

WEINGARTEN REALTY INVESTORS /TX/

Form S-3ASR

October 07, 2011

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As filed with the Securities and Exchange Commission on October 7, 2011

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM S-3**  
**REGISTRATION STATEMENT**

*Under*

*THE SECURITIES ACT OF 1933*

**WEINGARTEN REALTY INVESTORS**

(Exact name of registrant as specified in its charter)

**Texas**  
(State or other jurisdiction  
of incorporation or organization)

2600 Citadel Plaza Drive, Suite 125

**74-1464203**  
(IRS Employer  
Identification No.)

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**Houston, Texas 77008**

**(713) 866-6000**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Andrew M. Alexander**

**President and Chief Executive Officer**

**Weingarten Realty Investors**

**2600 Citadel Plaza Drive, Suite 125**

**Houston, Texas 77008**

**(713) 866-6000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Bryan L. Goolsby**

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**2200 Ross Avenue, Suite 2200**

**Dallas, Texas 75201**

**(214) 740-8000**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement as determined by market conditions.

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

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

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

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

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.    x

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.    "

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

Large Accelerated filer	x		Accelerated filer	"
Non-accelerated filer	"	(Do not check if a smaller reporting company)	Smaller reporting company	"

### CALCULATION OF REGISTRATION FEE

	Amount to be	
Title of Each Class of Securities to be Registered	Registered/Proposed Maximum Offering Price Per Unit/Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Debt Securities	(1)(2)	\$0 (1)(2)
Common Shares of Beneficial Interest		
Preferred Shares of Beneficial Interest		
Depository Shares		
Warrants		

- (1) This registration statement covers an indeterminate amount of each identified class of securities.
- (2) An unspecified aggregate initial offering price or number of the securities of each identified class is being registered as may from time to time be offered at unspecified prices. Separate consideration may or may not be received for securities that are issuable upon exercise, conversion or exchange of other securities or that are represented by depository shares. In accordance with Rules 456(b) and 457(r), the Registrant is deferring payment of all of the registration fees.

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**PROSPECTUS**

**Weingarten Realty Investors**  
**Debt Securities, Common Shares, Preferred Shares,**  
**Depository Shares and Warrants**

From time to time, we may offer to sell debt securities, common shares, preferred shares, depository shares and warrants. Our debt securities may be convertible into, or exchangeable for, our common or preferred shares. The preferred shares may either be sold separately or represented by depository shares.

We may offer and sell these securities to or through one or more underwriters, dealers and agents or directly to purchasers, on a continuous or delayed basis.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in a supplement to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus.

Our common shares of beneficial interest trade on the New York Stock Exchange under the symbol **WRI**, our depository shares representing Series D Cumulative Redeemable Preferred Shares trade on the NYSE under the symbol **WRIPRD**, our depository shares representing Series E Cumulative Redeemable Preferred Shares trade on the NYSE under the symbol **WRIPRE**, our depository shares representing Series F Cumulative Redeemable Preferred Shares trade on the NYSE under the symbol **WRIPRF**. Where applicable, the prospectus supplement will contain information on any listing on a securities exchange of securities covered by that prospectus supplement.

**Investing in our securities involves risk. See **Risk Factors** beginning on page 3 of this prospectus.**

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

The date of this prospectus is October 7, 2011.

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We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained in or incorporated by reference into this prospectus, any applicable supplement to this prospectus or any applicable free writing prospectus. You must not rely upon any information or representation not contained in or incorporated by reference to this prospectus, any applicable supplement to this prospectus or any applicable free writing prospectus as if we had authorized it. This prospectus and any applicable prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate. Nor do this prospectus and any accompanying prospectus supplement constitute an offer to sell or the solicitation of any offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus or any applicable prospectus supplement is correct on any date after their respective dates, even though this prospectus or an applicable supplement is delivered or securities are sold on a later date. Our business, financial condition and results of operations may have changed since those dates.

