsecured notes, as defined and calculated per the terms of our senior notes and bonds. These calculations, which are not based on accounting principles generally accepted in the United States of America ("U.S. GAAP"), are presented to investors to show our ability to incur additional debt under the terms of our senior notes and bonds as well as to disclose our current compliance with such covenants and are not measures of our liquidity or performance. The actual amounts as of September 30, 2023, are:

Note Covenants	Required	Actual
Limitation on incurrence of total debt	≤ 60% of adjusted assets	39.7 %
Limitation on incurrence of secured debt	≤ 40% of adjusted assets	1.7 %
Debt service coverage (trailing 12 months) ⁽¹⁾	≥ 1.5x	4.5x
Maintenance of total unencumbered assets	≥ 150% of unsecured debt	257.6 %

⁽¹⁾ Our debt service coverage ratio is calculated on a pro forma basis for the preceding four-quarter period on the assumptions that: (i) the incurrence of any debt (as defined in the covenants) incurred by us since the first day of such four-quarter period and the application of the proceeds therefrom (including to refinance other debt since the first day of such four-quarter period), (ii) the repayment or retirement of any of our debt since the first day of such four-quarter period, and (iii) any acquisition or disposition by us of any asset or group since the first day of such four quarters had in each case occurred on October 1, 2022 and subject to certain additional adjustments. Such pro forma ratio has been prepared on the basis required by that debt service covenant, reflects various estimates and assumptions and is subject to other uncertainties, and therefore does not purport to reflect what our actual debt service coverage ratio would have been had transactions referred to in clauses

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(i), (ii) and (iii) of the preceding sentence occurred as of October 1, 2022, nor does it purport to reflect our debt service coverage ratio for any future period. The following is our calculation of debt service and fixed charge coverage at September 30, 2023 (in thousands, for trailing twelve months):

Net income available to common stockholders	\$	881,170
Plus: interest expense, excluding the amortization of deferred financing costs		630,215
Plus: provision for taxes		45,599
Plus: depreciation and amortization		1,857,495
Plus: provisions for impairment		69,282
Plus: pro forma adjustments		303,311
Less: gain on sales of real estate		(29,022)
Income available for debt service, as defined	\$	3,758,050
Total pro forma debt service charge	\$	843,250
Debt service and fixed charge coverage ratio		4.5

Credit Agency Ratings

The borrowing interest rates under our revolving credit facility are based upon our ratings assigned by credit rating agencies. As of September 30, 2023, we were assigned the following investment grade corporate credit ratings on our senior unsecured notes and bonds: Moody's Investors Service has assigned a rating of A3 with a "stable" outlook and Standard & Poor's Ratings Group has assigned a rating of A- with a "stable" outlook. In addition, we were assigned the following ratings on our commercial paper at September 30, 2023: Moody's Investors Service has assigned a rating of P-2 and Standard & Poor's Ratings Group has assigned a rating of A-2.

Based on our credit agency ratings as of September 30, 2023, interest rates under our credit facility for U.S. borrowings would have been at the SOFR, plus 0.725% with a SOFR adjustment charge of 0.10% and a revolving credit facility fee of 0.125%, for all-in pricing of 0.95% over SOFR, for British Pound Sterling borrowings, at the SONIA, plus 0.725% with a SONIA adjustment charge of 0.0326% and a revolving credit facility fee of 0.125%, for all-in pricing of 0.8826% over SONIA, and for Euro Borrowings at one-month EURIBOR, plus 0.725%, and a revolving credit facility fee of 0.125%, for all-in pricing of 0.85% over one-month EURIBOR. In addition, our credit facility provides that the interest rates can range between: (i) SOFR/SONIA/EURIBOR, plus 1.40% if our credit rating is lower than BBB-/Baa3 or our senior unsecured debt is unrated and (ii) SOFR/SONIA/EURIBOR, plus 0.70% if our credit rating is A/A2 or higher. In addition, our credit facility provides for a facility commitment fee based on our credit ratings, which ranges from: (i) 0.30% for a rating lower than BBB-/Baa3 or unrated, and (ii) 0.10% for a credit rating of A/A2 or higher.

We also issue senior debt securities from time to time and our credit ratings can impact the interest rates charged in those transactions. If our credit ratings or ratings outlook change, our cost to obtain debt financing could increase or decrease. The credit ratings assigned to us could change based upon, among other things, our results of operations and financial condition. These ratings are subject to ongoing evaluation by credit rating agencies, and we cannot assure you that our ratings will not be changed or withdrawn by a rating agency in the future if, in its judgment, circumstances warrant. Moreover, a rating is not a recommendation to buy, sell or hold our debt securities, preferred stock or common stock.

Material Cash Requirements

The following table summarizes the maturity of each of our obligations as of September 30, 2023 (dollars in millions):

	Credit Facility and Commercial Paper ⁽¹⁾	Senior Unsecured Notes	Term Loans ⁽²⁾	Mortgages Payable	Interest ⁽³⁾	Ground Leases Paid by the Company ⁽⁴⁾	Ground Leases Paid by Our Clients ⁽⁵⁾	Other ⁽⁶⁾	Totals
2023	\$ 376.8	\$ —	\$ —	\$ 1.3	\$ 169.4	\$ 2.7	\$ 7.8	\$ 468.4	\$ 1,026.4
2024	—	850.0	250.0	740.5	751.6	13.5	30.7	430.4	3,066.7
2025	—	1,050.0	—	42.4	671.1	12.0	30.0	20.0	1,825.5
2026	481.5	2,075.0	1,040.2	12.0	538.3	17.6	29.3	0.6	4,194.5
2027	—	1,993.1	—	22.3	464.0	9.4	26.4	—	2,515.2
Thereafter	—	11,449.8	—	3.5	2,086.8	299.9	265.5	3.8	14,109.3
Totals	\$ 858.3	\$ 17,417.9	\$ 1,290.2	\$ 822.0	\$ 4,681.2	\$ 355.1	\$ 389.7	\$ 923.2	\$ 26,737.6

⁽¹⁾ The initial term of the credit facility expires in June 2026 and includes, at our option, two six-month extensions. At September 30, 2023, there were \$481.5 million borrowings under our revolving credit facility, and commercial paper programs outstanding were \$376.8 million, which matured in October 2023.

⁽²⁾ The maturity date for our 2023 multi-currency term loan assumes the two twelve-month extensions available at the Company's option are fully exercised.

⁽³⁾ Interest on the term loans, notes, bonds, mortgages payable, credit facility and commercial paper programs has been calculated based on outstanding balances at period end through their respective maturity dates.

⁽⁴⁾ We currently pay the ground lessors directly for the rent under the ground leases.

⁽⁵⁾ Our clients, who are generally sub-tenants clients under ground leases, are responsible for paying the rent under these ground leases. In the event our client fails to pay the ground lease rent, we are primarily responsible.

⁽⁶⁾ "Other" consists of \$903.6 million of commitments under construction contracts, and \$19.5 million for re-leasing costs, recurring capital expenditures, and non-recurring building improvements.

DIVIDEND POLICY

Distributions are paid monthly to holders of shares of our common stock.

Distributions are paid monthly to the limited partners holding common units of Realty Income, L.P., each on a per unit basis that is equal to the amount paid per share to our common stockholders.

In order to maintain our status as a REIT for federal income tax purposes, we generally are required to distribute dividends to our stockholders aggregating annually at least 90% of our taxable income (excluding net capital gains), and we are subject to income tax to the extent we distribute less than 100% of our taxable income (including net capital gains). In 2022, our cash distributions to common stockholders totaled \$1.81 billion, or approximately 97.8% of our taxable income of \$1.85 billion. Certain measures are available to us to reduce or eliminate our tax exposure as a REIT, and accordingly, no provision for federal income taxes, other than our taxable REIT subsidiaries (each, a "TRS"), has been made. Our taxable income reflects non-cash deductions for depreciation and amortization. Our taxable income is presented to show our compliance with REIT dividend requirements and is not a measure of our liquidity or operating performance. We intend to continue to make distributions to our stockholders that are sufficient to meet this dividend requirement and that will reduce or eliminate our exposure to income taxes. Furthermore, we believe our cash on hand and funds from operations are sufficient to support our current level of cash distributions to our stockholders. We distributed \$2.2830 per share to stockholders during the nine months ended September 30, 2023, representing 76.4% of our diluted AFFO per share of \$2.99.

Future distributions will be at the discretion of our Board of Directors and will depend on, among other things, our results of operations, FFO, Normalized FFO, AFFO, cash flow from operations, financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Internal Revenue Code of 1986, as amended, our debt service requirements, and any other factors the Board of Directors may deem relevant. In addition, our credit facility contains financial covenants that could limit the amount of distributions payable by us in the event of a default, and which prohibit the payment of distributions on our common stock in the event that we fail to pay when due (subject to any applicable grace period) any principal or interest on borrowings under our credit facility.

Distributions of our current and accumulated earnings and profits for federal income tax purposes generally will be taxable to stockholders as ordinary income, except to the extent that we recognize capital gains and declare a capital gains dividend, or that such amounts constitute "qualified dividend income" subject to a reduced rate of tax. The maximum tax rate of non-corporate taxpayers for "qualified dividend income" is generally 20%. In general,

dividends payable by REITs are not eligible for the reduced tax rate on qualified dividend income, except to the extent that certain holding requirements have been met with respect to the REIT's stock and the REIT's dividends are attributable to dividends received from certain taxable corporations (such as our TRSs) or to income that was subject to tax at the corporate or REIT level (for example, if we distribute taxable income that we retained and paid tax on in the prior taxable year). However, non-corporate stockholders, including individuals, generally may deduct up to 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning after December 31, 2017 and before January 1, 2026.

Distributions in excess of earnings and profits generally will first be treated as a non-taxable reduction in the stockholders' basis in their stock, but not below zero. Distributions in excess of that basis generally will be taxable as a capital gain to stockholders who hold their shares as a capital asset. None of the distributions to our common stockholders, made or deemed to have been made in 2022, were classified as a return of capital for federal income tax purposes.

RESULTS OF OPERATIONS

The following is a comparison of our results of operations for the three and nine months ended September 30, 2023 and 2022.

Total Revenue

The following summarizes our total revenue (dollars in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2023	2022	Change	2023	2022	Change
Rental (excluding reimbursable)	\$ 947,549	\$ 781,883	\$ 165,666	\$ 2,720,806	\$ 2,297,272	\$ 423,534
Rental (reimbursable)	61,313	44,063	17,250	208,634	129,039	79,595
Other	30,242	11,323	18,919	73,268	28,720	44,548
Total revenue	<u>\$ 1,039,104</u>	<u>\$ 837,269</u>	<u>\$ 201,835</u>	<u>\$ 3,002,708</u>	<u>\$ 2,455,031</u>	<u>\$ 547,677</u>

Rental Revenue (excluding reimbursable)

The table below summarizes our rental revenue (excluding reimbursable) in the three and nine months ended September 30, 2023 and 2022 (dollars in thousands):

	Number of Properties	Three months ended September 30,			Nine months ended September 30,		
		2023	2022	Change	2023	2022	Change
Properties acquired during 2023 & 2022	2,391	\$ 225,631	\$ 52,214	\$ 173,417	\$ 546,147	\$ 85,763	\$ 460,384
Same store rental revenue ⁽¹⁾	10,577	716,015	700,869	15,146	2,140,980	2,107,396	33,584
Constant currency adjustment ⁽²⁾	N/A	3,848	(2,997)	6,845	6,560	4,462	2,098
Properties sold during and prior to 2023	265	522	11,313	(10,791)	3,434	25,676	(22,242)
Straight-line rent and other non-cash adjustments	N/A	(10,151)	2,978	(13,129)	(16,307)	15,010	(31,317)
Vacant rents, development and other ⁽³⁾	314	11,103	16,645	(5,542)	37,494	53,975	(16,481)
Other excluded revenue ⁽⁴⁾	N/A	581	861	(280)	2,498	4,990	(2,492)
Totals		<u>\$ 947,549</u>	<u>\$ 781,883</u>	<u>\$ 165,666</u>	<u>\$ 2,720,806</u>	<u>\$ 2,297,272</u>	<u>\$ 423,534</u>

⁽¹⁾ Same store rental revenue increased by 2.2% and 1.6% for the three and nine months ended September 30, 2023 as compared to the same periods in 2022, respectively.

⁽²⁾ For purposes of comparability, same store rental revenue is presented on a constant currency basis using the exchange rate as of September 30, 2023, of 1.22 British Pound Sterling ("GBP")/USD and 1.06 Euro ("EUR")/USD. None of the properties in Italy and Ireland met our same store pool definition for the periods presented.

⁽³⁾ Relates to the aggregate of (i) rental revenue from 287 properties that were available for lease during part of 2023 or 2022, and (ii) rental revenue for 27 properties under development or completed developments that do not meet our same store pool definition for the periods presented.

⁽⁴⁾ Primarily consists of reimbursements for tenant improvements and rental revenue that is not contractual base rent such as lease termination.

For purposes of determining the same store rent property pool, we include all properties that were owned for the entire year-to-date period, for both the current and prior year, except for properties during the current or prior year that; (i) were vacant at any time, (ii) were under development or redevelopment, or (iii) were involved in eminent domain and rent was reduced. Each of the exclusions from the same store pool are separately addressed within the applicable sentences above, explaining the changes in rental revenue for the period.

Of the 14,044 in-place leases in the portfolio, which excludes 276 vacant units, 11,644, or 82.9%, were under leases that provide for increases in rents through: base rent increases tied to inflation (typically subject to ceilings), percentage rent based on a percentage of the clients' gross sales, fixed increases, or a combination of two or more of the aforementioned rent provisions.

Rent based on a percentage of our client's gross sales, or percentage rent, was \$2.2 million in the three months ended September 30, 2023, \$2.3 million for the three months ended September 30, 2022, \$8.0 million for the nine months ended September 30, 2023, and \$8.3 million for the nine months ended September 30, 2022. Percentage rent represents less than 1.0% of rental revenue.

At September 30, 2023, our portfolio of 13,282 properties was 98.8% leased with 159 properties available for lease, as compared to 99.0% leased with 126 properties available for lease at December 31, 2022, and 98.9% leased with 131 properties available for lease at September 30, 2022. It has been our experience that approximately 1% to 4% of our property portfolio will be available for lease at any given time; however, it is possible that the number of properties available for lease or sale could increase in the future, given the nature of economic cycles and other unforeseen global events.

Rental Revenue (reimbursable)

A number of our leases provide for contractually obligated reimbursements from clients for recoverable real estate taxes and operating expenses. Contractually obligated reimbursements by our clients increased by \$17.3 million and \$79.6 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, primarily due to higher recoverable real estate tax taxes from overall portfolio growth.

Other Revenue

Other revenue primarily relates to interest income recognized on financing receivables for certain leases with above-market terms. Other revenue increased by \$18.9 million and \$44.5 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, due to a higher number of leases with above-market terms in recent acquisitions.

Total Expenses

The following summarizes our total expenses (in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2023	2022	Change	2023	2022	Change
Depreciation and amortization	\$ 495,566	\$ 419,016	\$ 76,550	\$ 1,419,321	\$ 1,232,215	\$ 187,106
Interest	184,121	117,409	66,712	522,110	333,933	188,177
Property (excluding reimbursable)	9,668	8,656	1,012	26,447	28,202	(1,755)
Property (reimbursable)	61,313	44,063	17,250	208,634	129,039	79,595
General and administrative	35,525	34,096	1,429	106,521	100,934	5,587
Provisions for impairment	16,808	1,650	15,158	59,801	16,379	43,422
Merger and integration-related costs	2,884	3,746	(862)	4,532	12,994	(8,462)
Total expenses	\$ 805,885	\$ 628,636	\$ 177,249	\$ 2,347,366	\$ 1,853,696	\$ 493,670
Total revenue ⁽¹⁾	\$ 977,791	\$ 793,206		\$ 2,794,074	\$ 2,325,992	
General and administrative expenses as a percentage of total revenue ⁽¹⁾	3.6 %	4.3 %		3.8 %	4.3 %	
Property expenses (excluding reimbursable) as a percentage of total revenue ⁽¹⁾	1.0 %	1.1 %		0.9 %	1.2 %	

⁽¹⁾ Excludes rental revenue (reimbursable).

Depreciation and Amortization

Depreciation and amortization increased by \$76.6 million and \$187.1 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, primarily due to overall portfolio growth from acquisitions.

