SIMON PROPERTY GROUP INC /DE/
Form S-3/A
November 02, 2004

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As filed with the Securities and Exchange Commission on November 2, 2004

Registration No. 333-119882

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1
to
FORM S-3

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

SIMON PROPERTY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware	**04-6268599**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

National City Center
115 West Washington Street, Suite 15 East; Indianapolis, IN 46204; (317) 636-1600
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

James M. Barkley
Simon Property Group
National City Center
115 West Washington Street, Suite 15 East; Indianapolis, IN 46204; (317) 636-1600
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

David C. Worrell
Baker & Daniels
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204
(317) 237-1110

Approximate date of commencement of proposed sale to the public: From time to time or at one time after the effective date of the Registration Statement.

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

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

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

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

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

This Registration Statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PROSPECTUS

843,392 Shares Common Stock
1,156,039 Shares Series D 8.00% Cumulative Redeemable Preferred Stock

SIMON PROPERTY GROUP, INC.

This prospectus relates to resales of shares of common stock and Series D 8% Preferred Stock by the selling stockholders named in this prospectus. We will not receive any of the proceeds from the sale of the shares by the selling stockholders.

The selling stockholders, or their pledgees, donees, transferees or other successors in interest, may offer the shares through public or private transactions at prevailing market prices, at prices related to prevailing market prices or at privately negotiated prices. Our common stock is traded on the New York Stock Exchange under the symbol "SPG." On November 4, 2004, the closing sale price as reported by the NYSE was $ per share. We do not intend to list our Series D 8% Preferred Stock on any national securities exchange or to seek the admission thereof for trading on any automated dealer quotation system.

You should read carefully this prospectus before you invest.

Investing in our securities involves risk. See "Risk Factors" beginning on page 2.

THE SECURITIES AND EXCHANGE COMMISSION AND STATE SECURITIES REGULATORS HAVE NOT APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED WHETHER THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Our principal executive offices are located at National City Center, Suite 15 East, 115 West Washington Street, Indianapolis, Indiana 46204 and our telephone number is (317) 636-1600.

The date of this prospectus is November 5, 2004

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We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus. The selling stockholders are offering to sell, and seeking offers to buy, our shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the shares.

WHO WE ARE

We own, operate, manage, lease, acquire, expand and develop real estate properties, primarily regional malls and community shopping centers. We have elected to be taxed as a real estate investment trust or REIT for federal income tax purposes.

The core of our business originated with the shopping center businesses of Melvin Simon, Herbert Simon, David Simon and other members and associates of the Simon family. We have grown significantly by acquiring properties and merging with other real estate companies, including our merger with DeBartolo Realty Corporation in 1996 and our combination with Corporate Property Investors, Inc. in 1998.

As of June 30, 2004, we and our majority-owned subsidiary, Simon Property Group, L.P. or the Operating Partnership, owned or held an interest in 247 income-producing properties in North America which consisted of 176 regional malls, 67 community shopping centers, and four office and mixed-use properties in 37 states, Canada and Puerto Rico. Mixed-use properties are properties whose operating income includes two or more significant retail, office, and/or hotel components. As of the same date, we owned interests in four parcels of land held for future development and had ownership interests in other real estate assets in the United States. Finally, we had ownership interests in 48 assets in Europe (France, Italy, Poland and Portugal).

Our predecessor was organized as a Massachusetts business trust in 1971 and reorganized as a Delaware corporation on March 10, 1998. Our principal executive offices are located at National City Center, Suite 15 East, 115 West Washington Street, Indianapolis, Indiana 46204; our telephone number is (317) 636-1600. Our Internet website address is www.simon.com. The information in our website is not incorporated by reference into this prospectus.

If you want to find more information about us, please see the sections entitled "Where You Can Find More Information" and "Incorporation of Information We File with the SEC" in this prospectus.