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### **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under the shelf registration process, we may, from time to time, sell any of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer securities, we will provide a prospectus supplement that will describe the specific amounts, prices and terms of the offered securities. The prospectus supplement may also add, update or change the information contained in this prospectus. You should read carefully both this prospectus and any prospectus supplement, together with the additional information described under [Where You Can find More Information](#).

### **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the reporting requirements of the Securities Exchange Act of 1934 as amended, (the [Exchange Act](#) ) and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC's web site at [www.sec.gov](http://www.sec.gov). In addition, you may read and copy our SEC filings at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005. Copies of these documents may be available on our website ([www.weingarten.com](http://www.weingarten.com)). Any other documents available on our website are not incorporated by reference into this prospectus.

This prospectus is only part of a registration statement we filed with the SEC under the Securities Act of 1933, as amended, and therefore omits certain information contained in the registration statement. We have also filed exhibits and schedules to the registration statement that we have excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or document. You may inspect or obtain a copy of the registration statement, including exhibits and schedules, as described in the previous paragraph.

### **CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This prospectus, any prospectus supplement and the documents incorporated by reference herein contains forward-looking statements, as defined under the Private Securities Litigation Reform Act of 1995 with respect to our financial condition, results of operations and business. Generally, the words believes, expects, intends, estimates, anticipates, projects, plans, may or similar expressions identify forward-looking statements. Factors that may cause actual results to differ materially from current expectations include, but are not limited to:

disruptions in financial markets;

national, regional and local economic conditions;

local real estate conditions such as an oversupply of space or a reduction in demand for real estate in the area;

the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or general downturn in their business;

financing risks, such as the inability to obtain equity, debt or other sources of financing on favorable terms;

our ability to complete dispositions of non-core properties;

changes in governmental laws and regulations;

the level and volatility of interest rates;

the availability of suitable acquisition opportunities;

changes in expected development activity;

increases in operating costs;

competition from other available space;

how well we manage our properties;

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changes in market rental rates;

our ability to secure adequate insurance;

changes in zoning laws;

consequences of any armed conflict involving, or terrorist attack against, the United States;

changes in or potential liability under environmental laws or regulations;

tax matters, including failure to qualify as a real estate investment trust, could have adverse consequences; and

investments through real estate joint ventures and partnerships involve risks not present in investments in which we are the sole investor.

Readers should carefully review our financial statements and the notes hereto, as well as the section entitled "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, and the other documents we file from time to time with the SEC, including Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

For these statements, we claim the protection of the safe harbor forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. You are cautioned not to place undue reliance on our forward-looking statements, which speak only as of the date of this prospectus and the applicable prospectus summary or the date of any document incorporated by reference. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to our forward-looking statements to reflect events or circumstances after the date of this prospectus and the applicable prospectus summary.

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**THE COMPANY**

We are a real estate investment trust ( REIT ) organized under the Texas Business Organizations Code. Through a predecessor entity, we began the ownership and development of shopping centers and other commercial real estate in 1948. Our primary business is leasing space to tenants in the neighborhood and community shopping centers and industrial properties that we own or lease. We also manage properties for joint ventures in which we hold interests, and for third-party owners for which we charge fees.

At June 30, 2011, we owned or operated under long-term leases, either directly or through our interest in real estate joint ventures or partnerships, a total of 386 developed income-producing properties and 11 properties under various stages of construction and development. The total number of centers includes 317 neighborhood and community shopping centers located in 22 states spanning the country from coast to coast. We also owned 77 industrial projects located in California, Florida, Georgia, Tennessee, Texas and Virginia and three other operating properties located in Arizona and Texas. The portfolio of properties is approximately 73.4 million square feet.

At June 30, 2011, we also owned interests in 42 parcels of land held for future development that totaled approximately 31.6 million square feet.

Our principal executive offices are located at 2600 Citadel Plaza Drive, Suite 125, Houston, Texas 77008, and our phone number is (713) 866-6000. Our website address is [www.weingarten.com](http://www.weingarten.com). The information contained on our website is not part of this prospectus or any accompanying prospectus supplement.