Interest Expense

The following is a summary of the components of our interest expense (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Interest on our credit facility, commercial paper, term loans, notes, mortgages and interest rate swaps	\$ 199,059	\$ 131,160	\$ 564,347	\$ 376,448
Credit facility commitment fees	1,358	1,358	3,999	3,521
Amortization of debt origination and deferred financing costs	6,930	3,653	19,498	10,056
(Gain) loss on interest rate swaps	(1,790)	734	(5,390)	2,180
Amortization of net mortgage premiums	(3,201)	(3,327)	(9,597)	(10,418)
Amortization of net note premiums	(14,989)	(15,762)	(45,647)	(47,185)
Capital lease obligation	378	382	1,183	1,060
Interest capitalized	(3,624)	(789)	(6,283)	(1,729)
Interest expense	<u>\$ 184,121</u>	<u>\$ 117,409</u>	<u>\$ 522,110</u>	<u>\$ 333,933</u>

Credit facility, commercial paper, term loans, mortgages and notes

Average outstanding balances	\$ 20,249,836	\$ 16,174,244	\$ 19,685,182	\$ 15,680,253
Weighted average interest rates	3.93 %	3.21 %	3.81 %	3.16 %

Interest expense increased by \$66.7 million and \$188.2 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, primarily due to higher average debt and weighted average interest. See notes to the accompanying consolidated financial statements additional information regarding our indebtedness.

Property Expenses (excluding reimbursable)

Property expenses (excluding reimbursable) consist of costs associated with properties available for lease, non-net-leased properties and general portfolio expenses and include, but are not limited to, property taxes, maintenance, insurance, utilities, property inspections and legal fees.

Property expenses (excluding reimbursable) increased by \$1.0 million for the three months ended September 30, 2023 and decreased \$1.8 million for the nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, which was primarily impacted by property tax expense.

Property Expenses (reimbursable)

Property expenses (reimbursable) consist of reimbursable property taxes and operating costs paid on behalf of our clients. Property expenses (reimbursable) increased by \$17.3 million and \$79.6 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, which is proportional to overall portfolio growth.

General and Administrative Expenses

General and administrative expenses are expenditures related to the operations of our company, including employee-related costs, professional fees, and other general overhead costs associated with running our business.

General and administrative expenses increased by \$1.4 million and \$5.6 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, primarily due to higher payroll-related compensation costs associated with the growth of the company.

Provisions for Impairment

The following table summarizes provisions for impairment during the periods indicated below (dollars in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Carrying value prior to impairment	\$ 37.5	\$ 48.1	\$ 161.4	\$ 107.0
Less: total provisions for impairment	(16.8)	(1.7)	(59.8)	(16.4)
Carrying value after impairment	\$ 20.7	\$ 46.4	\$ 101.6	\$ 90.6

Merger and Integration-Related Costs

Merger and integration-related costs consist of advisory fees, attorney fees, accountant fees, and incremental and non-recurring costs necessary to convert data and systems, retain employees and otherwise enable us to operate the acquired business or assets efficiently.

We incurred approximately \$2.9 million and \$4.5 million of merger and integration-related transaction costs during the three and nine months ended September 30, 2023, respectively, compared to approximately \$3.7 million and \$13.0 million during the three and nine months ended September 30, 2022, respectively, in conjunction with our merger with VEREIT, Inc. in November 2021.

Gain on Sales of Real Estate

The following summarizes our property dispositions (dollars in millions):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Number of properties sold	24	35	79	139
Net sales proceeds	\$ 32.3	\$ 142.4	\$ 92.8	\$ 414.7
Gain on sales of real estate	\$ 7.6	\$ 42.9	\$ 19.7	\$ 93.6

Foreign Currency and Derivative (Loss) Gain, Net

We borrow in the functional currencies of the countries in which we invest. Net foreign currency gain and loss are primarily related to the remeasurement of intercompany debt from foreign subsidiaries. Derivative gain and loss primarily relates to mark-to-market adjustments on derivatives that do not qualify for hedge accounting and settlement of designated derivatives reclassified from Accumulated other comprehensive income ("AOCI").

Net foreign currency and derivative (loss) gain, net for the three and nine months ended September 30, 2023 was a loss of \$2.8 million and a gain of \$5.0 million, respectively, primarily due to foreign currency fluctuations related to the remeasurement of intercompany debt.

In June 2022, following the early prepayment of our Sterling-denominated intercompany loan receivable from our consolidated foreign subsidiaries, we terminated the four cross-currency swaps used to hedge the foreign currency exposure of the intercompany loan. As the hedge relationship was terminated and the future principal and interest associated with the prepaid intercompany loan will not occur, \$20.0 million gain was reclassified from AOCI to 'Foreign currency and derivative (loss) gain, net' during the nine months ended September 30, 2022. The reclassification from AOCI was offset by \$7.9 million in losses from the intercompany loan remeasurement on the final exchange.

Equity in Income and Impairment of Investment in Unconsolidated Entities

Equity in income of unconsolidated entities relates to three equity method investments acquired in our merger with VEREIT, Inc. in November 2021, which were all sold during the third quarter of 2022. The loss for the three and nine months ended September 30, 2022 was primarily driven by an other than temporary impairment related to the sale of these investments. Following the sale of the properties, distributions primarily result from the release of hold backs from property sales, refunds from taxing authorities and distributions of operating cash. The income for the nine months ended September 30, 2023 is attributable to distributions in excess of our basis.

Other Income, Net

Certain miscellaneous non-recurring revenue is included in other income, net. The increase of \$5.0 million and \$6.1 million for the three and nine months ended September 30, 2023 as compared with the same periods in 2022, respectively, was primarily due to higher interest income earned on money market accounts and an increase in gain on insurance proceeds from recoveries on property losses exceeding our carrying value.

Income Taxes

Income taxes primarily consist of international income taxes accrued or paid by us and our subsidiaries, as well as to state and local taxes. The increase of \$1.2 million and \$0.4 million in income taxes for the three and nine months ended September 30, 2023, as compared with the same periods in 2022, is primarily attributable to higher taxable income in the UK; partially offset by lower UK tax rates.

NON-GAAP FINANCIAL MEASURES

Adjusted Earnings before Interest, Taxes, Depreciation and Amortization for Real Estate ("Adjusted EBITDAre")

Nareit established an EBITDA metric for real estate companies (i.e., EBITDA for real estate, or EBITDAre) it believed would provide investors with a consistent measure to help make investment decisions among REITs. Our definition of "Adjusted EBITDAre" is generally consistent with the Nareit definition, other than our adjustments to remove foreign currency and derivative gain and loss, excluding gain and loss from the settlement of foreign currency forwards not designated as hedges (which is consistent with our previous calculations of "Adjusted EBITDA"). We define Adjusted EBITDAre, a non-GAAP financial measure, for the most recent quarter as earnings (net income) before (i) interest expense, including non-cash loss (gain) on swaps, (ii) income and franchise taxes, (iii) gain on extinguishment of debt, (iv) real estate depreciation and amortization, (v) provisions for impairment, (vi) merger and integration-related costs, (vii) gain on sales of real estate, (viii) foreign currency and derivative gain and loss, net, (ix) gain on settlement of foreign currency forwards, and (x) our proportionate share of adjustments from unconsolidated entities. Our Adjusted EBITDAre may not be comparable to Adjusted EBITDAre reported by other companies or as defined by Nareit, and other companies may interpret or define Adjusted EBITDAre differently than we do. Management believes Adjusted EBITDAre to be a meaningful measure of a REIT's performance because it provides a view of our operating performance, analyzes our ability to meet interest payment obligations before the effects of income tax, depreciation and amortization expense, provisions for impairment, gain on sales of real estate and other items, as defined above, that affect comparability, including the removal of non-recurring and non-cash items that industry observers believe are less relevant to evaluating the operating performance of a company. In addition, EBITDAre is widely followed by industry analysts, lenders, investors, rating agencies, and others as a means of evaluating the operational cash generating capacity of a company prior to servicing debt obligations. Management also believes the use of an annualized quarterly Adjusted EBITDAre metric, which we refer to as Annualized Adjusted EBITDAre, is meaningful because it represents our current earnings run rate for the period presented. Annualized Adjusted EBITDAre and Annualized Pro Forma Adjusted EBITDAre, as defined below, are also used to determine the vesting of performance share awards granted to executive officers. Annualized Adjusted EBITDAre should be considered along with, but not as an alternative to net income as a measure of our operating performance. We define Annualized Pro Forma Adjusted EBITDAre as Annualized Adjusted EBITDAre, subject to certain adjustments to incorporate Adjusted EBITDAre from properties we acquired or stabilized during the applicable quarter and to remove Adjusted EBITDAre from properties we disposed of during the applicable quarter, and include transaction accounting adjustments in accordance with U.S. GAAP, giving pro forma effect to all transactions as if they occurred at the beginning of the applicable period. Our calculation includes all adjustments consistent with the requirements to present Adjusted EBITDAre on a pro forma basis in accordance with Article 11 of Regulation S-X. The Annualized Pro Forma Adjustments are consistent with the debt service coverage ratio calculated under financial covenants for our senior unsecured notes. We believe Annualized Pro Forma Adjusted EBITDAre is a useful non-GAAP supplemental measure, as it excludes properties that were no longer owned at the balance sheet date and includes the annualized rent from properties acquired during the quarter. Management also uses our ratios of net debt-to-Annualized Adjusted EBITDAre and net debt-to-Annualized Pro Forma Adjusted EBITDAre as measures of leverage in assessing our financial performance, which is calculated as net debt (which we define as total debt per the consolidated balance sheets, excluding deferred financing costs and net premiums and discounts, less cash and cash equivalents), divided by annualized quarterly Adjusted EBITDAre and annualized Pro Forma Adjusted EBITDAre, respectively.

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The following is a reconciliation of net income (which we believe is the most comparable U.S. GAAP measure) to Adjusted EBITDAre and Annualized Pro Forma EBITDAre calculations for the period indicated below (dollars in thousands):

	Three months ended September 30,	
	2023	2022
Net income	\$ 233,877	\$ 220,287
Interest	184,121	117,409
Gain on extinguishment of debt	—	(240)
Income taxes	11,336	10,163
Depreciation and amortization	495,566	419,016
Provisions for impairment	16,808	1,650
Merger and integration-related costs	2,884	3,746
Gain on sales of real estate	(7,572)	(42,883)
Foreign currency and derivative losses, net	2,813	22,893
Gain on settlement of foreign currency forwards	—	2,784
Proportionate share of adjustments from unconsolidated entities	—	662
Quarterly Adjusted EBITDAre	<u>\$ 939,833</u>	<u>\$ 755,487</u>
Annualized Adjusted EBITDAre ⁽¹⁾	<u>\$ 3,759,332</u>	<u>\$ 3,021,948</u>
Annualized Pro Forma Adjustments	<u>\$ 74,503</u>	<u>\$ 31,700</u>
Annualized Pro Forma Adjusted EBITDAre	<u>\$ 3,833,835</u>	<u>\$ 3,053,648</u>
Total debt per the consolidated balance sheets, excluding deferred financing costs and net premiums and discounts	\$ 20,388,406	\$ 16,142,608
Less: Cash and cash equivalents	(344,129)	(187,745)
Net Debt ⁽²⁾	\$ 20,044,277	\$ 15,954,863
Net Debt/Annualized Adjusted EBITDAre	5.3 x	5.3 x
Net Debt/Annualized Pro Forma Adjusted EBITDAre	5.2 x	5.2 x

⁽¹⁾ We calculate Annualized Adjusted EBITDAre by multiplying the Quarterly Adjusted EBITDAre by four.

⁽²⁾ Net Debt is total debt per our consolidated balance sheets, excluding deferred financing costs and net premiums and discounts, less cash and cash equivalents.

As described above, the Annualized Pro Forma Adjustments, which include transaction accounting adjustments in accordance with U.S. GAAP, consist of adjustments to incorporate the Adjusted EBITDAre from properties we acquired or stabilized during the applicable quarter and remove Adjusted EBITDAre from properties we disposed of during the applicable quarter, giving pro forma effect to all transactions as if they occurred at the beginning of the period, consistent with the requirements of Article 11 of Regulation S-X. The following table summarizes our Annualized Pro Forma Adjusted EBITDAre calculation for the period indicated below (dollars in thousands):

	Three months ended September 30,	
	2023	2022
Annualized pro forma adjustments from properties acquired or stabilized	\$ 79,141	\$ 68,589
Annualized pro forma adjustments from properties disposed	(4,638)	(36,889)
Annualized Pro forma Adjustments	<u>\$ 74,503</u>	<u>\$ 31,700</u>

FUNDS FROM OPERATIONS AVAILABLE TO COMMON STOCKHOLDERS ("FFO") AND NORMALIZED FUNDS FROM OPERATIONS AVAILABLE TO COMMON STOCKHOLDERS ("Normalized FFO")

We define FFO, a non-GAAP measure, consistent with the National Association of Real Estate Investment Trusts' definition, as net income available to common stockholders, plus depreciation and amortization of real estate assets, plus provisions for impairments of depreciable real estate assets, and reduced by gain on property sales. We define Normalized FFO, a non-GAAP financial measure, as FFO excluding merger and integration-related costs related to our merger with VEREIT, Inc. We define diluted FFO and diluted normalized FFO as FFO and normalized FFO adjusted for dilutive noncontrolling interests.

The following summarizes our FFO and Normalized FFO (dollars in millions, except per share data):

	Three months ended September 30,			Nine months ended September 30,		
	2023	2022	% Change	2023	2022	% Change
FFO available to common stockholders	\$ 736.1	\$ 597.2	23.3 %	\$ 2,108.4	\$ 1,807.4	16.7 %
FFO per share ⁽¹⁾	\$ 1.04	\$ 0.97	7.2 %	\$ 3.09	\$ 2.99	3.3 %
Normalized FFO available to common stockholders	\$ 739.0	\$ 600.9	23.0 %	\$ 2,113.0	\$ 1,820.4	16.1 %
Normalized FFO per share ⁽¹⁾	\$ 1.04	\$ 0.97	7.2 %	\$ 3.10	\$ 3.01	3.0 %

⁽¹⁾ All per share amounts are presented on a diluted per common share basis.

The following is a reconciliation of net income available to common stockholders (which we believe is the most comparable U.S. GAAP measure) to FFO and Normalized FFO. Also presented is information regarding distributions paid to common stockholders and the weighted average number of common shares used for the basic and diluted computation per share (dollars in thousands, except per share amounts):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Net income available to common stockholders	\$ 233,473	\$ 219,567	\$ 653,904	\$ 642,143
Depreciation and amortization	495,566	419,016	1,419,321	1,232,215
Depreciation of furniture, fixtures and equipment	(817)	(511)	(1,656)	(1,478)
Provisions for impairment	16,808	1,650	59,801	16,379
Gain on sales of real estate	(7,572)	(42,883)	(19,675)	(93,611)
Proportionate share of adjustments for unconsolidated entities	—	717	(465)	12,812
FFO adjustments allocable to noncontrolling interests	(1,312)	(402)	(2,808)	(1,075)
FFO available to common stockholders	\$ 736,146	\$ 597,154	\$ 2,108,422	\$ 1,807,385
FFO allocable to dilutive noncontrolling interests	1,375	985	4,166	2,569
Diluted FFO	\$ 737,521	\$ 598,139	\$ 2,112,588	\$ 1,809,954
FFO available to common stockholders	\$ 736,146	\$ 597,154	\$ 2,108,422	\$ 1,807,385
Merger and integration-related costs	2,884	3,746	4,532	12,994
Normalized FFO available to common stockholders	\$ 739,030	\$ 600,900	\$ 2,112,954	\$ 1,820,379
Normalized FFO allocable to dilutive noncontrolling interests	1,375	985	4,166	2,569
Diluted Normalized FFO	\$ 740,405	\$ 601,885	\$ 2,117,120	\$ 1,822,948
FFO per common share, basic and diluted	\$ 1.04	\$ 0.97	\$ 3.09	\$ 2.99
Normalized FFO per common share, basic and diluted	\$ 1.04	\$ 0.97	\$ 3.10	\$ 3.01
Distributions paid to common stockholders	\$ 543,343	\$ 458,586	\$ 1,555,679	\$ 1,342,695
FFO available to common stockholders in excess of distributions paid to common stockholders	\$ 192,803	\$ 138,568	\$ 552,743	\$ 464,690
Normalized FFO available to common stockholders in excess of distributions paid to common stockholders	\$ 195,687	\$ 142,314	\$ 557,275	\$ 477,684
Weighted average number of common shares used for FFO and Normalized FFO:				
Basic	709,165	617,512	681,419	604,464
Diluted	711,338	619,201	683,925	605,958

We consider FFO and Normalized FFO to be appropriate supplemental measures of a REIT's operating performance as they are based on a net income analysis of property portfolio performance that adds back items such as depreciation and impairments for FFO, and adds back merger and integration-related costs, for Normalized FFO. The historical accounting convention used for real estate assets requires straight-line depreciation of buildings and improvements, which implies that the value of real estate assets diminishes predictably over time. Since real estate values historically rise and fall with market conditions, presentations of operating results for a REIT, using historical accounting for depreciation, could be less informative.

ADJUSTED FUNDS FROM OPERATIONS AVAILABLE TO COMMON STOCKHOLDERS ("AFFO")

We define AFFO, a non-GAAP measure, as FFO adjusted for unique revenue and expense items, which we believe are not as pertinent to the measurement of our ongoing operating performance. We define diluted AFFO as AFFO adjusted for dilutive noncontrolling interests.