RECENT DEVELOPMENTS

On October 14, 2004, we acquired all of the outstanding common stock of Chelsea Property Group, Inc. ("Chelsea") and its operating partnership subsidiary in a transaction valued at approximately $3.5 billion. In connection with the transaction, Chelsea's operating partnership became our wholly-owned subsidiary. We issued 12,978,795 shares of common stock, 13,261,712 shares of a new issue of convertible preferred stock and paid $1.591 million in cash. We financed the cash portion of the purchase price with a twenty-four month, $1.8 billion bridge loan that bears interest at LIBOR plus 55 basis points. LIBOR at June 30, 2004 was 1.35%. Chelsea unit holders received 4,652,232 common units of limited partnership interest and 4,753,794 units of a new issue of convertible preferred units. In addition, we also assumed Chelsea's existing indebtedness and preferred stock, which totaled approximately $1.3 billion as of June 30, 2004. The Chelsea portfolio is comprised of 60 premium outlet and other shopping centers containing 16.9 million square feet of gross leasable area in 31 states and Japan.

USE OF PROCEEDS

We will not receive any proceeds from the sale of the shares by the selling stockholders.

The selling stockholders will pay any underwriting discounts and commissions and expenses they incur for brokerage, accounting, tax or legal services or any other expenses they incur in disposing of the shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares covered by this prospectus. These may include, without limitation, all registration and filing fees, NYSE listing fees, fees and expenses of our counsel and accountants, and blue sky fees and expenses.

RISK FACTORS

You should carefully consider the following risks, along with the other information contained or incorporated by reference in this prospectus before you decide to purchase any of our securities. If any of the following events actually occurs, our business, financial condition and results of operations would likely suffer, possibly materially.

Risk Factors Relating to the Series D 8% Preferred Stock

There is no established trading market for the Series D 8% Preferred Stock and there can be no assurance as to the development or liquidity of any market for such securities.

There is no established trading market for the Series D 8% Preferred Stock and there can be no assurance as to the development or liquidity of any market for such securities, the ability of the holders to sell their Series D 8% Preferred Stock or the price at which holders of the Series D 8% Preferred Stock may be able to sell such securities. Future trading prices of the Series D 8% Preferred Stock will depend on many factors, including, among other things, prevailing interest rates, our operating results and the market for similar securities. In addition, we do not intend to list the Series D 8% Preferred Stock on any national securities exchange or to seek the admission thereof for trading on any automated dealer quotation system.

The Series D 8% Preferred Stock will rank junior to all of our liabilities and will not limit our ability to incur future indebtedness that will rank senior to the Series D 8% Preferred Stock.

The Series D 8% Preferred Stock will rank junior to all of our liabilities. In the event of our bankruptcy, liquidation or winding-up, our assets will be available to pay obligations on the Series D 8% Preferred Stock, only after all of our indebtedness and other liabilities have been paid. In addition, the Series D 8% Preferred Stock will effectively rank junior to all existing and future liabilities of our subsidiaries and any capital stock of our subsidiaries held by others. The rights of holders of the Series D 8% Preferred Stock to participate in the distribution of assets of our subsidiaries will rank junior to the prior claims of each subsidiary's creditors and any such other equity holders. As of June 30, 2004, we had total unaudited consolidated liabilities of approximately $12.0 billion. Consequently, if we are forced to liquidate our assets to pay creditors, we may not have sufficient assets remaining to pay amounts due on any or all of our preferred stock then outstanding. We and our subsidiaries may incur substantial amounts of additional debt and other obligations that will rank senior to the Series D 8% Preferred Stock, and the terms of the Series D 8% Preferred Stock will not limit the amount of such debt or other obligations that we may incur, except that we will not be able to issue preferred stock senior to the Series D 8% Preferred Stock without the approval of holders of at least a majority in liquidation preference of the shares of Series D 8% Preferred Stock and 8.00% Cumulative Convertible Preferred Units of the Operating Partnership then outstanding.

Our ability to issue preferred stock in the future could adversely affect the rights of holders of the Series D 8% Preferred Stock.

Our charter authorizes us to issue up to 100,000,000 shares of preferred stock in one or more series on terms determined by our board of directors. As of October 15, 2004, we had 13,261,712 shares of preferred stock outstanding. Our future issuance of any series of preferred stock under our charter could therefore effectively diminish our ability to pay dividends on, and the liquidation preference of, the Series D 8% Preferred Stock.

Risk Factors Relating to Simon Property Generally

We have a substantial debt burden that could affect our future operations.