**RISK FACTORS**

Investing in our securities involves risk. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading Risk Factors in our most recent Annual Report on Form 10-K and in our most recent Quarterly Reports on Form 10-Q, which are incorporated herein by reference and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future.

**USE OF PROCEEDS**

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities for the repayment or refinancing of debt; the redemption of outstanding securities; acquisition of properties; the acquisition of real estate-related securities; development of new properties; redevelopment of existing properties; and working capital and general purposes. Pending the use thereof, we intend, generally, to apply any net proceeds to the reduction of indebtedness or invest them in short-term, interest-bearing securities.

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

The following table sets forth the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends for the periods shown:

	Six Months Ended		Year Ended December 31,				
	June 30, 2011	2010	2010	2009	2008	2007	2006
Ratio of earnings to fixed charges (1)	1.23	1.22	1.24	1.69	1.21	1.56	1.72
Ratio of earnings to combined fixed charges and preferred dividends (2)	1.00	.99	1.01	1.39	1.01	1.37	1.61

- (1) The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. For this purpose, earnings consists of income from continuing operations before taxes (which includes equity in earnings of unconsolidated subsidiaries and partnerships only to the extent of dividends or distributions from operations received) plus fixed charges (other than any interest that has been capitalized) and amortization of previously capitalized interest; and fixed charges consists of interest expense (including amortization of loan costs and debt discounts), and interest that has been capitalized.
- (2) The ratio of earnings to combined fixed charges and preferred dividends is computed by dividing earnings by the total of fixed charges and preferred dividends. For this purpose, earnings consists of income from continuing operations before taxes (which includes equity in earnings of unconsolidated subsidiaries and partnerships only to the extent of dividends or distributions from operations received) plus fixed charges (other than any interest that has been capitalized) and amortization of previously capitalized interest; fixed charges consists of interest expense (including amortization of loan costs and debt discounts), and interest that has been capitalized; and preferred dividends consists of the amount of pre-tax earnings that would be required to cover preferred dividend requirements.

**DESCRIPTION OF DEBT SECURITIES**

We may issue senior and subordinated debt securities. Neither the senior debt securities nor the subordinated debt securities will be secured by any of our or our subsidiaries' property or assets. By owning our debt securities, you will be one of our unsecured creditors.

**Indentures**

Any senior debt securities will be issued under a senior indenture dated as of May 1, 1995 between us and JPMorgan Chase Bank, as trustee, and any subordinated debt securities will be issued under a subordinated indenture dated as of May 1, 1995 between us and JPMorgan Chase Bank, as trustee. The term trustee as used in this prospectus refers to any bank that we may appoint as trustee under the terms of the applicable indenture, in its capacity as trustee for the senior debt securities or the subordinated debt securities.

We have summarized specific terms and provisions of the indentures. The summary is not complete. The indentures have been incorporated by reference as exhibits to the registration statement of which this prospectus is a part. We urge you to read the indentures because they, and not this description, fully define the rights of holders of debt securities. The indentures are subject to the Trust Indenture Act of 1939, as amended. To obtain copies of the indentures, see [Where You Can Find More Information](#) on page 1.

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### **General**

Unless otherwise provided in the prospectus supplement, the debt securities (whether senior or subordinated) will be our direct, unsecured general obligations. The senior debt securities will rank equally with all of our other unsecured and unsubordinated indebtedness. The subordinated debt securities will be subordinated and junior in right of payment to the prior payment in full of our present and future senior debt securities. See Subordinated Debt Securities below.

The indentures do not limit the amount of debt securities that we can offer. Each indenture allows us to issue debt securities up to the principal amount that may be authorized by us. We may issue additional debt securities without your consent. We may issue debt securities in one or more series. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuances of additional debt securities of such series.

Without your consent, we may engage in a highly leveraged transaction, a restructuring, a transaction involving a change in control, or a merger or similar transaction that may adversely affect holders of debt securities.