The following summarizes our AFFO (dollars in millions, except per share data):

	Three months ended September 30,			Nine months ended September 30,		
	2023	2022	% Change	2023	2022	% Change
AFFO available to common stockholders	\$ 721.4	\$ 603.6	19.5 %	\$ 2,043.8	\$ 1,767.4	15.6 %
AFFO per share ⁽¹⁾	\$ 1.02	\$ 0.98	4.1 %	\$ 2.99	\$ 2.92	2.4 %

⁽¹⁾ All per share amounts are presented on a diluted per common share basis.

We consider AFFO to be an appropriate supplemental measure of our performance. Most companies in our industry use a similar measurement, but they may use the term "CAD" (for Cash Available for Distribution), "FAD" (for Funds Available for Distribution) or other terms. Our AFFO calculations may not be comparable to AFFO, CAD or FAD reported by other companies, and other companies may interpret or define such terms differently than we do.

The following is a reconciliation of net income available to common stockholders (which we believe is the most comparable U.S. GAAP measure) to Normalized FFO and AFFO. Also presented is information regarding distributions paid to common stockholders and the weighted average number of common shares used for the basic and diluted computation per share (dollars in thousands, except per share amounts):

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Net income available to common stockholders	\$ 233,473	\$ 219,567	\$ 653,904	\$ 642,143
Cumulative adjustments to calculate Normalized FFO ⁽¹⁾	505,557	381,333	1,459,050	1,178,236
Normalized FFO available to common stockholders	739,030	600,900	2,112,954	1,820,379
Gain on extinguishment of debt	—	(240)	—	(367)
Amortization of share-based compensation	6,231	5,099	20,154	16,742
Amortization of net debt premiums and deferred financing costs ⁽²⁾	(10,244)	(16,728)	(34,441)	(50,772)
Non-cash (gain) loss on interest rate swaps	(1,790)	735	(5,390)	2,181
Straight-line impact of cash settlement on interest rate swaps ⁽³⁾	1,797	—	5,392	—
Leasing costs and commissions	(1,392)	(686)	(6,868)	(3,853)
Recurring capital expenditures	(52)	(273)	(190)	(459)
Straight-line rent and expenses, net	(42,791)	(29,628)	(113,239)	(85,004)
Amortization of above and below-market leases, net	24,939	17,422	61,967	47,466
Proportionate share of adjustments for unconsolidated entities	—	(85)	—	(4,239)
Other adjustments ⁽⁴⁾	5,642	27,050	3,497	25,318
AFFO available to common stockholders	\$ 721,370	\$ 603,566	\$ 2,043,836	\$ 1,767,392
AFFO allocable to dilutive noncontrolling interests	1,357	1,006	4,170	2,613
Diluted AFFO	\$ 722,727	\$ 604,572	\$ 2,048,006	\$ 1,770,005
AFFO per common share:				
Basic	\$ 1.02	\$ 0.98	\$ 3.00	\$ 2.92
Diluted	\$ 1.02	\$ 0.98	\$ 2.99	\$ 2.92
Distributions paid to common stockholders	\$ 543,343	\$ 458,586	\$ 1,555,679	\$ 1,342,695
AFFO available to common stockholders in excess of distributions paid to common stockholders	\$ 178,027	\$ 144,980	\$ 488,157	\$ 424,697
Weighted average number of common shares used for computation per share:				
Basic	709,165	617,512	681,419	604,464
Diluted	711,338	619,201	683,925	605,958

⁽¹⁾ See reconciling items for Normalized FFO presented under "Funds from Operations Available to Common Stockholders ("FFO") and Normalized Funds from Operations Available to Common Stockholders ("Normalized FFO").

⁽²⁾ Includes the amortization of net premiums on notes payable and assumption of our mortgages payable, which are being amortized over the life of the applicable debt, and costs incurred and capitalized upon issuance and exchange of our notes payable, assumption of our mortgages payable and issuance of our term loans, which are also being amortized over the lives of the applicable debt. No costs associated with our credit facility agreements or annual fees paid to credit rating agencies have been included.

⁽³⁾ Represents the straight-line amortization of \$72.0 million gain realized upon the termination of \$500.0 million in notional interest rate swaps in October 2022, over the term of the \$750.0 million of 5.625% senior unsecured notes due October 2032.

⁽⁴⁾ Includes foreign currency gain and loss as a result of intercompany debt and remeasurement transactions, mark-to-market adjustments on investments and derivatives that are non-cash in nature, straight-line payments from cross-currency swaps, obligations related to financing lease liabilities, and adjustments allocable to noncontrolling interests.

We believe the non-GAAP financial measure AFFO provides useful information to investors because it is a widely accepted industry measure of the operating performance of real estate companies that is used by industry analysts and investors who look at and compare those companies. In particular, AFFO provides an additional measure to compare the operating performance of different REITs without having to account for differing depreciation assumptions and other unique revenue and expense items which are not pertinent to measuring a particular company's on-going operating performance. Therefore, we believe that AFFO is an appropriate supplemental performance metric, and that the most appropriate U.S. GAAP performance metric to which AFFO should be reconciled is net income available to common stockholders.

Presentation of the information regarding FFO, Normalized FFO, and AFFO is intended to assist the reader in comparing the operating performance of different REITs, although it should be noted that not all REITs calculate FFO, Normalized FFO, and AFFO in the same way, so comparisons with other REITs may not be meaningful. Furthermore, FFO, Normalized FFO, and AFFO are not necessarily indicative of cash flow available to fund cash needs and should not be considered as alternatives to net income as an indication of our performance. FFO, Normalized FFO, and AFFO should not be considered as alternatives to reviewing our cash flows from operating, investing, and financing activities. In addition, FFO, Normalized FFO, and AFFO should not be considered as measures of liquidity, our ability to make cash distributions, or our ability to pay interest payments.

PROPERTY PORTFOLIO INFORMATION

At September 30, 2023, out of the 13,282 properties that we owned or held interest in, 13,123 properties were leased under net lease agreements. A net lease typically requires the client to be responsible for monthly rent and certain property operating expenses including property taxes, insurance, and maintenance. In addition, clients of our properties typically pay rent increases based on: (1) fixed increases, (2) increases tied to inflation (typically subject to ceilings), or (3) additional rent calculated as a percentage of the clients' gross sales above a specified level.

We define total portfolio annualized contractual rent as the monthly aggregate cash amount charged to clients, inclusive of monthly base rent receivables, but excluding percentage rent and reimbursements from clients, as of the balance sheet date, multiplied by 12, excluding percentage rent. We believe total portfolio annualized contractual rent is a useful supplemental operating measure, as it excludes properties that were no longer owned at the balance sheet date and includes the annualized rent from properties acquired during the quarter. Total portfolio annualized contractual rent has not been reduced to reflect reserves recorded as adjustments to U.S. GAAP rental revenue in the periods presented and excludes unconsolidated entities.

Top 10 Industry Concentrations

We are engaged in a single business activity, which is the leasing of property to clients, generally on a net basis. That business activity spans various geographic boundaries and includes property types and clients engaged in various industries. Even though we have a single segment, we believe our investors continue to view diversification as a key component of our investment philosophy and so we believe it remains important to present certain information regarding our property portfolio classified according to the business of the respective clients, expressed as a percentage of our total portfolio annualized contractual rent:

Percentage of Total Portfolio Annualized Contractual Rent by Industry ⁽¹⁾

	As of				
	Sept 30, 2023	Dec 31, 2022	Dec 31, 2021	Dec 31, 2020	Dec 31, 2019
Grocery	11.4%	10.0%	10.2%	9.8%	7.9%
Convenience Stores	10.6	8.6	9.1	11.9	12.3
Dollar Stores	7.2	7.4	7.5	7.6	7.9
Drug Stores	5.9	5.7	6.6	8.2	8.8
Home Improvement	5.8	5.6	5.1	4.3	2.9
Restaurants-Quick Service	5.3	6.0	6.6	5.3	5.8
Restaurants-Casual	4.6	5.1	5.9	2.8	3.2
Automotive Service	4.2	4.0	3.2	2.7	2.6
Health and Fitness	4.1	4.4	4.7	6.7	7.0
General Merchandise	3.7	3.7	3.7	3.4	2.5

⁽¹⁾ The presentation of Top 10 Industry Concentrations combines total portfolio contractual rent from the U.S. and Europe. Europe consists of properties in the U.K., starting in May 2019, in Spain, starting in September 2021, in Italy, starting in October 2022, and in Ireland, starting in June 2023.

Property Type Composition

The following table sets forth certain property type information regarding our property portfolio as of September 30, 2023 (dollars in thousands):

Property Type	Number of Properties	Approximate Leasable Square Feet ⁽¹⁾	Total Portfolio Annualized Contractual Rent	Percentage of Total Portfolio Annualized Contractual Rent
Retail	12,879	172,641,300	\$ 3,195,302	82.6 %
Industrial	364	84,412,700	507,054	13.1
Gaming	1	3,096,700	100,000	2.6
Other ⁽²⁾	38	2,411,200	64,947	1.7
Totals	13,282	262,561,900	\$ 3,867,303	100.0 %

⁽¹⁾ Includes leasable building square footage. Excludes 2,962 acres of leased land categorized as agriculture at September 30, 2023.

⁽²⁾ "Other" includes 27 properties classified as agriculture, consisting of approximately 0.3 million leasable square feet and \$37.6 million in annualized contractual rent and 10 properties classified as office, consisting of approximately 2.1 million leasable square feet and \$27.3 million in annualized contractual rent, as well as one land parcel under development.

Client Diversification

The following table sets forth the 20 largest clients in our property portfolio, expressed as a percentage of total portfolio annualized contractual rent, which does not give effect to deferred rent, at September 30, 2023:

Client	Number of Leases	Percentage of Total Portfolio Annualized Contractual Rent ⁽¹⁾
Walgreens	369	3.9 %

Dollar General	1,630	3.9
Dollar Tree / Family Dollar	1,195	3.3
7-Eleven	634	3.2
EG Group Limited	415	2.7
Wynn Resorts	1	2.6
FedEx	77	2.2
B&Q (Kingfisher)	50	1.8
Asda	37	1.8
Sainsbury's	35	1.7
LA Fitness	70	1.7
BJ's Wholesale Clubs	33	1.6
Lifetime Fitness	23	1.5
CVS Pharmacy	191	1.4
Wal-Mart / Sam's Club	67	1.4
Tractor Supply	186	1.3
Tesco	22	1.3
AMC Theaters	35	1.2
Red Lobster	200	1.2
Regal Cinemas (Cineworld)	35	1.1
Total	5,305	40.9 %

(1) Amounts for each client are calculated independently; therefore, the individual percentages may not sum to the total.

Lease Expirations

The following table sets forth certain information regarding the timing of the lease term expirations in our portfolio (excluding rights to extend a lease at the option of the client) and their contribution to total portfolio annualized contractual rent as of September 30, 2023 (dollars in thousands):

Year	Expiring Leases		Approximate Leasable Square Feet	Total Portfolio Annualized Contractual Rent	Percentage of Total Portfolio Annualized Contractual Rent
	Retail	Non-Retail			
	Total Portfolio ⁽¹⁾				
2023	168	—	1,267,300	\$ 22,077	0.6 %
2024	512	24	9,024,300	106,600	2.8
2025	915	37	14,702,100	210,874	5.5
2026	855	33	16,010,500	195,882	5.1
2027	1,411	37	22,307,500	288,821	7.5
2028	1,570	55	28,194,800	344,960	8.9
2029	1,139	28	24,476,500	296,603	7.7
2030	592	20	15,875,400	188,126	4.9
2031	549	40	23,361,100	263,672	6.8
2032	973	33	17,883,200	254,462	6.6
2033	735	19	16,522,300	208,445	5.4
2034	602	8	10,828,000	225,474	5.7
2035	440	4	5,854,700	117,369	2.9
2036	438	8	7,956,100	143,290	3.7
2037	515	9	8,748,900	136,136	3.5
2038-2143	2,206	69	36,778,400	864,512	22.4
Totals	13,620	424	259,791,100	\$ 3,867,303	100.0 %

(1) Leases on our multi-client properties are counted separately in the table above. This table excludes 276 vacant units.

Geographic Diversification

The following table sets forth certain geographic information regarding our property portfolio as of September 30, 2023 (dollars in thousands):

Location	Number of Properties	Percent Leased	Approximate Leasable Square Feet	Percentage of Total Portfolio Annualized Contractual Rent
Alabama	405	98 %	4,395,600	1.8 %
Alaska	6	100	299,700	0.1
Arizona	254	99	4,000,600	1.8
Arkansas	260	93	2,817,700	1.0
California	353	99	12,452,300	5.4
Colorado	170	96	2,697,500	1.2
Connecticut	52	98	1,754,700	0.6
Delaware	24	100	141,100	0.1
Florida	886	99	10,557,200	5.2
Georgia	577	98	9,188,900	3.4
Hawaii	22	100	47,800	0.2
Idaho	27	100	189,100	0.1
Illinois	557	97	13,284,700	4.9
Indiana	428	97	8,200,500	2.5

Iowa	110	100	3,484,100	0.9
Kansas	195	97	4,691,500	1.0
Kentucky	377	99	6,342,100	1.6
Louisiana	355	99	5,289,700	1.9
Maine	85	99	1,208,700	0.6
Maryland	78	99	3,064,500	1.2
Massachusetts	207	99	6,664,300	4.6
Michigan	475	99	5,908,200	2.5
Minnesota	261	98	4,330,200	1.8
Mississippi	305	99	4,525,800	1.2
Missouri	394	99	5,467,600	1.9
Montana	24	100	223,100	0.1
Nebraska	81	99	1,131,600	0.3
Nevada	74	99	2,665,700	0.8
New Hampshire	54	98	667,300	0.5
New Jersey	145	97	2,277,000	1.5
New Mexico	110	100	1,354,200	0.6
New York	338	98	4,960,200	3.0
North Carolina	417	99	8,434,700	2.8
North Dakota	21	95	427,800	0.2
Ohio	716	98	16,067,600	4.0
Oklahoma	336	97	4,443,500	1.6
Oregon	42	100	650,400	0.3
Pennsylvania	344	97	6,226,800	2.3
Rhode Island	31	100	214,600	0.2
South Carolina	326	99	5,186,200	1.9
South Dakota	34	100	474,900	0.2
Tennessee	463	98	7,362,200	2.3
Texas	1,602	99	27,435,400	10.1
Utah	39	100	1,585,500	0.5
Vermont	18	100	173,500	0.1
Virginia	370	98	7,384,200	2.3
Washington	82	99	1,862,600	0.8
West Virginia	80	100	763,300	0.3
Wisconsin	289	100	6,608,900	2.0
Wyoming	23	100	157,700	0.1
Puerto Rico	6	100	59,400	*
Ireland	4	100	311,500	0.1
Italy	7	100	1,075,100	0.4
Spain	54	100	3,960,100	0.9
United Kingdom	289	100	27,412,800	12.3
Totals/average	13,282	98 %	262,561,900	100.0 %
*Less than 0.1%				

IMPACT OF RECENT ACCOUNTING PRONOUNCEMENTS

For information on the impact of new accounting standards on our business, see note 1, *Basis of Presentation*, to our Consolidated Financial Statements.

CRITICAL ACCOUNTING POLICIES

Our consolidated financial statements have been prepared in accordance with U.S. GAAP and are the basis for our discussion and analysis of financial condition and results of operations. Preparing our consolidated financial statements requires us to make a number of estimates and assumptions that affect the reported amounts and disclosures in the consolidated financial statements. We believe that we have made these estimates and assumptions in an appropriate manner and in a way that accurately reflects our financial condition. We continually test and evaluate these estimates and assumptions using our historical knowledge of the business, as well as other factors, to ensure that they are reasonable for reporting purposes. However, actual results may differ from these estimates and assumptions. There have been no material changes to the Critical Accounting Policies disclosed in our Annual Report on [Form 10-K](#) for the year ended December 31, 2022. This summary should be read in conjunction with the more complete discussion of our accounting policies and procedures included in note 2, Summary of Significant Accounting Policies and Procedures and New Accounting Standards, to our consolidated financial statements in our Annual Report.

Item 3: Quantitative and Qualitative Disclosures about Market Risk

We are exposed to economic risks from interest rates and foreign currency exchange rates. A portion of these risks is hedged, but the risks may affect our financial statements.

Interest Rates

We are exposed to interest rate changes primarily as a result of our credit facility and commercial paper programs, term loans, mortgages payable, and long-term notes and bonds used to maintain liquidity and expand our real estate investment portfolio and operations. Our interest rate risk management objective is to limit the impact of interest rate changes on earnings and cash flow and to lower our overall borrowing costs. To achieve these objectives, we issue long-term notes and bonds, primarily at fixed rates.