As of June 30, 2004, unaudited consolidated mortgages and other indebtedness for which we are liable totaled $11.1 billion, of which approximately $482.8 million matures during the second half of 2004, including recurring principal amortization. We are subject to the risks normally associated with debt financing, including the risk that our cash flow from operations will be insufficient to meet required debt service. Our debt service costs generally will not be reduced when developments, such as the entry of new competitors or the loss of major tenants, could cause a reduction in income from a property. Should such events occur, our operations and ability to make expected distributions to stockholders may be adversely affected. If a property is mortgaged to secure payment of indebtedness and we are unable to pay that indebtedness, the property could be transferred to the mortgagee resulting in a loss of income and a decline in asset value.

Rising interest rates could adversely affect our debt service costs.

As of June 30, 2004, approximately $2.1 billion of our total unaudited consolidated debt adjusted to reflect outstanding derivative instruments was subject to floating interest rates. In a rising interest rate environment, these debt service costs will increase. In addition, we may not be able to refinance maturing fixed-rate debt on as favorable terms, or at all. Increased debt service costs would adversely affect our cash flow and the amounts of cash we have available for distribution to our stockholders.

Our hedging arrangements could increase our interest rate risk.

We use interest rate hedging arrangements to manage our exposure to interest rate volatility, but these arrangements may expose us to additional risks. Although our interest rate risk management policy establishes minimum credit ratings for counterparties, this does not eliminate the risk that a counterparty may fail to honor its obligations. Developing an effective interest rate risk strategy is complex and no strategy can completely insulate us from risks associated with interest rate fluctuations. There can be no assurance that our hedging activities will have the desired beneficial impact on our results of operations or financial condition. These hedging agreements may involve costs, such as transaction fees or breakage costs, if we terminate them.

Rising interest rates could make our distribution rates less attractive.

One of the factors that may influence the price of our securities in public markets is the annual distribution rate we pay as compared with the yields on alternative investments. Any significant increase in interest rates could lead holders of our securities to seek higher yields through other investments, which could adversely affect the market price of our securities.

We face a wide range of competition that could affect our ability to operate profitably.

Shopping malls compete with other retail properties for tenants on the basis of the rent charged and location. The principal competition for existing shopping malls may come from future shopping malls that will be located in the same market areas and from mail order and electronic commerce. There is also considerable competition to acquire desirable real estate. The competition is provided by real estate investment trusts, insurance companies, private pension plans and private developers. Additionally, our credit rating and leverage will affect our competitive position in the public debt and equity markets.

We face competition from other shopping mall developers for the acquisition of prime development sites and for tenants and are subject to the risks of real estate development, including the lack of financing, construction delays, environmental requirements, budget overruns and lease-up. We compete with other real estate operations in seeking management, leasing revenues, land for

development and properties for acquisition. In addition, retailers at our properties face increasing competition from discount shopping centers, outlet malls, catalogues, discount shopping clubs and electronic commerce. With respect to many of our properties, there are similar properties within the same market area. The existence of competitive properties affects our ability to lease space and the level of rents we can obtain. Renovations and expansions at competing malls could negatively affect our properties. Increased competition could adversely affect our revenues.

We are subject to risks that affect the general retail environment.

Our concentration in the retail shopping center real estate market means that we are subject to factors that affect the retail environment generally, including the level of consumer spending, the willingness of retailers to lease space in our shopping centers and tenant bankruptcies. These factors include changes in economic conditions, consumer confidence and terrorist activities.

We may not be able to renew leases and relet space.

We are subject to the risks that, upon expiration of leases for space in our properties, the premises may not be relet or the terms of reletting, including the cost of concessions to tenants, may be less favorable than current lease terms. If we are unable to relet all or a substantial portion of this space or if the rental rates upon such reletting are significantly lower than expected rates, our cash generated before debt repayments and capital expenditures and ability to make expected distributions to stockholders would be adversely affected.

We depend on our anchor tenants to attract shoppers.

Regional malls are typically anchored by well-known department stores and other tenants who generate shopping traffic at the mall. The value of our properties would be adversely affected if tenants or anchors failed to meet their contractual obligations, sought concessions in order to continue operations or ceased their operations. If the sales of stores operating in our properties were to decline significantly due to economic conditions, closing of anchors or for other reasons, tenants may be unable to pay their minimum rents or expense recovery charges. In the event of default by a tenant or anchor, we may experience delays and costs in enforcing our rights as landlord.

We have limited control with respect to certain properties partially owned or managed by third parties.