### **Modification of the Indentures**

To change or modify either indenture, we must obtain the consent of holders of at least a majority in principal amount of all outstanding debt securities affected by that change. The consent of holders of at least a majority in principal amount of each series of outstanding debt securities is required to waive compliance by us with specific covenants in an indenture. We must obtain the consent of each holder affected by a change:

to extend the maturity, or to reduce the principal, redemption premium or interest rate;

change the place of payment, or the currency, for payment;

limit the right to sue for payment;

reduce the level of consents needed to approve a change to an indenture; or

modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required level of consents needed to approve a change to an indenture.

### **Senior Debt Securities**

Any additional senior debt securities we issue will rank equally in right of payment with the senior debt securities offered by this prospectus and the applicable prospectus supplement. Further, the senior indenture does not prohibit us from issuing additional debt securities that may rank equally in right of payment to the senior debt securities. Any senior debt securities offered pursuant to the senior indenture will be senior in right of payment to all subordinated debt securities issued under the subordinated indenture.

### **Subordinated Debt Securities**

The subordinated debt securities will have a junior position to all of our senior debt. Under the subordinated indenture, payment of the principal, interest and any premium on the subordinated debt securities will generally be subordinated and junior in right of payment to the prior payment in full of all senior debt. The subordinated indenture provides that no payment of principal, interest and any premium on the subordinated debt securities may be made in the event of any insolvency, bankruptcy or similar proceeding involving us or our properties.

The subordinated indenture will not limit the amount of senior debt that we may incur. All series of subordinated debt securities as well as other subordinated debt issued under the subordinated indenture will rank equally with each other in right of payment.



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The subordinated indenture prohibits us from making a payment of principal, premium, interest or sinking fund payments for the subordinated debt securities during the continuance of any default on senior debt or any default under any agreement pursuant to which the senior debt was issued beyond the grace period, unless and until the default on the senior debt is cured or waived.

Upon any distribution of our assets in connection with any dissolution, winding-up, liquidation, reorganization, bankruptcy or other similar proceeding, the holders of all senior debt securities will first be entitled to receive payment in full of the principal, any premium and interest due on the senior debt before the holders of the subordinated debt securities are entitled to receive any payment. Because of this subordination, if we become insolvent, our creditors who are not holders of senior debt or of the subordinated debt securities may recover less, ratably, than holders of senior debt but may recover more, ratably, than holders of the subordinated debt securities.

## **Additional Terms of Debt Securities**

A prospectus supplement and any supplemental indentures relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following:

the type and title of debt securities offered;

any limit upon the total principal amount of the series of debt securities;

the total principal amount and priority of the debt securities;

the percentage of the principal amount at which the debt securities will be issued and any payments due if the maturity of the debt securities is accelerated;

the dates on which the principal of and premium, if any, on the debt securities will be payable or the method of determining such date;

the interest rates (which may be fixed or variable) that the debt securities will bear, or the method for determining such rates;

the dates from which the interest on the debt securities will accrue and be payable, or the method of determining those dates;

the date or dates on which interest will be payable and the record date or dates to determine the persons who will receive payment;

the place where principal of, premium, if any, and interest, on the debt securities will be payable or at which the debt securities may be surrendered for registration of transfer or exchange;

the period or periods within which, the price or prices at which, the currency (if other than U.S. dollars) in which, and the other terms and conditions upon which, the debt securities may be redeemed, in whole or in part, at our option, if we have that option;

the obligation, if any, we have to redeem or repurchase the debt securities pursuant to any sinking fund or similar provisions or upon the happening of a specified event or at the option of a holder; and the period or periods within which, the price at which, and the

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other terms and conditions upon which, such debt securities shall be redeemed or purchased, in whole or in part;

the denominations in which the debt securities are authorized to be issued;

if the amount of principal of, or premium, if any, or interest on, the debt securities may be determined with reference to an index or pursuant to a formula or other method, the method in which such amounts will be determined;

the amount or percentage payable if we accelerate the maturity of the debt securities, if other than the principal amount;

any changes to or additional events of default or covenants set forth in the indentures;

the terms of subordination, if any;

any special tax implications of the debt securities, including provisions for original issue discount securities;

provisions, if any, granting special rights to the holders of the debt securities if certain specified events occur; the circumstances, if any, under which we will pay additional amounts on the debt securities held by non-U.S. persons for taxes, assessments or similar charges;

whether the debt securities will be issued in registered or bearer form or both;