In order to mitigate and manage the effects of interest rate risks on our operations, we may utilize a variety of financial instruments, including

interest rate swaps, interest rate swaptions, interest rate locks and caps. The use of these types of instruments to hedge our exposure to changes in interest rates carries additional risks, including counterparty credit risk, the enforceability of hedging contracts and the risk that unanticipated and significant changes in interest rates will cause a significant loss of basis in the contract. To limit counterparty credit risk, we will seek to enter into such agreements with major financial institutions with favorable credit ratings. There can be no assurance that we will be able to adequately protect against the foregoing risks or realize an economic benefit that exceeds the related amounts incurred in connection with engaging in such hedging activities. We do not enter into any derivative transactions for speculative or trading purposes.

The following table presents, by year of expected maturity, the principal amounts, average interest rates and estimated fair values of our fixed and variable rate debt as of September 30, 2023. This information is presented to evaluate the expected cash flows and sensitivity to interest rate changes (dollars in millions):

Expected Maturity Data

Year of Principal Due	Fixed rate debt	Weighted average rate on fixed rate debt	Variable rate debt	Weighted average rate on variable rate debt
2023	\$ 1.3	4.84 %	\$ 376.8	4.04 %
2024	1,840.5	4.48 %	—	—
2025	1,092.4	4.23 %	—	—
2026 ⁽¹⁾	1,587.0	3.72 %	2,021.7	4.75 %
2027	2,015.4	2.68 %	—	—
Thereafter	11,453.3	3.66 %	—	—
Totals ⁽²⁾	\$ 17,989.9	3.68 %	\$ 2,398.5	4.64 %
Fair Value ⁽³⁾	\$ 16,040.8		\$ 2,392.0	

⁽¹⁾ Assumes the two twelve-month extensions available at the Company's option on our 2023 term loans are fully exercised. As our interest rate swaps which fix our per annum interest rate expires upon the initial maturity date (excluding extensions), it becomes variable-rate debt starting in 2024 and is reflected in table above.

⁽²⁾ Excludes net premiums recorded on mortgages payable, net premiums recorded on notes payable, deferred financing costs on mortgages payable, notes payable, and term loans, and basis adjustment on interest rate swaps designated as fair value hedges on notes payable.

⁽³⁾ We base the estimated fair value of the publicly-traded fixed rate senior notes and bonds at September 30, 2023, on the indicative market prices and recent trading activity of our senior notes and bonds payable. We base the estimated fair value of our fixed rate mortgages and private senior notes payable at September 30, 2023, on the relevant forward interest rate curve, plus an applicable credit-adjusted spread. We believe that the carrying values of the line of credit and commercial paper borrowings and term loan balances reasonably approximate their estimated fair values at September 30, 2023.

The table above incorporates only those exposures that exist as of September 30, 2023. It does not consider those exposures or positions that could arise after that date. As a result, our ultimate realized gain or loss, with respect to interest rate fluctuations, would depend on the exposures that arise during the period, our hedging strategies at the time, and interest rates.

At September 30, 2023, our outstanding notes, bonds and mortgages payable had fixed interest rates. Interest on our credit facility and commercial paper borrowings and term loans is variable. However, the variable interest rate feature on our term loans have been mitigated by interest rate swap agreements. Based on our revolving credit facility balance of \$481.5 million at September 30, 2023, a 1% change in interest rates would change our interest rate costs by \$4.8 million per year.

Foreign Currency Exchange Rates

We are exposed to foreign currency exchange variability related to investments in and earnings from our foreign investments. Foreign currency market risk is the possibility that our results of operations or financial position could be better or worse than planned because of changes in foreign currency exchange rates. We primarily hedge our foreign currency risk by borrowing in the currencies in which we invest thereby providing a natural hedge. We continuously evaluate and manage our foreign currency risk through the use of derivative financial instruments, including currency exchange swaps, and foreign currency forward contracts with financial counterparties where practicable. Such derivative instruments are viewed as risk management tools and are not used for speculative or trading purposes. Additionally, our inability to redeploy rent receipts from our international operations on a timely basis subjects us to foreign exchange risk.

Item 4: Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of and for the quarter ended September 30, 2023, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer.

Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that as of September 30, 2023 our disclosure controls and procedures were effective and were operating at a reasonable assurance level.

Changes in Internal Controls

There have been no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2023, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

PART II. OTHER INFORMATION

Item 1A: Risk Factors

You should carefully consider the risks described below and those risks described in "Item 1A, Risk Factors" in Part I of our Annual Report on [Form 10-K](#) for the year ended December 31, 2022, as our business, financial condition and results of operations could be adversely affected by any of the risks and uncertainties described therein and herein.

Risks Related to the Proposed Merger

The announcement and pendency of the Merger may have an adverse effect on our business, operating results and price of our common stock.

We are subject to risks in connection with the announcement and pendency of the Merger, including, but not limited to, the following:

- Market reaction to the announcement and pendency of the Merger;
- Changes in our business, operating results, market price of our common stock and prospects generally;
- Market assessments of the likelihood that the Merger will be consummated;
- The amount of consideration offered per share is based on a fixed exchange ratio, and will not be adjusted to account for changes in our or Spirit's respective business, assets, liabilities, prospects, outlook, financial condition or results of operations, or any other changes, during the pendency of the Merger, including any change in the market price of, analyst estimates of, or projections relating to, our common stock or Spirit's common stock;
- Potential adverse effects on our relationships with our current clients, suppliers and other business partners, or those with which we are seeking to establish business relationships, due to uncertainties about the Merger;
- We have incurred, and will continue to incur, significant costs, expenses and fees for professional services and other transaction costs in connection with the Merger, and many of these fees and costs are payable by us regardless of whether the Merger is consummated;
- We may incur unexpected costs, liabilities or delays in connection with or with respect to the Merger;
- Potential adverse effects to our ability to raise capital during the pendency of the Merger, or the impact of the Merger on our or Spirit's existing or future indebtedness, or our ability to assume such indebtedness on favorable terms, or at all;
- Potential adverse effects on our ability to attract, recruit, retain and motivate current and prospective employees who may be uncertain about their future roles and relationships with us following the completion of the Merger, and the possibility that our employees could lose productivity as a result of uncertainty regarding their employment following the Merger;
- The pendency and outcome of any legal proceedings that may be instituted against us, our directors, executive officers and others relating to the transactions contemplated by the Merger Agreement;

- The inherent risks, costs and uncertainties associated with integrating the operations successfully and risks of not achieving all or any of the anticipated benefits of the Merger, or the risk that the anticipated benefits of the Merger may not be fully realized or take longer to realize than expected;
- Competitive pressures in the markets in which we and Spirit operate;
- Potential restrictions on the conduct of our business prior to the completion of the Merger pursuant to the terms of the Merger Agreement;
- The inability for our stockholders to realize the anticipated benefits of the Merger;
- The occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement; and
- The possibility of disruption to our business, including increased costs and diversion of management time and resources that could otherwise have been devoted to other opportunities that may have been beneficial to us.

Any of these risks could adversely affect our results of operations, financial condition and business prospects.

The Merger may not be completed on the terms or timeline currently contemplated, or at all. Completion of the Merger is subject to many conditions and if these conditions are not satisfied or waived, the Merger will not be completed, which could adversely affect our operations.

The closing of the Merger is subject to certain conditions, including: (1) approval by Spirit's stockholders of the Merger; (2) the effectiveness of the registration statement on Form S-4 to be filed with the SEC by us in connection with the transactions contemplated by the Merger Agreement; (3) approval for listing on the New York Stock Exchange ("NYSE") of the shares of our common stock and our Series A Preferred Stock to be issued in the Merger or reserved for issuance in connection therewith; (4) no injunction or law prohibiting the Merger; (5) accuracy of each party's representations, subject in most cases to materiality or material adverse effect qualifications; (6) compliance by each party with its covenants in all material respects; (7) with respect to the other party, there not having occurred since the date of the Merger Agreement any event, development, change or occurrence that has had or would reasonably be expected to have had, individually or in the aggregate, a material adverse effect; (8) receipt by each of us and Spirit of an opinion to the effect that the Merger will qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and (9) receipt by Spirit of an opinion that we qualify as a REIT under the Code and receipt by us of an opinion that Spirit qualifies as a REIT under the Code.

We cannot provide assurance that these conditions to completing the Merger will be satisfied or waived, and accordingly, that the Merger will be completed on the terms or timeline that the parties anticipate or at all.

Failure to consummate the Merger may adversely affect our results of operations, financial condition and business prospects for many reasons, including, among others: (i) we will have incurred substantial costs relating to the Merger, such as legal, accounting, financial advisor, filing, printing and mailing fees and integration costs that have already been incurred or will continue to be incurred until the closing of the Merger, which could adversely affect our financial conditions, results of operations and ability to make distributions to its stockholders and to pay the principal of and interest on its debt securities and other indebtedness; (ii) the Merger, whether or not it closes, will divert the attention of our management instead of enabling it to more fully pursue other opportunities that could be beneficial to us, without realizing any of the benefits of having completed the Merger or the other transactions contemplated by the Merger Agreement; and (iii) any reputational harm due to the adverse perception of any failure to successfully complete the Merger.

Our common stockholders will be diluted by the Merger, if consummated.

The Merger will dilute the ownership position of our common stockholders. Additionally, upon the closing of the Merger, we will issue 6,900,000 shares of Series A Preferred Stock, which, in certain circumstances, can be converted into our common stock. Consequently, our common stockholders, as a general matter, will have less voting control and influence over our management and policies after the effective time of the Merger than they currently exercise over our management and policies.

Potential litigation instituted against us, Spirit or our respective directors challenging the proposed Merger may prevent the Merger from becoming effective within the expected timeframe or at all.

Potential litigation related to the Merger may result in injunctive or other relief prohibiting, delaying or otherwise adversely affecting the parties' ability to complete the Merger. Such relief may prevent the Merger from becoming effective within the expected timeframe or at all. In addition, defending against such claims may be expensive and

divert management's attention and resources, which could adversely affect the respective businesses of us and Spirit.

We expect to incur substantial expenses related to the Merger and the transactions contemplated by the Merger Agreement.

We expect to incur substantial expenses in completing the Merger and integrating the operations of Spirit with ours. There are a large number of systems that must be integrated, separated or terminated in connection with the Merger, and the other transactions contemplated by the Merger Agreement, including leasing, billing, management information, purchasing, accounting and finance, sales, payroll and benefits, fixed asset, lease administration and regulatory compliance. While we have assumed that a certain level of transaction, integration and termination expenses would be incurred, there are a number of factors beyond our control that could affect the total amount or the timing of the expenses. Many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time. The expenses in connection with the Merger and the transactions contemplated by the Merger Agreement are expected to be significant, although the aggregate amount and timing of such charges are uncertain.

Following the Merger, if consummated, we may be unable to integrate the operations of Spirit successfully, or realize the anticipated synergies and related benefits of the Merger and the transactions contemplated by the Merger Agreement or do so within the anticipated time frame.

The Merger involves the combination of two companies which currently operate as independent public companies. We will be required to devote significant management attention and resources to integrating the operations of Spirit. Potential difficulties we may encounter in the integration process include the following:

- the inability to successfully combine Spirit's operations with ours in a manner that permits the combined company to achieve the cost savings anticipated to result from the Merger, which would result in some anticipated benefits of the Merger not being realized in the time frame anticipated or at all;
- lost sales and clients as a result of certain clients of either of us or Spirit deciding not to do business with the combined company;
- the continued complexities associated with managing a multi-national combined company, integrating certain personnel from the two companies, and the potential complexities associated with the separation of personnel;
- the complexities with combining two companies;
- the failure to retain key employees of either of the two companies;
- potential unknown liabilities and unforeseen increased expenses, delays or regulatory conditions associated with the Merger and the transactions contemplated by the Merger Agreement; and
- performance shortfalls at one or both of the two companies as a result of the diversion of management's attention caused by completing the Merger and integrating Spirit's operations with ours.

For all these reasons, you should be aware that it is possible that the integration process could result in the distraction of our management, the disruption of our ongoing business or inconsistencies in our services, standards, controls, procedures and policies, any of which could adversely affect our ability to maintain relationships with clients, customers, vendors, joint venture partners and employees or to achieve the anticipated benefits of the Merger, or could otherwise adversely affect our business and financial results.

Item 2: Unregistered Sales of Equity Securities and Use of Proceeds

The following shares of stock were withheld for state and federal payroll taxes on the vesting of employee stock awards, as permitted under the 2021 Incentive Award Plan of Realty Income Corporation:

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share
July 1, 2023 — July 31, 2023	4	\$ 59.90
August 1, 2023 — August 31, 2023	180	\$ 60.57
September 1, 2023 — September 30, 2023	99	\$ 56.20
Total	283	\$ 59.03

⁽¹⁾ All 283 shares of common stock purchased during the three months ended September 30, 2023 were withheld for state and federal payroll taxes on the vesting of employee stock awards, as permitted under the 2021 Incentive Award Plan of Realty Income Corporation. The withholding of common stock by us could be deemed a purchase of such common stock.

Item 5: Other Information

Director and Officer Trading Arrangements

During the three months ended September 30, 2023, none of our officers or directors adopted or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any “non-Rule 10b5-1 trading arrangement.”

Amendment and Restatement of Bylaws

On November 3, 2023, our Board of Directors approved the amendment and restatement of our Amended and Restated Bylaws (as so amended and restated, the “Amended and Restated Bylaws”) to, among other changes:

- address the universal proxy rules adopted by the SEC, including by clarifying that no person may solicit proxies in support of a director nominee other than the Board of Directors’ nominees unless such person has complied with Rule 14a-19 under the Securities Exchange Act of 1934, as amended, including applicable notice and solicitation requirements;
- enhance certain procedural mechanics and disclosure requirements in connection with stockholder nominations of directors and submissions of other proposals at stockholder meetings, including requiring additional background information and disclosures regarding proposing stockholders, proposed nominees and business, and other persons related to a stockholder’s solicitation of proxies;
- reserve the white proxy card for exclusive use by the Board of Directors;
- establish that derivative claims (other than actions arising under federal securities laws), claims alleging a breach of any duty owed by a director, officer or employee, claims pursuant to the Maryland General Corporation Law, our charter or Amended and Restated Bylaws and claims governed by the internal affairs doctrine be brought in any state court of competent jurisdiction in Maryland (or, if such state courts do not have jurisdiction, the United States District Court located within the State of Maryland), unless the Company agrees otherwise;
- establish that claims arising under the Securities Act of 1933, as amended, be brought in the United States federal district courts, unless the Company agrees otherwise; and
- clarify the procedures for announcing the date, time and place of a reconvened meeting of stockholders in the event a meeting of stockholders is adjourned.

The Amended and Restated Bylaws also include certain technical, modernizing and clarifying changes, including updates to provisions relating to virtual meetings to align with changes to the Maryland General Corporation Law.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the Amended and Restated Bylaws, a copy of which is attached as Exhibit 3.1 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

Item 6: Exhibits

Exhibit No. Description

Plans of acquisition, reorganization, arrangement, liquidation or succession

- 2.1 [Agreement and Plan of Merger, dated as of April 29, 2021, by and among Realty Income Corporation, Rams MD Acquisition Sub I, Inc., Rams Acquisition Sub II, LLC, VEREIT, Inc. and VEREIT Operating Partnership, L.P. \(filed as exhibit 2.1 to the Company's Form 8-K, filed on April 30, 2021 \(File No. 001-13374\), and incorporated herein by reference\).](#)
- 2.2 [First Amendment to Agreement and Plan of Merger, dated as of June 25, 2021, by and among Realty Income Corporation, Rams MD Acquisition Sub I, Inc., Rams Acquisition Sub II, LLC, VEREIT, Inc. and VEREIT Operating Partnership, L.P. \(filed as exhibit 2.1 to the Company's Form 8-K, filed on June 25, 2021 \(File No. 001-13374\), and incorporated herein by reference\).](#)
- 2.3 [Agreement and Plan of Merger, dated as of October 29, 2023, by and among Realty Income Corporation, Saints MD Acquisition Sub, Inc. and Spirit Realty Capital, Inc. \(filed as exhibit 2.1 to the Company's Form 8-K, filed on October 30, 2023 and incorporated herein by reference\).](#)

Bylaws

- 3.1* [Amended and Restated Bylaws of the Company dated November 3, 2023.](#)

Certifications

- 31.1* [Certification of the Chief Executive Officer pursuant to Rule 13a-14\(a\) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2* [Certification of the Chief Financial Officer pursuant to Rule 13a-14\(a\) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32** [Section 1350 Certifications as furnished by the Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

Interactive Data Files

- 101.INS* Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.SCH* Inline XBRL Taxonomy Extension Schema Document.
- 101.CAL* Inline XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.LAB* Inline XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE* Inline XBRL Taxonomy Extension Presentation Linkbase Document.
- 101.DEF* Inline XBRL Taxonomy Extension Definition Linkbase Document.
- 104* Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

Filed herewith.