As of June 30, 2004, we owned interests in 90 income-producing properties with other parties. Of those, 19 properties are included in our consolidated financial statements. We account for the other 71 properties under the equity method. Although at June 30, 2004 we had operational control, as general partner or property manager, of 59 of the 71 properties, we did not have sole control over all major decisions, such as selling or refinancing the properties without the consent of the other owners. These limitations may adversely affect our ability to sell these properties at the most advantageous time for us.

Real estate investments are relatively illiquid.

Our real estate investment properties represent substantially all of our total consolidated assets. Real property investments are relatively illiquid. Our ability to vary our portfolio of properties in response to changes in economic and other conditions is limited. If we want to sell a property, there is no assurance that we will be able to dispose of it in the desired time period or that the sales price of a property will exceed our investment.

A large number of securities available for future sale could adversely affect the market price of our securities.

As of October 15, 2004, there were approximately 61,792,029 outstanding units of limited partnership interests of the Operating Partnership that are exchangeable for cash or, at our option, shares of our common stock on a one-for-one basis. Although such exchanges would typically require the exchanging limited partner to recognize taxable gain on the exchange, the sale of substantial numbers of shares could adversely affect the prevailing market price for our securities. The existence of registration rights in favor of the limited partners and other parties could also adversely affect the terms upon which we can obtain additional capital in the equity markets in the future.

Provisions in our charter and bylaws could prevent a change of control.

Our charter contains a general restriction on the accumulation of shares in excess of 8% of the capital stock. The charter permits the Simons to own up to 18%. Ownership is determined by the lower of amount of outstanding shares, voting power or value controlled. Our Board of Directors may, by majority vote, permit exceptions to those levels in circumstances where the board determines our ability to qualify as a REIT will not be jeopardized. These restrictions on ownership may have the effect of delaying, deferring or preventing a transaction or a change in control that might otherwise be in the best interest of our stockholders. Other provisions of our charter and by-laws could have the effect of delaying or preventing a change of control even if some stockholders deem such a change to be in their best interests. These include provisions preventing holders of our common stock from acting by written consent and requiring that up to six directors in the aggregate may be elected by holders of Class B common stock and Class C common stock.

Failure to qualify as a REIT would have serious adverse consequences on our stockholders.

Simon Property and certain subsidiaries of the Operating Partnership have elected to be taxed as REITs. Those subsidiaries are Retail Property Trust, a Massachusetts business trust, and Chelsea Property Group, Inc., a Maryland corporation. We anticipate that another subsidiary, Simon Kravco LLC, a Delaware limited liability company that has elected to be taxed as a corporation, will elect to be taxed as a REIT beginning with the 2004 tax year. We believe that Simon Property and these subsidiaries are organized and operated so as to qualify as REITs under the Internal Revenue Code. We intend to continue to operate them in a manner consistent with REIT status, but we cannot assure you that we will succeed in this. Qualification as a REIT requires us to satisfy annual and quarterly tests under highly technical and complex Internal Revenue Code provisions for which there are only limited judicial and administrative interpretations. For example, at least 95% of our gross income in any year must be derived from qualifying sources, and we must pay dividends to stockholders aggregating annually at least 90% of our REIT taxable income determined without regard to the dividends paid deduction and by excluding capital gains. These provisions and the applicable treasury regulations are more complicated in our case because we hold our assets in partnership form. Legislation, new regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of such qualification. If Simon Property or any of these subsidiaries were to fail to qualify as a REIT in any taxable year, the nonqualifying entity would be subject to federal income tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates and it would be disqualified from treatment as a REIT for four years.

DESCRIPTION OF CAPITAL STOCK

Authorized Stock

The securities offered by this prospectus are shares of our common stock and Series D 8% Preferred Stock. We have the authority to issue 750,000,000 shares of capital stock, par value $0.0001 per share, consisting of the following:

400,000,000 shares of common stock,

12,000,000 shares of Class B common stock,

4,000 shares of Class C common stock,

100,000,000 shares of Preferred Stock, and

237,996,000 shares of Excess Common Stock.