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the date as of which any debt securities in bearer form and any temporary global security representing outstanding securities are dated, if other than the original issuance date of the debt securities;

the forms of the securities and interest coupons, if any, of the series;

if other than the trustee under the applicable indenture, the identity of the registrar and any paying agent for the debt securities;

any means of defeasance or covenant defeasance that may be specified in the debt securities;

whether the debt securities are to be issued in whole or in part in the form of one or more temporary or permanent global securities and, if so, the identity of the depository or its nominee, if any, for the global security or securities and the circumstances under which beneficial owners of interest in the global security may exchange those interests for certificated debt securities to be registered in the name of, or to be held by, the beneficial owners or their nominees;

if the debt securities may be issued or delivered, or any installment of principal or interest may be paid, only upon receipt of certain certificates or other documents or satisfaction of other conditions in addition to those specified in the applicable indenture, the form of those certificates, documents or conditions;

any definitions for the debt securities for that series that are different from or in addition to the definitions included in the applicable indentures;

in the case of the subordinated indenture, the relative degree to which the debt securities shall be senior to or junior to other securities, whether currently outstanding or to be offered in the future, and to other debt, in right of payment;

whether the debt securities are to be guaranteed and, if so, by identity of the guarantors and the terms of the guarantees;

the terms, if any, upon which the debt securities may be converted or exchanged into or for our common shares, preferred shares or other securities or property;

any restrictions on the registration, transfer or exchange of the debt securities; and

any other terms consistent with the indenture.

**Certain Covenants**

Under the indentures, we are required to:

pay the principal, interest and any premium on the debt securities when due;

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maintain a place of payment;

deliver a report to the trustee at the end of each fiscal year certifying our compliance with all of our obligations under the indentures;

deposit sufficient funds with any paying agent on or before the due date for any principal, interest or any premium;

maintain an unencumbered total asset value (as defined in the indentures) in an amount of not less than 100% of the aggregate principal amount of all our outstanding debt;

except as described under Merger, Consolidation and Sale of Assets, do or cause to be done all things necessary to preserve and keep in full force and effect our existence, rights (declaration of trust and statutory) and franchises, unless the board of trust managers determines that the preservation thereof is no longer desirable in the conduct of our business;

cause all of our material properties used or useful for the conduct of our business to be maintained and kept in good condition, repair and working order and we will cause to be made all necessary repairs, renewals, replacements, betterments and improvements of our material properties to be made, all as in our judgment may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times;

keep all of our insurable properties insured against loss or damage at least equal to their then full insurable value with insurers of recognized responsibility and, if such insurer has publicly rated debt, the rating for such debt must be at least investment grade with the nationally recognized rating agencies; and

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pay or discharge or cause to be paid or discharged, before they shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon us or upon our income; and profits or property, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property; provided, however, we are not required to pay or discharge any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith.

Under the indentures, we may not:

incur or permit a subsidiary to incur any debt (as defined in the indentures) which causes the aggregate principal amount of all our outstanding debt to become greater than 60% of the sum of (1) our total assets (as defined in the indentures) at the end of the calendar quarter covered in our then most recent 10-K or 10-Q and (2) the purchase price of any real estate assets or mortgages receivable acquired and any securities offering proceeds received since the end of such calendar quarter to the extent such proceeds were not used by us to acquire real estate assets or mortgages receivable or used to reduce debt;

incur or permit a subsidiary to incur any debt if our ratio of consolidated income available for debt service (as defined in the indentures) to the annual service charge (as defined in the indentures) shall have been less than 1.5 for the four quarters then most recently ended; and

incur any debt or permit a subsidiary to incur any debt secured by any mortgage lien, charge, pledge, encumbrance or security interest in which the aggregate principal amount of all our outstanding secured debt is greater than 40% of our total assets.