*Furnished herewith.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

REALTY INCOME CORPORATION

Date: November 7, 2023

/s/ SEAN P. NUGENT

Sean P. Nugent

Senior Vice President, Controller and Principal Accounting Officer
(Principal Accounting Officer)

AMENDED AND RESTATED
BYLAWS
OF
REALTY INCOME CORPORATION

As of November 3, 2023

ARTICLE I
DEFINITIONS

Whenever used in these Bylaws, unless the context otherwise requires, the terms defined in this Article I shall have the following respective meanings:

"ACT" has the meaning assigned to such term in Section 18 of Article IV hereof.

"ADVISOR" means any Person (other than a director, officer or employee of the Corporation) to whom the Corporation may delegate the responsibility for directing or performing the day-to-day business affairs of the Corporation, including a Person or entity to which an Advisor subcontracts substantially all such functions.

"AFFILIATE" of a Person means (a) any other Person directly or indirectly controlling, controlled by and under common control with such Person, (b) any other Person owning or controlling 10% or more of the outstanding voting securities of such Person, (c) any officer, director or general partner of such Person, or (d) if such Person is an officer, director or general partner, any Person for which such Person acts as an officer, director or general partner. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"ANCILLARY SERVICES" means any business activity rendered in connection with, or incidental to, the Corporation's primary activity of leasing its properties, which generates revenue for the Corporation that would be treated by the IRS as Nonqualifying Income, including, but not limited to, the sale of goods and services to its tenants and others.

"APPRAISED VALUE" means the value of a property as determined by an appraisal made by one or more independent qualified appraisers selected in accordance with procedures established by the Board (and a majority of the Independent Directors as to any proposed acquisition from any Advisor, a director or an officer of the Corporation or any Affiliate thereof).

"ASSISTANT SECRETARIES" has the meaning assigned to such term in Section 10 of Article V hereof.

"BOARD" means the Board of Directors of the Corporation, as constituted from time to time.

"BUSINESS DAY" means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of California are authorized or obligated by law or executive order to close.

"BYLAWS" means the Bylaws of the Corporation, as amended from time to time.

"CHAIRMAN OF THE BOARD" has the meaning assigned to such term in Section 4 of Article V hereof.

"CHARTER" means the charter of Realty Income Corporation, as in effect from time to time.

"CHIEF EXECUTIVE OFFICER" has the meaning assigned to such term in Section 5 of Article V hereof.

"CHIEF OPERATING OFFICER" has the meaning assigned to such term in Section 6 of Article V hereof.

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

"COMMON STOCK" means the Common Stock of the Corporation, par value \$0.01 per share.

"COMPANY PROXY MATERIALS" has the meaning assigned to such term in Section 15(a) of Article III hereof.

"COMPANY SECURITIES" has the meaning assigned to such term in Section 12(a)(3)(iii) of Article III hereof.

"CONFLICTING PROVISIONS" has the meaning assigned to such term in Section 1 of Article XIII hereof.

"CONTESTED ELECTION" has the meaning assigned to such term in Section 8 of Article III hereof.

"CORPORATION" means Realty Income Corporation, a Maryland corporation.

"DELIVERY DATE" has the meaning assigned to such term in Section 3(b)(4) of Article III hereof.

"DTC" has the meaning assigned to such term in Section 15(d)(i) of Article III hereof.

"ELECTION MEETING" has the meaning assigned to such term in Section 8 of Article III hereof.

"ELIGIBLE STOCKHOLDER" has the meaning assigned to such term in Section 15(a) of Article III hereof.

"EMERGENCY" has the meaning assigned to such term in Section 19 of Article IV hereof.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"FINAL PROXY ACCESS NOMINATION DATE" has the meaning assigned to such term in Section 15(h) of Article III hereof.

"FOREIGN ACTION" has the meaning assigned to such term in Article XIV hereof.

"INDEBTEDNESS" of any Person means the principal of, premium, if any, and interest on, (i) all indebtedness of such Person (including Indebtedness of others guaranteed by such Person), incurred or assumed which is (A) for money borrowed or (B) evidenced by a note or similar instrument given in connection with the acquisition of any businesses, properties or assets of any kind and (ii) amendments, renewals, extensions, modifications and refunding of any such indebtedness or obligation.

"INDEPENDENT DIRECTORS" means the directors of the Corporation who are not employees of the Corporation or any Subsidiaries of the Corporation.

"INTERESTED PARTY" has the meaning ascribed to such term in Section 7 of Article VII hereof.

"IRS" means the United States Internal Revenue Service.

"MEETING RECORD DATE" has the meaning assigned to such term in Section 3(b)(4) of Article III hereof.

"MGCL" means the Maryland General Corporation Law or any successor statute.

"MINIMUM HOLDING PERIOD" has the meaning assigned to such term in Section 15(b) of Article III hereof.

"NONQUALIFYING INCOME" means income not described in Section 856(c)(2) of the Code, or any successor provision.

"NOTICE OF BYLAW AMENDMENT PROPOSAL" has the meaning assigned to such term in Article XII.

"NOTICE OF PROXY ACCESS NOMINATION" has the meaning assigned to such term in Section 15(c) of Article III hereof.

"OWN," "OWNED," "OWNING" and other variations thereof have the meanings assigned to such terms in Section 15(b) of Article III hereof.

"PERSON" means an individual, a corporation, REIT, limited partnership, general partnership, joint stock company or an association, a joint venture, trust, bank, trust company, land trust, business trust or an estate, or any other entity and governmental agency and any political subdivision thereof, and also includes a group as that term is defined for purposes of Section 13(d)(3) of the Exchange Act.

"PREFERRED STOCK" means the Preferred Stock of the Corporation, par value \$0.01 per share, authorized to be issued in one or more classes or series under the Charter.

"PRESIDENT" has the meaning assigned to such term in Section 7 of Article V.

"PROPOSED NOMINEE" has the meaning assigned to such term in Section 12(a)(3) of Article III hereof.

"PUBLIC ANNOUNCEMENT" has the meaning assigned to such term in Section 12(c)(4) of Article III hereof.

"QUALIFYING FUND FAMILY" has the meaning assigned to such term in Section 15(g) of Article III hereof.

"RECORD DATE REQUEST NOTICE" has the meaning assigned to such term in Section 3(b)(1) of Article III hereof.

"REIT" means a real estate investment trust under Sections 856 to 860 the Code or any successor provisions.

"REIT PROVISIONS OF THE CODE" means Part II, Subchapter M of Chapter 1 of the Code, as now enacted or hereafter amended, or successor statutes, relating to REITs.

"REQUEST RECORD DATE" has the meaning assigned to such term in Section 3(b)(1) of Article III hereof.

"REQUIRED INFORMATION" has the meaning assigned to such term in Section 15(a) of Article III hereof.

"REQUIRED SHARES" has the meaning assigned to such term in Section 15(b) of Article III hereof.

"SECRETARY" has the meaning assigned to such term in Section 9 of Article V hereof.

"SECURITIES ACT" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"SOLICITING STOCKHOLDER" has the meaning assigned to such term in Section 12(c)(3) of Article III hereof.

"SPECIAL MEETING PERCENTAGE" has the meaning assigned to such term in Section 3(a) of Article III hereof.

"SPECIAL MEETING REQUEST" has the meaning assigned to such term in Section 3(b)(2) of Article III hereof.

"STATEMENT" has the meaning assigned to such term in Section 15(a) of Article III hereof.

"STOCKHOLDER ASSOCIATED PERSON" has the meaning assigned to such term in Section 12(a)(6) of Article III hereof.

"STOCKHOLDER NOMINEE" has the meaning assigned to such term in Section 15(a) of Article III hereof.

"STOCKHOLDER-REQUESTED MEETING" has the meaning assigned to such term in Section 3(b)(4) of Article III hereof.

"TREASURER" has the meaning assigned to such term in Section 11 of Article V.

"VICE PRESIDENT" has the meaning assigned to such term in Section 8 of Article V hereof.

"VOTING COMMITMENT" has the meaning assigned to such term in Section 12(a)(4)(i)(A) of Article III hereof.

ARTICLE II

OFFICES

Section 1. PRINCIPAL OFFICE. The principal office of the Corporation shall be located at such place or places as the Board may designate.

Section 2. ADDITIONAL OFFICES. The Corporation may have additional offices at such places as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE III
MEETINGS OF STOCKHOLDERS

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting. The Board may determine that a meeting not be held at any place, but instead may be held partially or solely by means of remote communication. In accordance with these Bylaws and subject to any guidelines and procedures adopted by the Board, stockholders and proxy holders may participate in any meeting of stockholders held by means of remote communication and may vote at such meeting as permitted by Maryland law.

Section 2. ANNUAL MEETING. An annual meeting of stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board.

Section 3. SPECIAL MEETINGS.

(a) General. Each of the Chairman of the Board, Chief Executive Officer, President and Board may call a special meeting of stockholders. Except as provided in subsection (b)(4) of this Section 3, a special meeting of stockholders shall be held on the date and at the time and place set by the Chairman of the Board, Chief Executive Officer, President or Board, whoever has called the meeting. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the Secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting (the "Special Meeting Percentage").

(b) Stockholder-Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information and certifications relating to each such stockholder, each individual whom the stockholder proposes to nominate for election or reelection as a director and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors or the election of each such individual, as applicable, in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act. Upon receiving the Record Date Request Notice, the Board may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board. If the Board, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the Secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record

Date entitled to cast not less than the Special Meeting Percentage shall be delivered to the Secretary. In addition, the Special Meeting Request shall (a) set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the Secretary), (b) bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of stock of the Corporation which are owned (beneficially or of record) by each such stockholder and (iii) the nominee holder for, and number of, shares of stock of the Corporation owned beneficially but not of record by such stockholder, (d) be sent to the Secretary by registered mail, return receipt requested, and (e) be received by the Secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the Secretary receives on behalf of the Corporation payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) In the case of any special meeting called by the Secretary upon the request of stockholders (a "Stockholder-Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board; provided, however, that the date of any Stockholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day, on the first preceding Business Day; and provided further that in the event that the Board fails to designate a place for a Stockholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for a Stockholder-Requested Meeting, the Board may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the Board fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The Board may revoke the notice for any Stockholder-Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the Secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the Secretary: (i) if the notice of meeting has not already been delivered, the Secretary shall refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the Secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Corporation's

intention to revoke the notice of the meeting or for the chairman of the meeting to adjourn the meeting without action on the matter, (A) the Secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chairman of the meeting may call the meeting to order and adjourn the meeting without acting on the matter. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board, Chief Executive Officer, President or Board may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the Secretary until the earlier of (i) five Business Days after actual receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

Section 4. NOTICE. Not less than ten nor more than 90 days before each meeting of stockholders, the Secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article III or the validity of any proceedings at any such meeting.

Section 5. SCOPE OF NOTICE. Subject to Section 12(a) of this Article III, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may postpone or cancel a meeting of stockholders by making a public announcement (as defined in Section 12(c)(4) of this Article III) of such postponement or cancellation prior to the meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

Section 6. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the Board to be chairman of the meeting or, in the absence of such appointment or appointed individual, by the Chairman of the Board or, in the

case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting in the following order: the Vice Chairman of the Board, if there is one, the Chief Executive Officer, the President, the Vice Presidents in their order of rank and, within each rank, in their order of seniority, the Secretary, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. An individual appointed by the Board shall serve as Secretary of the meeting of stockholders or, in the absence of such appointment, the Secretary of the Corporation, or, in the case of a vacancy in the office or absence of the Secretary, an Assistant Secretary, or, in the case of a vacancy in the office of Assistant Secretary or the absence of both the Secretary and all Assistant Secretaries, an individual appointed by the chairman of the meeting shall act as Secretary of the meeting of stockholders. In the event that the Secretary presides at a meeting of stockholders, an Assistant Secretary, or, in the absence of all Assistant Secretaries, an individual appointed by the Board or the chairman of the meeting, shall record the minutes of the meeting. Even if present at the meeting, the person holding the office named herein may delegate to another person the power to act as chairman or Secretary of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place either (i) announced at the meeting or (ii) provided at a future time through means announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 7. QUORUM. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum; but this section shall not affect any requirement under any statute, the Charter or these Bylaws for the vote necessary for the approval of any matter. The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum. If such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting *sine die* or from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. The date, time and place of the meeting, as reconvened, shall be either (a) announced at the meeting or (b) provided at a future time through means announced at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 8. VOTING. Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such nominee by the holders of shares represented and entitled to vote therefor at a meeting of the stockholders for

the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board has not rescinded such determination by the record date for the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the holders of shares represented and entitled to vote at such meeting with respect to the election of such director.

For purposes of this Section 8, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director or other action exceeds the number of votes cast "against" that candidate or other action (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against"). In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors or to "abstain" from such vote and shall not have the right to cast any other vote with respect to such election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the right to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or classes or series, the determination as to whether an election constitutes a Contested Election shall be made on a class-by-class or series-by-series basis, as applicable. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute, the Charter or these Bylaws. Unless otherwise provided in the Charter, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders.

Section 9. PROXIES. A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the record of proceedings of the meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

Section 10. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Corporation registered in the name of a corporation, limited liability company, partnership, joint venture, trust or other entity, if entitled to be voted, may be voted by the President or a Vice President, managing member, manager, general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or fiduciary, in such capacity, may vote stock registered in such trustee's or fiduciary's name, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set

forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board considers necessary or desirable. On receipt by the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 11. INSPECTORS. The Board or the chairman of the meeting may appoint, before or at the meeting, one or more inspectors for the meeting and any successor to the inspector. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairman of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 12. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board or (iii) by any stockholder of the Corporation who was a stockholder of record at the record date set by the Board for the purpose of determining stockholders entitled to vote at the annual meeting, at the time of giving of notice by the stockholder as provided for in this Section 12(a) and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 12(a) and the other applicable provisions of this Section 12 and, as applicable, with Section 15 of this Article III with respect to qualifying nominations of a Stockholder Nominee pursuant to a Notice of Proxy Access Nomination (each as defined below).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such other business must otherwise be a proper matter for action by the stockholders. To be timely, including pursuant to Rule 14a-19 (or any successor provision) under the Exchange Act, a stockholder's notice shall set forth all information and representations required under this Section 12 and shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Pacific Time, on the 120th day prior to the first anniversary of the date of the proxy statement (as defined in Section 12(c)(4) of this Article III) for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Pacific Time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made. The

postponement or adjournment of an annual meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"), (A) all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and (B) a description of any direct or indirect material interest in any material contract or agreement between or among any stockholder giving notice and any Stockholder Associated Person (as defined below), on the one hand, and each Proposed Nominee or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such stockholder or Stockholder Associated Person were the "registrant" for purposes of such rule and the Proposed Nominee were a director or executive officer of such registrant;

(ii) as to any other business that the stockholder proposes to bring before the meeting, (A) a description of such business, the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person, individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements and undertakings (x) between or among such stockholder and any Stockholder Associated Person or (y) between or among such stockholder, any Stockholder Associated Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder, and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Regulation 14A (or any successor provision) of the Exchange Act;

(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,

(A) (I) the class, series and number of all shares of stock or other securities of the Corporation or any affiliate thereof (collectively, the "Company Securities"), if any, which are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such stockholder, Proposed Nominee or Stockholder Associated Person, except that such person shall in all events be deemed to beneficially own any shares of any class or series of stock of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future, (II) the date on which each such Company Security was acquired, (III) the investment intent of such acquisition, and (IV) any pledge by such person with respect to any Company Securities or short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person;

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person;

(C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the previous six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of Company Securities for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation or any affiliate thereof disproportionately to such person's economic interest in the Company Securities;

(D) any material interest, direct or indirect (including, without limitation, any existing or prospective commercial, business, contractual or other material relationship with the Corporation or any affiliate of the Corporation, including any employment agreement, collective bargaining agreement or consulting agreement), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, individually or in the aggregate, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series; and

(E) any pending or threatened legal proceeding in which such stockholder, Proposed Nominee or Stockholder Associated Person is a party or a participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 12(a) and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person that is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(v) the name and address of any person who contacted or was contacted by the stockholder giving the notice or by any Stockholder Associated Person about the Proposed Nominee or other business proposal;

(vi) to the extent known by the stockholder giving the notice, the name and address of any other person supporting the nominee for election or reelection as a director or the proposal of other business;

(vii) (A) in the case of a business proposal other than a nomination, a representation that the stockholder giving notice and any Stockholder Associated Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (B) if the stockholder is proposing one or more Proposed Nominees (other than Proposed Nominees submitted as Stockholder Nominees by an Eligible Stockholder pursuant to a Notice of Proxy Access Nomination pursuant to Section 15 of this Article III), a representation that such stockholder, Proposed Nominee or Stockholder Associated Person intends or is part of a group

which intends to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of each Proposed Nominee in accordance with Rule 14a-19 (or any successor provision) under the Exchange Act;

(viii) an undertaking that such stockholder will appear in person or by proxy at the meeting to nominate any Proposed Nominees or to bring such business before the meeting, as applicable, and an acknowledgment that if the stockholder does not so appear in person or by proxy at the meeting to nominate such Proposed Nominees or bring such business before the meeting, as applicable, the Corporation need not bring such Proposed Nominee or such business for a vote at such meeting and any proxies or votes cast in favor of the election of any such Proposed Nominee or of any proposal related to such other business need not be counted or considered; and

(ix) all other information regarding the stockholder giving the notice and each Stockholder Associated Person that would be required to be disclosed by the stockholder in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by:

(i) a written representation executed by the Proposed Nominee:

(A) that such Proposed Nominee (I) is not, and, if elected as a director during his or her term of office, will not become, a party to any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the Corporation, with such Proposed Nominee's duties under the MGCL, (II) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation, (III) consents to be named in a proxy statement as a nominee, (IV) consents to serve as a director of the Corporation for the entire term if elected, (V) will notify the Corporation simultaneously with the notification to the stockholder of the Proposed Nominee's actual or potential unwillingness or inability to serve as a director for the entire term, (VI) does not need any permission or consent from any third party to serve as a director of the Corporation, if elected, that has not been obtained, including any employer or any other board or governing body on which such Proposed Nominee serves and (VII) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such Proposed Nominee all such policies and guidelines then in effect);

(B) attaching copies of any and all requisite permissions or consents; and

(C) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon written request, to the stockholder providing the notice and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case

pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded); and

(ii) unless such Proposed Nominee is submitted as a Stockholder Nominee by an Eligible Stockholder pursuant to a Proxy Access Nomination pursuant to Section 15 of this Article III, a written representation executed by the stockholder that such stockholder will:

(A) comply with Rule 14a-19 (or any successor provision) under the Exchange Act in connection with such stockholder's solicitation of proxies in support of any Proposed Nominee and, except to the extent otherwise agreed to by the Corporation in writing, maintain the confidentiality of any information provided by the Corporation to the stockholder pursuant to Rule 14a-19(d) (or any successor provision) until such information has been made public by the Corporation;

(B) notify the Corporation as promptly as practicable of any determination by the stockholder to no longer solicit proxies for the election of any Proposed Nominee as a director at the applicable meeting;

(C) no later than five Business Days prior to the applicable meeting, deliver in writing to the Secretary of the Corporation at the principal executive office of the Corporation, evidence, sufficient in the judgment of the Board, to demonstrate that such stockholder has satisfied the requirements of Rule 14a-19(a)(3) (or any successor provision) under the Exchange Act; and

(D) furnish such other or additional information as the Corporation may request for the purpose of determining whether the requirements of this Section 12 have been complied with and of evaluating any nomination or other business described in the stockholder's notice.

(5) Notwithstanding anything in this subsection (a) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board is increased, and there is no public announcement of such action at least 100 days prior to the first anniversary of the date of the proxy statement (as defined in Section 12(c)(4) of this Article III) for the preceding year's annual meeting, a stockholder's notice required by clause (iii) of paragraph (a)(1) of this Section 12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Pacific Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(6) The Board may request that the stockholder giving notice and any Stockholder Associated Person furnish such additional information as may be reasonably required by the Board. Such stockholder shall provide such additional information within ten days after it has been requested by the Board. The Board may also require any proposed candidate for nomination as a director to furnish such other information as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon. Without limiting the generality of the foregoing, the Board may request such other information in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation or to comply with the director qualification standards and additional selection criteria in accordance with the Corporation's corporate governance guidelines. Such other information shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five Business Days after the

request by the Board of Directors has been delivered to, or mailed and received by, the Nominating Person.

(7) For purposes of this Section 12, "Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with such stockholder or another Stockholder Associated Person or who is otherwise a participant (as defined in Instruction 3 to Item 4 of Schedule 14A under the Exchange Act) in the solicitation, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting and, except as contemplated by and in accordance with the next two sentences of this Section 12(b), no stockholder may nominate an individual for election to the Board or make a proposal of other business to be considered at a special meeting. Nominations of individuals for election to the Board may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board, (ii) by a stockholder that has requested that a special meeting be called for the purpose of electing directors in compliance with Section 3 of this Article III and that has supplied the information required by Section 3 of this Article III about each individual whom the stockholder proposes to nominate for election of directors and that provides a written representation that such stockholder will comply with Rule 14a-19 (or any successor provision) under the Exchange Act or (iii) provided that the special meeting has been called in accordance with Section 3(a) of this Article III for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record at the record date set by the Board for the purpose of determining stockholders entitled to vote at the special meeting, at the time of giving of notice provided for in this Section 12 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures and other applicable requirements set forth in this Section 12. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board, any stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information and representations required by paragraphs (a)(3) and (4) of this Section 12, is delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Pacific Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and such stockholder satisfies the other applicable requirements of this Section 12. The postponement or adjournment of a special meeting (or public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General. (1) If any information or representation submitted pursuant to this Section 12 or Section 15 of this Article III by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders, including any information or representation from a Proposed Nominee, shall be inaccurate in any material respect, such information or representation may be deemed not to have been provided in accordance with this Section 12. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information or representation. Upon written request by the Secretary or the Board, any such stockholder or Proposed Nominee shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (i) written verification,

satisfactory, in the discretion of the Board or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 12 or Section 15 of this Article III, (ii) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting and, if applicable, satisfy the requirements of Rule 14a-19(a)(3) (or any successor provision) under the Exchange Act) submitted by the stockholder pursuant to this Section 12 or Section 15 of this Article III as of an earlier date and (iii) an updated representation by each Proposed Nominee that such individual will serve as a director of the Corporation if elected. If a stockholder or Proposed Nominee fails to provide such written verification, update or representation within such period, the information as to which such written verification, update or representation was requested may be deemed not to have been provided in accordance with this Section 12 or Section 15 of this Article III.

(2) Only such individuals who are nominated in accordance with this Section 12 or Section 15 of this Article III shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 12. A stockholder proposing a Proposed Nominee shall have no right to (i) nominate a number of Proposed Nominees that exceeds the number of directors to be elected at the meeting or (ii) substitute or replace any Proposed Nominee unless such substitute or replacement is nominated in accordance with this Section 12 (including the timely provision of all information and representations with respect to such substitute or replacement Proposed Nominee in accordance with the deadlines set forth in this Section 12) and the nomination of each Proposed Nominee being substituted or replaced has been withdrawn by written notice to the Secretary of the Corporation at the principal executive office of the Corporation prior to, or concurrently with, such stockholder's delivery of notice of the nomination of any substitute or replacement Proposed Nominee pursuant to this Section 12. If the Corporation provides notice to a stockholder that the number of Proposed Nominees proposed by such stockholder exceeds the number of directors to be elected at a meeting, the stockholder must provide written notice to the Corporation within five Business Days stating the names of the Proposed Nominees that have been withdrawn so that the number of Proposed Nominees proposed by such stockholder no longer exceeds the number of directors to be elected at a meeting. If any individual who is nominated in accordance with this Section 12 becomes unwilling or unable to serve on the Board, then the nomination with respect to such individual shall no longer be valid and no votes may validly be cast for such individual. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 12, and (i) any defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect and/or (ii) any other business, other than a nomination, not properly brought before the meeting shall not be transacted.

(3) Notwithstanding the foregoing provisions of this Section 12, unless otherwise required by law, the Corporation shall disregard the nomination of, and any proxy authority granted in favor of, or votes for, director nominees other than the Corporation's nominees or Proposed Nominee submitted as Stockholder Nominees by an Eligible Stockholder pursuant to a Notice of Proxy Access Nomination pursuant to Section 15 of this Article III, notwithstanding that such nominee is included as a nominee in the Corporation's proxy statement, notice of meeting or other proxy materials for any annual meeting (or any supplement thereto), if the stockholder or Stockholder Associated Person (each, a "Soliciting Stockholder") soliciting proxies in support of such director nominees abandons the solicitation or does not (i) comply with Rule 14a-19 (or any successor provision) under the Exchange Act, including any failure by the Soliciting Stockholder to (A) provide the Corporation with any notices required thereunder in

a timely manner or (B) comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) (or any successor provisions) under the Exchange Act or (ii) timely provide sufficient evidence in the determination of the Board sufficient to satisfy the Corporation that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) (or any successor provision) under the Exchange Act in accordance with the following sentence.

(4) For purposes of this Section 12 and Section 15 of this Article III, "the date of the proxy statement" shall have the same meaning as "the date of the company's proxy statement released to shareholders" as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. "Public announcement" shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act with respect to the matters set forth in this Section 12. Nothing in this Section 12 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, any proxy statement filed by the Corporation with the Securities and Exchange Commission pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 12 shall require disclosure of revocable proxies received by, or routine solicitation contacts made by or on behalf of, the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of a definitive proxy statement on Schedule 14A by such stockholder or Stockholder Associated Person.

(6) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the chairman of the meeting, if the stockholder giving notice as provided for in this Section 12 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

Section 13. VOTING BY BALLOT. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

Section 14. CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the MGCL, shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

Section 15. PROXY ACCESS.

(a) Notwithstanding anything to the contrary in these Bylaws, whenever the Board solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 15, the Corporation shall include in its form of proxy, proxy statement and other applicable filings pursuant to Section 14(a) of the Exchange Act (the "Company Proxy Materials"), in addition to the names of any individuals nominated for election by or at the direction of the Board, the name, together with the Required Information (as defined below), of any individual nominated for election to the Board (each such individual being hereinafter referred to as a "Stockholder Nominee") by a stockholder or group of no more than 20 stockholders that satisfies the requirements of this Section 15 (such individual or group, including as the context requires each member thereof, being hereinafter referred to as the "Eligible Stockholder"). For purposes of this Section 15, the "Required Information" is (A) the

information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Company Proxy Materials by the rules and regulations promulgated under the Exchange Act and (B) if the Eligible Stockholder so elects, a written statement in support of the Stockholder Nominee's candidacy, not to exceed 500 words, delivered to the Secretary at the time the Notice of Proxy Access Nomination (as defined below) required by this Section 15 is provided (the "Statement"). Notwithstanding anything to the contrary contained in this Section 15, the Corporation may omit from the Company Proxy Materials any information or Statement (or portion thereof) that the Board, in its sole discretion, determines (A) is materially false or misleading, (B) omits to state any material fact necessary in order to make such information or Statement, in light of the circumstances under which it was provided or made, not misleading, (C) violates any applicable law or regulation or provision of the Charter or these Bylaws or (D) impugns the character, integrity or personal reputation of a person or makes charges concerning improper, illegal or immoral conduct or associations, in each case without factual foundation. For the avoidance of doubt, and any other provision of these Bylaws notwithstanding, the Corporation may in its sole discretion solicit against and include in Company Proxy Materials its own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation with respect to the foregoing.

(b) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 15, an Eligible Stockholder must have Owned (as defined below) at least three percent of the shares of Common Stock outstanding from time to time (the "Required Shares") continuously for at least three years (the "Minimum Holding Period") as of both the date the Notice of Proxy Access Nomination is received by the Secretary in accordance with this Section 15 and the close of business on the record date for determining the stockholders entitled to vote at the annual meeting of stockholders, and must thereafter continuously Own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof). For purposes of this Section 15, an Eligible Stockholder shall be deemed to "Own" only those outstanding shares of Common Stock as to which the Eligible Stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (A) sold by such Eligible Stockholder or any of its Affiliates in any transaction that has not been settled or closed, including short sales, (B) borrowed by such Eligible Stockholder or any of its Affiliates for any purpose or purchased by such Eligible Stockholder or any of its Affiliates pursuant to an agreement to resell, (C) that are subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument, agreement, arrangement or understanding entered into by such Eligible Stockholder or any of its Affiliates, whether any such instrument, agreement, arrangement or understanding is to be settled with shares or with cash or other property based on the notional amount or value of shares of outstanding Common Stock, in any such case which instrument, agreement, arrangement or understanding has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or its Affiliate's full right to vote or direct the voting of any such shares or (2) hedging, offsetting or altering (or attempting to hedge, offset or alter) to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or its Affiliate or (D) for which the Eligible Stockholder or its Affiliate has transferred the right to vote the shares other than by means of a proxy, power of attorney or other instrument or arrangement that is unconditionally revocable at any time by the Eligible Stockholder or its Affiliate and that expressly directs the proxy holder to vote at the direction of the Eligible Stockholder or its Affiliate. In addition, an Eligible Stockholder shall be deemed to "Own" shares of Common Stock held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the full right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares of Common Stock. An Eligible Stockholder's Ownership of shares of Common

Stock shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares provided that the Eligible Stockholder has the power to recall such loaned shares on three Business Days' notice and has in fact unconditionally recalled such loaned shares as of the time the Notice of Proxy Access Nomination is provided and through the date of the annual meeting of stockholders (and any postponement or adjournment thereof). For purposes of this Section 15, the terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether and how outstanding shares of Common Stock are "Owned" for these purposes shall be determined by the Board in its sole discretion.

(c) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 15, an Eligible Stockholder must provide to the Secretary, in proper form and within the times specified below, (i) a written notice expressly electing to have such Stockholder Nominee included in the Company Proxy Materials pursuant to this Section 15 (a "Notice of Proxy Access Nomination") and (ii) any updates or supplements to such Notice of Proxy Access Nomination. To be timely, the Notice of Proxy Access Nomination must be received by the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Pacific Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting of stockholders is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, the Notice of Proxy Access Nomination to be timely must be so received by the Secretary not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Pacific Time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such annual meeting is first made. The public announcement of a postponement or an adjournment of an annual meeting shall not commence a new time for the giving of a Notice of Proxy Access Nomination as described above.

(d) To be in proper form for purposes of this Section 15, the Notice of Proxy Access Nomination shall include the following information:

(i) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period and, if applicable, each participant in the Depository Trust Company ("DTC") or affiliate of a DTC participant through which the Required Shares are or have been held during the Minimum Holding Period if the intermediary is not a DTC participant or affiliate of a DTC participant) verifying that, as of a date within seven Business Days prior to the date the Notice of Proxy Access Nomination is received by the Secretary, the Eligible Stockholder Owns, and has Owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide (A) within five Business Days after the record date for the annual meeting of stockholders, written statements from the record holder or intermediaries between the record holder and the Eligible Stockholder verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the close of business on the record date, together with a written statement by the Eligible Stockholder that such Eligible Stockholder will continue to Own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof), and (B) the updates and supplements to the Notice of Proxy Access Nomination at the times and in the forms required by this Section 15;

(ii) a copy of the Schedule 14N filed or to be filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;

(iii) information and certifications that are the same as would be required to be set forth in a stockholder's notice of nomination pursuant to Sections 12(a)(3) and (4) of Article III of these Bylaws (except for Section 12(a)(3)(vii) and Section 12(a)(4)(ii)), including the written

consent of the Stockholder Nominee to being named in the Company Proxy Materials as a nominee and to serving as a director if elected;

(iv) the written agreement of the Stockholder Nominee (A) if so requested, to meet in person with members of the Board and the Nominating/Corporate Governance Committee on reasonable notice by the Corporation of the time and place and (B) upon such Stockholder Nominee's election as a director, to make such acknowledgments, enter into such agreements and provide such information as the Board requires of all directors at such time, including, without limitation, agreeing to be bound by the Corporation's code of conduct, insider trading policy, corporate governance guidelines, confidentiality and other similar policies and procedures;

(v) a representation that the Eligible Stockholder (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and that neither the Eligible Stockholder nor any Stockholder Nominee being nominated thereby presently has such intent, (B) has not nominated and will not nominate for election to the Board at the annual meeting of stockholders (or any postponement or adjournment thereof) any individual other than the Stockholder Nominee(s) included in the Company Proxy Materials pursuant to this Section 15, (C) has not engaged and will not engage in, and has not been and will not be a "participant" in another person's, "solicitation," each within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting (or any postponement or adjournment thereof) other than such Stockholder Nominee(s) or a nominee of the Board, (D) has complied, and will comply, with all applicable laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting (or any postponement or adjournment thereof), including, without limitation, Rule 14a-9 (or any successor provision) under the Exchange Act, (E) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation and (F) has not provided and will not provide any facts, statements or information in its communications with the Corporation and the stockholders that were not or will not be true and complete in all material respects or which omitted or will omit to state a material fact necessary in order to make such facts, statements or information, in light of the circumstances under which they were or will be provided, not misleading;

(vi) a written undertaking that the Eligible Stockholder (A) assumes all liability arising out of any legal or regulatory violation arising out of any communication with the stockholders by the Eligible Stockholder, its Affiliates and associates or their respective agents or representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 15, or out of the facts, statements or information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the Corporation pursuant to this Section 15 or otherwise in connection with the inclusion of such Stockholder Nominee(s) in the Company Proxy Materials pursuant to this Section 15, and (B) indemnifies and holds harmless the Corporation and each of its directors, officers, agents and employees against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers, agents or employees arising out of any nomination of a Stockholder Nominee or inclusion of such Stockholder Nominee in the Company Proxy Materials pursuant to this Section 15;

(vii) a written description of any compensatory, payment or other agreement, arrangement or understanding with any person or entity other than the Corporation under which the Stockholder Nominee is receiving or will receive compensation or payments directly related to service on the Board, together with a full and complete copy of any such agreement, arrangement or understanding if written; and

(viii) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination.