### **Events of Default, Notice and Waiver**

Events of default under the indentures for any series of debt securities include:

failure for 30 days to pay interest on any debt securities of that series;

failure to pay principal of, or premium, if any, on any debt securities of that series;

failure to pay any sinking fund payment when due;

failure to perform or breach of any covenant or warranty contained in the indentures (other than a covenant added to the indentures solely for the benefit of a particular series of debt securities), which continues for 60 days after written notice as provided in the indenture;

default under any of our other debt instruments with an aggregate principal amount outstanding of at least \$10,000,000; or

events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under an indenture. The trustee may withhold notice to the holders of debt securities of any default (except in the payment of principal or interest) if it considers such withholding of notice to be in the best interests of the holders.

If an event of default for any series of debt securities occurs and continues, the trustee or the holders of at least 25% of the total principal amount of the debt securities of the series may declare the entire principal of that series due and payable immediately. If an event of default occurs due to bankruptcy, insolvency or reorganization or court appointment of a receiver, liquidator or trustee, no advance notice of acceleration is required; acceleration is automatic.

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Each indenture provides that, if an event of default has occurred, the trustee is to use the degree of care a prudent person would use in the conduct of his own affairs. Subject to those provisions, the trustee is under no obligation to exercise any of its rights or powers under an indenture at the request of any of the holders of the debt securities of a series unless they have furnished to the trustee reasonable security or indemnity.

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Each indenture provides that, after a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in aggregate principal amount of the debt securities of that series, by written notice to us and the trustee, may rescind and annul such declaration if:

we have paid, or deposited with the trustee a sum sufficient to pay:

all overdue interest on all debt securities of the applicable series;

the principal of and premium, if any, on any debt securities of the applicable series which have become due other than by such declaration of acceleration, plus interest thereon at the rate borne by the debt securities;

to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the debt securities; and

all sums paid or advanced by the trustee under the indenture and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel; and

all events of default, other than the non-payment of principal of, or interest on, the debt securities which have become due solely by such declaration of acceleration, have been cured or waived.

The trustee is required to give notice to the holders of debt securities within 90 days of a default under the applicable indenture unless such default shall have been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to such series (except a default in the payment of the principal of, and premium, if any, or interest on any debt security of such series or in the payment of any sinking fund installment in respect of any debt security of such series) if the trustee considers such withholding to be in the interest of the holders.

## **Limitation on Suits**

The indentures limit the right of holders of debt securities to institute legal proceedings. No holder of any debt securities will have the right to bring a claim under an indenture unless:

the holder has given written notice to the trustee of default under the terms of that series of debt;

the holders of not less than 25% of the aggregate principal amount of debt securities of that series shall have made a written request to the trustee to bring the claim and furnished the trustee reasonable indemnification as it may require;

the trustee has not commenced an action within 60 days of receipt of the notice, request and offer of indemnity; and

no direction inconsistent with a request has been given to the trustee by the holders of not less than a majority of the aggregate principal amount of the debt securities.

The holders of a majority in aggregate principal amount of any series of debt securities may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any power conferred on the trustee with respect to the securities of any series; provided, however, that

the direction does not conflict with any rule of law or an indenture;

the trustee may take any action it deems proper and which is consistent with the direction of the holders; and

the trustee is not required to take any action that would unduly prejudice the holders of the debt securities not taking part in the action or would impose personal liability on the trustee.

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**Defeasance**

Unless stated otherwise in a prospectus supplement, we will be able to discharge our obligations under debt securities at any time by taking the actions described below. The discharge of all obligations using this process is known as defeasance. If we defease debt securities, all obligations under the series of debt securities that are defeased will be deemed to have been discharged, except for:

the rights of holders of outstanding debt securities to receive, solely from funds deposited for this purpose, payments in respect of the principal o