Each Stockholder Nominee and the Eligible Stockholder shall promptly furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such Stockholder Nominee to qualify as independent (as determined (i) under the rules and listing standards of any national securities exchange on which any securities of the Corporation are listed and (ii) under Section 3-802(b) of the MGCL), (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such Stockholder Nominee or (C) as may reasonably be required by the Corporation to determine that the Eligible Stockholder meets the criteria for qualification as an Eligible Stockholder.

(e) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 15, (i) an Eligible Stockholder must further update and supplement the Notice of Proxy Access Nomination, if necessary, so that the information provided or required to be provided in such Notice of Proxy Access Nomination pursuant to this Section 15 shall be true and complete in all material respects as of the record date for the annual meeting of stockholders and as of the date that is ten Business Days prior to such annual meeting (or any postponement or adjournment thereof), and (ii) such update and supplement (or a written notice stating that there is no such update or supplement) shall be received by the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Pacific Time, on the fifth Business Day after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than 5:00 p.m., Pacific Time, on the eighth Business Day prior to the date of the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting (or any postponement or adjournment thereof) (in the case of the update and supplement required to be made as of ten Business Days prior to the meeting (or any postponement or adjournment thereof)).

(f) In the event that any fact, statement or information provided by the Eligible Stockholder or a Stockholder Nominee to the Corporation or the stockholders ceases to be true and complete in all material respects or omits a material fact necessary to make such facts, statements or information, in light of the circumstances under which they were provided, not misleading, the Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any defect in such previously provided fact, statement or information and of the fact, statement or information required to correct any such defect, not later than two Business Days after becoming aware of the defect.

(g) Whenever an Eligible Stockholder consists of a group of more than one stockholder, each provision in this Section 15 that requires the Eligible Stockholder to provide any written statement, representation, undertaking, agreement or other instrument or to comply with any other requirement or condition shall be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other requirements or conditions (which, if applicable, shall apply with respect to the portion of the Required Shares Owned by such stockholder). When an Eligible Stockholder is comprised of a group, a violation of any provision of these Bylaws by any member of the group shall be deemed a violation by the entire group. No person may be a member of more than one group of persons constituting an Eligible Stockholder with respect to any annual meeting of stockholders. In determining the aggregate number of stockholders in a group, two or more funds that are part of the same family of funds under common management and investment control (a "Qualifying Fund Family") shall be treated as one stockholder. Not later than the deadline for delivery of the Notice of Proxy Access Nomination pursuant to this Section 15, a Qualifying Fund Family whose stock Ownership is counted for purposes of determining whether a stockholder or group of stockholders qualifies as an Eligible Stockholder

shall provide to the Secretary such documentation as is reasonably satisfactory to the Board, in its sole discretion, that demonstrates that the funds comprising the Qualifying Fund Family satisfy the definition thereof.

(h) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders and entitled to be included in the Company Proxy Materials with respect to an annual meeting of stockholders shall be the greater of (i) 20% of the number of directors up for election as of the last day on which a Notice of Proxy Access Nomination may be timely delivered pursuant to and in accordance with this Section 15 (the "Final Proxy Access Nomination Date") or, if such percentage is not a whole number, the closest whole number below such percentage or (ii) two; provided that the maximum number of Stockholder Nominees entitled to be included in the Company Proxy Materials with respect to a forthcoming annual meeting of stockholders shall be reduced by the number of individuals who were elected as directors at the immediately preceding or second preceding annual meeting of stockholders after inclusion in the Company Proxy Materials pursuant to this Section 15 and whom the Board nominates for re-election at such forthcoming annual meeting of stockholders. In the event that one or more vacancies for any reason occur on the Board after the Final Proxy Access Nomination Date but before the date of the annual meeting of stockholders and the Board elects to reduce the size of the Board in connection therewith, the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 15 shall be calculated based on the number of directors as so reduced. Any individual nominated by an Eligible Stockholder for inclusion in the Company Proxy Materials pursuant to this Section 15 whose nomination is subsequently withdrawn or whom the Board decides to nominate for election to the Board shall be counted as one of the Stockholder Nominees for purposes of determining the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 15. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Company Proxy Materials pursuant to this Section 15 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees be selected for inclusion in the Company Proxy Materials in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 15 exceeds the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 15(h) and include such ranking in the Notice of Proxy Access Nomination hereunder. In the event the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 15 exceeds the maximum number of nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 15(h), the highest-ranking Stockholder Nominee from each Eligible Stockholder pursuant to the preceding sentence shall be selected for inclusion in the Company Proxy Materials until the maximum number of Stockholder Nominees is reached, proceeding in order of the number of shares of Common Stock (largest to smallest) disclosed as Owned by each Eligible Stockholder in the Notice of Proxy Access Nomination submitted to the Secretary. If the maximum number is not reached after the highest-ranking Stockholder Nominee from each Eligible Stockholder has been selected, this selection process shall continue as many times as necessary, following the same order each time, until the maximum number is reached. The Stockholder Nominees so selected in accordance with this Section 15(h) shall be the only Stockholder Nominees entitled to be included in the Company Proxy Materials and, following such selection, if the Stockholder Nominees so selected are not included in the Company Proxy Materials or are not submitted for election for any reason (other than the failure of the Corporation to comply with this Section 15), no other Stockholder Nominees shall be included in the Company Proxy Materials pursuant to this Section 15.

(i) The Corporation shall not be required to include, pursuant to this Section 15, a Stockholder Nominee in the Company Proxy Materials for any annual meeting of stockholders (i) for which meeting the Secretary of the Corporation receives a notice that the Eligible Stockholder or any other stockholder has nominated one or more individuals for election to the

Board pursuant to the advance notice requirements for stockholder nominees for director set forth in Section 12 of Article III of these Bylaws, (ii) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation," each within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board, (iii) if such Stockholder Nominee would not qualify as independent (as determined under the (a) rules and listing standards of any national securities exchange on which any securities of the Corporation are listed or (b) Section 3-802(b) of the MGCL), (iv) if such Stockholder Nominee is or becomes a party to any agreement by which the Stockholder Nominee agrees or commits to vote a certain way on certain matters, (v) if the election of such Stockholder Nominee as a director would cause the Corporation to fail to comply with these Bylaws, the Charter, the rules and listing standards of any national securities exchange on which any securities of the Corporation are listed, or any applicable state or federal law, rule or regulation, (vi) if such Stockholder Nominee is or has been, within the past three years, a director, officer, employee or consultant of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vii) if such Stockholder Nominee is a defendant in or named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted or has pleaded *nolo contendere* in such a criminal proceeding within the past ten years, (viii) if such Stockholder Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act, (ix) if the Eligible Stockholder who has nominated such Stockholder Nominee or such Stockholder Nominee provides any fact, statement or information to the Corporation or the stockholders required or requested pursuant to this Section 15 that is not true and complete in all material respects or that omits a material fact necessary to make such facts, statements or information, in light of the circumstances in which they were provided, not misleading, or that otherwise contravenes any of the agreements, representations or undertakings made by such Eligible Stockholder or Stockholder Nominee pursuant to this Section 15 or (x) if the Eligible Stockholder who has nominated such Stockholder Nominee or such Stockholder Nominee fails to comply with any of its obligations pursuant to this Section 15, in each instance as determined by the Board in its sole discretion.

(j) Notwithstanding anything to the contrary set forth herein, the Board or the or the chairman of the meeting shall declare a nomination by an Eligible Stockholder to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if (i) the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have failed to comply with its or their obligations under this Section 15, as determined by the Board or the chairman of the meeting, or (ii) the Eligible Stockholder, or an authorized representative thereof, does not appear at the annual meeting of stockholders to present the nomination of the Stockholder Nominee(s) included in the Company Proxy Materials pursuant to this Section 15. For purposes of this Section 15(j), to be considered an authorized representative of a stockholder, a person must be specifically authorized, by a writing executed by such stockholder or an electronic transmission delivered by such stockholder, to act for such stockholder as its proxy at the annual meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction thereof, to the Corporation prior to such annual meeting.

(k) Any Stockholder Nominee who is included in the Company Proxy Materials for an annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election to the Board or is not elected and received the affirmative vote of less than 20% of the votes entitled to be cast in the election of directors at such annual meeting, will be ineligible for inclusion in the Company Proxy Materials as a Stockholder Nominee pursuant to this Section 15 for the next two annual meetings of stockholders. For the avoidance of doubt, this Section 15(k) shall not prevent any stockholder from nominating any individual to the Board pursuant to and in accordance with Section 12 of Article III of these Bylaws.

ARTICLE IV

DIRECTORS

Section 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of the Board.

Section 2. NUMBER, TENURE, QUALIFICATIONS AND RESIGNATION. At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board may establish, increase or decrease the number of directors, provided that the number thereof shall not be less than the minimum number required by the MGCL, nor more than 15; and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Except as provided in Section 11 of this Article IV with respect to vacancies, the directors shall be elected as provided in the Charter at the annual meeting of the stockholders, and each director so elected shall hold office until the next annual meeting of the stockholders and until his or her successor is duly elected and qualifies or until his or her death, retirement, resignation or removal. Any director of the Corporation may resign at any time by delivering his or her resignation to the Board, the Chairman of the Board or the Secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board shall be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board. The Board may provide, by resolution, the time and place of regular meetings of the Board without other notice than such resolution.

Section 4. SPECIAL MEETINGS. Special meetings of the Board may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the President or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board may fix the time and place of any special meeting of the Board called by them. The Board may provide, by resolution, the time and place of special meetings of the Board without other notice than such resolution.

Section 5. NOTICE. Notice of any special meeting of the Board shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. QUORUM. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the Charter or these Bylaws, the vote of a majority or other percentage of a particular group of directors is required for action, a quorum must also include a majority or such other percentage of such group.

The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 7. VOTING. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws.

Section 8. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 9. INFORMAL ACTION BY DIRECTORS. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and such consent is filed with the minutes of proceedings of the Board.

Section 10. ORGANIZATION. At each meeting of the Board, the Chairman of the Board or, in the absence of the chairman, the Vice Chairman of the Board, if any, shall act as chairman of the meeting. In the absence of both the Chairman and Vice Chairman of the Board, the Chief Executive Officer or, in the absence of the Chief Executive Officer, the President or, in the absence of the President, a director chosen by a majority of the directors present, shall act as chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary of the Corporation, or, in the absence of the Secretary and all Assistant Secretaries, an individual appointed by the chairman of the meeting, shall act as Secretary of the meeting.

Section 11. VACANCIES. If for any reason any or all of the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder. Any vacancy on the Board for any cause other than an increase in the number of directors may be filled by a majority of the remaining directors, even if such majority is less than a quorum. Any individual so elected as director shall hold office until the next annual meeting of stockholders and until his or her successor is elected and qualifies. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority of the entire Board. Any individual so elected as director shall serve until the next annual meeting of stockholders and until his or her successor is elected and qualifies.

Section 12. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Charter or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board and/or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity

and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. RELIANCE. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 14. COMMITTEES OF DIRECTORS. The Board may appoint from among its members an Audit Committee, a Compensation and Talent Committee, a Nominating/Corporate Governance Committee and one or more other committees, composed of one or more directors, to serve at the pleasure of the Board. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. The Board may delegate to committees appointed under Section 14 of this Article IV any of the powers of the Board, except as prohibited by law. Except as may be otherwise provided by the Board, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors, as the committee deems appropriate in its sole and absolute discretion.

Section 15. COMMITTEE MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. Members of a committee of the Board may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 16. INFORMAL ACTION BY COMMITTEES. Any action required or permitted to be taken at any meeting of a committee of the Board may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and such consent is filed with the minutes of proceedings of such committee.

Section 17. COMMITTEE CHANGES. Subject to the provisions hereof, the Board shall have the power at any time to change the membership of any committee, to appoint the chairman of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member, to dissolve any such committee or to withdraw or add to any powers previously delegated to a committee.

Section 18. RATIFICATION. The Board or the stockholders may ratify any act, omission, failure to act or determination made not to act (an "Act") by the Corporation or its officers to the extent that the Board or the stockholders could have originally authorized the Act and, if so ratified, such Act shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders. Any Act questioned in any proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscalculation, the application of improper principles or practices of accounting or otherwise, may be ratified, before or after

judgment, by the Board or by the stockholders, and such ratification shall constitute a bar to any claim or execution of any judgment in respect of such questioned Act.

Section 19. EMERGENCY PROVISIONS. Notwithstanding any other provision in the Charter or these Bylaws, this Section 19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board under Article IV of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board, (i) a meeting of the Board or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio, and (iii) the number of directors necessary to constitute a quorum shall be one-third of the entire Board.

ARTICLE V

OFFICERS

Section 1. GENERAL PROVISIONS. The officers of the Corporation shall be chosen by the Board and shall include a President, a Secretary and a Treasurer and may include a Chairman of the Board, a Vice Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Operating Officer, a Chief Financial Officer, one or more Assistant Secretaries and one or more Assistant Treasurers. In addition, the Board may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of stockholders except that the Chief Executive Officer or President may from time to time appoint one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers or other officers. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall serve until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except President and Vice President may be held by the same person. In its discretion, the Board may leave unfilled any office except that of President, Treasurer and Secretary. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, with or without cause, by the Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board, the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Any resignation shall take effect at any time subsequent to the time specified therein or, if the time when it shall become effective is not specified therein, immediately upon its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board for the balance of the term.

Section 4. CHAIRMAN OF THE BOARD. The Board of Directors may designate from among its members a Chairman of the Board, who shall not, solely by reason of these Bylaws, be an officer of the Corporation. The Board of Directors may designate the Chairman of the Board as an executive or non-executive chairman. The Chairman of the Board shall, if present, preside at all meetings of the Board and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board or prescribed by these Bylaws.

Section 5. CHIEF EXECUTIVE OFFICER. The Board may designate a Chief Executive Officer. In the absence of such designation, the Chairman of the Board shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board, and for the management of the business and affairs of the Corporation. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be prescribed by the Board from time to time.

Section 6. CHIEF OPERATING OFFICER. The Board may designate a Chief Operating Officer. The Chief Operating Officer shall have the responsibilities and duties as determined by the Board or the Chief Executive Officer.

Section 7. PRESIDENT. The Board shall designate a President. The President shall have the responsibilities and duties as determined by the Board or the Chief Executive Officer.

Section 8. VICE PRESIDENT. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board.

Section 9. SECRETARY. The Secretary shall attend all sessions of the Board and all meetings of the stockholders and record all votes and the minutes of all proceedings in one or more books to be kept for that purpose, and shall perform like duties for the standing committees when required by the Board. He or she shall give, or cause to be given, notice of all meetings of the stockholders and, if required, of the Board, and shall perform such other duties as may be prescribed by the Board or these Bylaws. He or she shall keep in safe custody the seal of the Corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his or her signature or by the signature of an Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature.

Section 10. ASSISTANT SECRETARIES. If there shall be one, the Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board, or if there be no such determination, the Assistant Secretary designated by the Board, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 11. TREASURER. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board. He or she shall disburse the funds of the Corporation as may be ordered by, or under the direction of, the Board, taking proper vouchers for such disbursements, and shall render to the Board, at its regular meetings, or when the Board so requires, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation.

Section 12. ASSISTANT TREASURER. If there shall be one, the Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board, or if there be no such determination, the Assistant Treasurer designated by the Board, shall, in the

absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 13. COMPENSATION. The compensation of the officers shall be fixed from time to time by or under the authority of the Board and no officer shall be prevented from receiving such compensation by reason of the fact that he or she is also a director.

ARTICLE VI

STOCK

Section 1. CERTIFICATES. Except as may be otherwise provided by the Board, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. The issuance of shares of stock in uncertificated form shall not affect shares already represented by a certificate until the certificate is surrendered to the Corporation. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be signed by the officers of the Corporation in any manner permitted by the MGCL and contain the statements and information required by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 2. TRANSFERS. The Board shall have the power to make such rules and regulations as it may deem appropriate concerning the issue, transfer and registration of shares of stock of the Corporation and may appoint transfer agents and registrars thereof. The duties of transfer agent and registrar may be combined.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATES. Subject to the provisions of Section 1 of this Article VI, any officer designated by the Board may direct a new certificate to be issued, or may direct that the shares that would have been represented thereby be registered on the stock ledger, in place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed. When authorizing the issuance of a new certificate or such registration, an officer designated by the Board may, in his discretion and as a condition precedent to such issuance or registration, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give such bond, with sufficient security, to the Corporation to indemnify it against loss or claim which may arise as a result of the issuance of a new certificate or registration of such shares.

Section 4. FIXING OF RECORD DATE. The Board may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such record date, in any case, shall not be prior to the close of business on the

day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Corporation shall maintain at its principal executive office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board may authorize the issuance of units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

ARTICLE VII

INVESTMENT POLICY AND RESTRICTIONS

Section 1. INVESTMENT. The Corporation intends to invest, directly or indirectly, in such real estate investments as may be approved by the Board from time to time. Subject to the restrictions of this Article VII, the Corporation's investments may be acquired in such manner, through such means and upon such terms and conditions as may be determined by the Board, and such investments may include, but are not limited to, direct acquisitions by the Corporation of real estate interests as well as investments in corporations, business trusts, general partnerships, limited partnerships, joint ventures or other legal entities and other investments. All investments made by the Corporation, except those pursuant to Article VII, Section 4, must be approved by a majority of the directors or made in accordance with guidelines approved by the Board and which are in effect at the time the investments are made by the Corporation's management.

Section 2. TAX TREATMENT AS A REIT. As soon as the Corporation commences doing business, the Corporation shall use its best efforts to be eligible for tax treatment as an REIT under the Code, shall make such elections and filings, and take such other actions as may be necessary, to be treated as a REIT under the Code, and shall thereafter conduct its business to continue to qualify as a REIT under the REIT Provisions of the Code.

Section 3. NO LIABILITY TO QUALIFY AS REIT. Although a general purpose of the Corporation is to qualify as a REIT under the REIT Provisions of the Code, no director, officer, employee, agent or independent contractor of the Corporation shall be liable for any act or omission resulting in the loss of tax benefits under the Code.

Section 4. SPECIFIC INVESTMENTS. Pending investment or reinvestment of the Corporation's assets in the type of investments described in Article VII, Section 1, the Corporation may invest its assets in investments such as: (a) United States government securities, (b) bankers' acceptances, (c) certificates of deposit, (d) bank repurchase agreements covering securities of the United States government or governmental agencies, (e) commercial

paper rated A-1 (or the equivalent) or better by Moody's Investors Services, Inc. or any other nationally-recognized rating agency, (f) interest-bearing time deposits in banks and thrift institutions, (g) money market funds, (h) mortgage-backed or related securities issued or guaranteed by the United States government or its agencies, (i) debt securities or equity securities collateralized by debt securities rated A-1 (or the equivalent) or better by Moody's Investors Services, Inc. or any other nationally-recognized rating agency, (j) other short- or medium-term liquid investments or hybrid debt/equity securities approved by the Board, or (k) any combination of the foregoing investments.

Section 5. RESERVES. The Corporation may retain, as a permanent reserve, such funds as the Board deems reasonable, in cash and in the types of investments described in Section 4 of this Article VII.

Section 6. INVESTMENT RESTRICTIONS. The Corporation shall not: (a) invest in foreign currency, bullion, commodities or commodity future contracts; (b) invest in contracts for the sale of real estate; (c) engage in underwriting or the agency distribution of securities issued by others; (d) issue "redeemable securities" (as defined in Section 2(a)(32) of the Investment Company Act of 1940, as amended), "face amount certificates of the installment type" (as defined in Section 2(a)(15) thereof) or "periodic payment plan certificates" (as defined in Section 2(a)(27) thereof); or (e) engage in short sales or trading activities in securities, except for purposes of hedging the Company's short-term investments and obligations.

Section 7. RESTRICTIONS UPON DEALINGS BETWEEN THE CORPORATION AND INTERESTED PARTIES.

(a) General Restrictions. Except as provided in this Section 7, the Corporation shall not engage in a transaction described in this Section 7 with any director, officer, any advisor, any person owning or controlling 10% or more of any class of the Corporation's outstanding voting securities, or any Affiliate of any of the aforementioned (individually, the "Interested Party" and collectively, the "Interested Parties"), except in compliance with the restrictions contained in this Section 7. Any transaction between the Corporation and any of the Interested Parties made in compliance with the requirements of this Section 7 shall be valid notwithstanding such relationship, and such Interested Party shall not be under any disability from or have any liability as a result of entering into any such transaction with the Corporation.

(b) Sales to the Corporation. Except as provided in this Paragraph (b), the Corporation shall not purchase property from any of the Interested Parties unless, after disclosure to the Board of the interest of the Interested Party in the proposed transaction, a majority of directors not otherwise interested in such transaction (including a majority of the Independent Directors) has in good faith determined that (x) the property is being offered to the Corporation upon terms fair and commercially reasonable to the Corporation and at a price not greater than the cost of such asset to the selling party or its Appraised Value, and (y) the cost of such property and any improvements thereof is clearly established at the time of the proposed transaction and, regardless of such property's Appraised Value, if such cost is less than the price to be paid by the Corporation, some material change has occurred to the property which would increase its value after the selling party acquired an interest therein. The passage of time, increases in gross revenues, substantial repairs, rehabilitation or improvements, and the receipt of permits, consents, approvals, licenses and other authorizations from governmental agencies or bodies, may be regarded as events increasing the value of the property and supporting a price in excess of the selling entity's costs.

(c) Sales by the Corporation. The Corporation shall not sell property to any Interested Parties, unless the interest of any such Interested Party in such proposed transaction has been disclosed to the Board and a majority of directors not otherwise interested in such transaction (including a majority of the Independent Directors) have determined in good faith that the

transaction is fair, competitive and commercially reasonable to the Corporation and on terms and conditions not less favorable than the terms and conditions that would have been made available from unaffiliated third parties.

(d) Loans to the Corporation. The Corporation shall not borrow funds from any of the Interested Parties unless, after disclosure to the Board of the interest of the Interested Party in the proposed transaction, a majority of directors not otherwise interested in such transaction (including a majority of the Independent Directors) have determined in good faith that the transaction is fair, competitive and commercially reasonable to the Corporation and on terms and conditions no less favorable to the Corporation than loans between unaffiliated lenders and borrowers under the same circumstances.

Section 8. CORPORATION'S RIGHT TO BORROW FUNDS. Subject to the restrictions contained in this Section 8, the Corporation may, at any time, at the discretion of the Board, create, incur, assume, guarantee, extend the maturity of or otherwise become liable with respect to any Indebtedness, on a secured or unsecured basis, and in connection therewith execute, issue and deliver promissory notes, commercial paper, notes, debentures, bonds and other debt obligations (which may be convertible into shares of capital stock or other equity interests or be issued together with warrants to acquire shares of capital stock or other equity interests).

Section 9. PURSUIT OF ANCILLARY SERVICES.

(a) The Corporation may provide any Ancillary Services to its tenants or others as long as the Board believes in good faith that the Corporation's pursuit of such Ancillary Services would not jeopardize the Corporation's qualification as a REIT under the Code.

(b) In the event that the Corporation's pursuit of one or more of the Ancillary Services might jeopardize the qualification of the Corporation as a REIT under the Code, the Corporation may, in lieu of offering such Ancillary Services directly: (i) Restructure the manner in which such Ancillary Services are offered to the Corporation's tenants or others, alter the pricing of other Ancillary Services or take such other action as the Corporation deems necessary; (ii) Invest in one or more other entities which directly provide the Ancillary Services to the Corporation's tenants or others; or (iii) Permit others, including Interested Parties, to offer the Ancillary Services to the Corporation's customers or others or to use the Corporation's properties as a site for offering such services, if such permission is granted in compliance with the terms of Paragraph (c) of this Section 9; provided, however, that, in each such instance, the Board has received an opinion from tax counsel or a ruling from the IRS that such action, subject to the qualifications and restrictions imposed by the Board, and such other assumptions as the Board may reasonably establish, would not disqualify the Corporation from taxation as a REIT under the Code.

(c) The Corporation may permit one or more third parties in addition to an Advisor (including entities in which a director, officer or an Affiliate thereof has an interest), to offer Ancillary Services to its customers or others, or to use the Corporation's properties as a site for offering such Ancillary Services, if the Board has in good faith made the following determinations: (i) The Corporation does not wish, or consider it advisable, to offer the Ancillary Services directly to its tenants or others or has determined that rendering such Ancillary Services would jeopardize the qualification of the Corporation as a REIT under the Code; (ii) Permitting others to render such Ancillary Services would likely increase the rental revenues or other income derived from the ownership of the Corporation's properties, enhance the competitiveness of the Corporation or otherwise provide economic benefits, directly or indirectly, to the Corporation; and (iii) The party or parties rendering the Ancillary Services are competent to do so, have experience in rendering such Ancillary Services and have entered into a written contract with the Corporation with respect to the provision of the Ancillary Services, having terms and conditions deemed fair and equitable by the Board.

Section 10. INVESTMENT IN CORPORATION'S SHARES. The Corporation may, at any time, at the discretion of the Board, invest in any class or series of the Common Stock or Preferred Stock, or in any of its promissory notes, commercial paper, notes, debentures, bonds or other debt obligations, for the purpose of supporting the value of any such securities or for any other purpose.

ARTICLE VIII

INDEPENDENT ACTIVITIES

Section 1. SHARES HELD BY DIRECTORS AND OFFICERS. Subject to any stock ownership guidelines and other relevant trading policies of the Corporation as may be in effect from time to time, any director or officer may acquire, own, hold and dispose of shares of capital stock in the Corporation, for his or her individual account, and may exercise all rights of a stockholder to the same extent and in the same manner as if he or she were not a director or officer.

Section 2. BUSINESS INTERESTS AND INVESTMENTS OF DIRECTORS. Subject to the limitations contained in this Section 2, any director who is not an officer of the Corporation may have personal business interests and may engage in personal business activities, which interests and activities may include the acquisition, syndication, holding, management, operation or disposition, for his or her own account or for the account of others, of interests in real property or persons engaged in the real estate business, even if the same directly compete with the actual business being conducted by the Corporation, and is not required to present to the Corporation any business opportunity which comes to him or her even though such opportunity is within the Corporation's investment policies.

Section 3. OTHER BUSINESS RELATIONSHIPS OF DIRECTORS. Subject to the provisions of Article VII, any director or officer may be interested as a trustee, officer, director, stockholder, partner, member, advisor or employee, or otherwise have a direct or indirect interest in any person who may be engaged to render advice or services to the Corporation, and may receive compensation from such person as well as compensation as a director, officer or otherwise hereunder, and no such activity shall be deemed to conflict with his or her duties and powers as a director or officer.

ARTICLE IX

GENERAL PROVISIONS

Section 1. DIVIDENDS. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Charter.

Section 2. PAYMENT OF DIVIDENDS; DIRECTORS' DISCRETION TO ESTABLISH RESERVES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board shall determine, and the Board may modify or abolish any such reserve.

Section 3. DUTIES. Any distribution of income or capital assets of the Corporation to stockholders will be accompanied by a written statement disclosing the source of the funds

distributed. If, at the time of distribution, this information is not available, a written explanation of the relevant circumstances will accompany the distribution and a written statement disclosing the source of funds distributed will be sent to the stockholders not later than sixty (60) days after the close of the fiscal year in which the distribution was made.

Section 4. CORPORATE SEAL. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Maryland." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

Section 5. ANNUAL STATEMENT. The Board shall cause an annual report to be sent to the stockholders not later than one hundred twenty (120) days after the close of the fiscal year adopted by the Corporation. This report shall be sent at least thirty (30) days before the annual meeting of stockholders to be held during the next fiscal year and in the manner specified in Section 5 of this Article IX for giving notice to stockholders of the Corporation. The annual report shall contain financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants. If the Corporation engages an Advisor to administer its affairs, the annual report shall include the aggregate amount of advisory fees and the aggregate amount of other fees paid to the Advisor and its Affiliates, including fees or charges paid to the Advisor and its Affiliates by third parties doing business with the Corporation.

Section 6. FISCAL YEAR. The Board shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

Section 7. CONTRACTS. The Board may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board and executed by an authorized person.

Section 8. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board.

Section 9. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board, the Chief Executive Officer, the President, the Chief Financial Officer, or any other officer designated by the Board may determine.

ARTICLE X

INDEMNIFICATION AND ADVANCES FOR EXPENSES

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall indemnify and shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served

another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner, trustee, member or manager of such corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the Charter and these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board, provide such indemnification and advance for expenses to a person who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Charter or these Bylaws inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

ARTICLE XI

WAIVER OF NOTICE

Whenever any notice is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XII

AMENDMENT OF BYLAWS

The Board is vested with the power to adopt, alter or repeal any provision of these Bylaws and to adopt new Bylaws; provided, however, that Section 3 of Article IX (relating to the written statement the Corporation is required to furnish to stockholders), Article VII except for Section 8 thereof (relating to investment policy and restrictions), Section 5 of Article IX (relating to an annual report), and the definitions in Article I, to the extent that such definitions are to be used in any of the Sections cited in this Article XII (relating to amendments to the Bylaws), may not be amended, repealed or modified, or inconsistent provisions adopted with respect thereto, without the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on the matter. In addition, pursuant to a binding proposal that is properly submitted by stockholders for approval at a duly called annual meeting or special meeting of stockholders, the stockholders shall have the power, by the affirmative vote of a majority of all votes entitled to be cast on the matter, to alter or repeal any provision of these Bylaws and to adopt new Bylaw provisions, in any such case to the extent permitted by and consistent with the Charter, these Bylaws (including, without limitation, Section 3(b) and Section 12 of Article III of these Bylaws) and applicable law.

ARTICLE XIII
MISCELLANEOUS

Section 1. PROVISIONS IN CONFLICT WITH LAW OR REGULATIONS. The provisions of these Bylaws are separable, and if the Board shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the REIT Provisions of the Code, the MGCL or other applicable federal or Maryland laws and regulations, the Conflicting Provisions shall be deemed never to have constituted a part of these Bylaws; provided, however, that such determination of the directors shall not affect or impair any of the remaining provisions of these Bylaws or render invalid or improper any action taken or omitted (including, but not limited to, the election of directors) prior to such determination. Such determination shall become effective when a certificate, signed by a majority of the directors setting forth any such determination and reciting that it was duly adopted by the directors, shall be filed with the books and records of the Corporation. The directors shall not be liable for failure to make any determination under this Section 1 of Article XIII. Nothing in this Section 1 shall in any way limit or affect the rights of the directors or the stockholders to amend these Bylaws.

Section 2. RELIANCE UPON LEGAL ADVICE. The directors, including the Independent Directors, may retain one or more legal counsel to assist them in making any determination required by them, or which they are permitted to make, pursuant to the terms of these Bylaws. Such directors shall not be liable for any loss caused by or resulting from any action taken or omitted in reliance upon any legal opinion rendered by such counsel, so long as the selection of the legal counsel and reliance on the advice was in good faith.

In making any such determinations, the directors shall not, however, be obligated to follow the advice of any legal counsel engaged to advise them.

Section 3. MARYLAND LAW TO GOVERN. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the MGCL shall govern the construction of these Bylaws.

ARTICLE XIV
EXCLUSIVE FORUM FOR CERTAIN LITIGATION

Unless the Corporation consents in writing to the selection of an alternative forum, any state court of competent jurisdiction in Maryland, or, if such state courts do not have jurisdiction, the United States District Court located within the State of Maryland shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, other than actions arising under federal securities laws, (b) any Internal Corporate Claim, as such term is defined in the MGCL, or any successor provision thereof, including, without limitation, (i) any action asserting a claim based on an alleged breach of any duty owed by any director or officer or other employee of the Corporation to the Corporation or to the stockholders of the Corporation or (ii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the MGCL, the Charter or these Bylaws, or (c) any other action asserting a claim that is governed by the internal affairs doctrine. None of the foregoing actions, claims or proceedings may be brought in any court sitting outside the State of Maryland unless the Corporation consents in writing to such court. This paragraph of Article XIV does not apply to any action or proceeding under federal securities laws or claims arising under the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. If any action the subject matter of which is within the scope of the first sentence of this Article XIV is filed in a court other than the courts in the State of Maryland (a "Foreign Action") in the

name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts in the State of Maryland in connection with any action brought in any such court to enforce the provisions of the first sentence of this Article XIV and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action or causes of action arising under the Securities Act, including all causes of action asserted against any defendant to such complaint.

The provisions of this Article XIV are intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional or entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

Certification of Chief Executive Officer

I, Sumit Roy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Realty Income Corporation for the quarter ended September 30, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2023

/s/ SUMIT ROY

Sumit Roy
President, Chief Executive Officer

Certification of Chief Financial Officer

I, Christie B. Kelly, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Realty Income Corporation for the quarter ended September 30, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2023

/s/ CHRISTIE B. KELLY

Christie B. Kelly

Executive Vice President, Chief Financial Officer and Treasurer

**Certification of Chief Executive Officer and Chief Financial Officer
Pursuant to 18 U.S.C. SECTION 1350**

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of Realty Income Corporation, a Maryland corporation (the "Company"), hereby certify, to his best knowledge, that:

- (i) the accompanying quarterly report on Form 10-Q of the Company for the quarter ended September 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Act"); and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ SUMIT ROY

Sumit Roy
President, Chief Executive Officer

/s/ CHRISTIE B. KELLY

Christie B. Kelly
Executive Vice President, Chief Financial Officer and Treasurer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Act, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.