Of the 100,000,000 authorized shares of Preferred Stock, the following have been designated:

209,249 shares of 6.50% Series A Convertible Preferred Stock,

5,000,000 shares of 6.50% Series B Convertible Preferred Stock,

209,249 shares of Series A Excess Preferred Stock,

5,000,000 shares of Series B Excess Preferred Stock,

2,700,000 shares of 7.00% Series C Convertible Preferred Stock,

2,700,000 shares of 8.00% Series D Cumulative Redeemable Preferred Stock,

1,000,000 shares of 8.00% Series E Cumulative Redeemable Preferred Stock,

8,000,000 shares of $8^{3}/_{4}$% Series F Cumulative Redeemable Preferred Stock,

3,000,000 shares of 7.89% Series G Cumulative Step-Up Premium Rate Preferred Stock,

453,000 shares of Series H Variable Rate Preferred Stock,

17,998,848 shares of 6% Series I Convertible Perpetual Preferred Stock, and

796,948 shares of 8 3/8% Series J Cumulative Redeemable Preferred Stock.

As of October 15, 2004, there were 1,156,039 shares of Series D 8% Preferred Stock, 1,000,000 shares of Series E Cumulative Redeemable Preferred Stock, 8,000,000 shares of Series F Cumulative Redeemable Preferred Stock, 3,000,000 shares of Series G Cumulative Step-Up Premium Rate Preferred Stock, 13,261,712 shares of Series I Convertible Perpetual Preferred Stock and 796,948 shares of Series J Cumulative Redeemable Preferred Stock outstanding. As of October 15, 2004, there were no shares of Series A Convertible Preferred Stock, Series A Excess Preferred Stock, Series B Convertible Preferred Stock, Series B Excess Preferred Stock, Series C Convertible Preferred Stock or Series H Variable Rate Preferred Stock outstanding.

Description of Common Stock

Terms of Common Stock. The holders of shares of common stock:

are entitled to one vote per share on all matters to be voted on by stockholders, other than the election of four directors who are elected exclusively by holders of Class B common stock, and the election of two directors who are elected exclusively by holders of Class C common stock;

are not entitled to cumulate their votes in the election of directors;

are entitled to receive dividends as may be declared from time to time by the Board of Directors, in its discretion, from legally available assets, subject to preferential rights of holders of Preferred Stock;

are not entitled to preemptive, subscription or conversion rights; and

are not subject to further calls or assessments.

The shares of common stock currently outstanding are, and the shares to be sold from time to time in one offering or a series of offerings pursuant to this prospectus will be, validly issued, fully paid and non-assessable. There are no redemption or sinking fund provisions applicable to the common stock.

Terms of Class B Common Stock and Class C Common Stock. As of October 15, 2004, we had 8,000 shares of Class B common stock outstanding and 4,000 shares of Class C common stock outstanding. Holders of Class B common stock and Class C common stock:

are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders, other than the election of four directors who are elected exclusively by the holders of Class B common stock and the election of two directors who are elected exclusively by the holders of Class C common stock;

are not entitled to cumulative voting for the election of directors; and

are entitled to receive ratably such dividends as may be declared by the Board of Directors out of legally available funds, subject to preferential rights of holders of Preferred Stock.

If we are liquidated, each outstanding share of common stock, Class B common stock and Class C common stock, including shares of Excess Common Stock, if any, will be entitled to participate *pro rata* in the assets remaining after payment of, or adequate provision for, all of our known debts and liabilities, subject to the right of the holders of Preferred Stock, including any Excess Preferred Stock into which shares such series has been converted, to receive preferential distributions.

All outstanding shares of Class B common stock are held in a voting trust of which Melvin, Herbert and David Simon are the voting trustees. The holders of Class B common stock are entitled to elect four of our 13 directors. However, they will be entitled to elect only two directors if their portion of the aggregate equity interest of us, including common stock, Class B common stock and units of limited partnership interests of the Operating Partnership considered on an as-converted basis decreases to less than 50% of the amount that they owned as of August 9, 1996.

Shares of Class B common stock may be converted at the holder's option into an equal number of shares of common stock. If the aggregate equity interest of the Simon family in us on a fully diluted basis has been reduced to less than 5%, the outstanding shares of Class B common stock convert automatically into an equal number of shares of common stock. Shares of Class B common stock also convert automatically into an equal number of shares of common stock upon the sale or transfer thereof to a person not affiliated with the Simon family. Holders of shares of common stock and Class B common stock have no sinking fund rights, redemption rights or preemptive rights to subscribe for any of our securities.

All outstanding shares of Class C common stock are held by the DeBartolo family. Except with respect to the right to elect directors, as summarized below, each share of Class C common stock has the same rights and restrictions as a share of Class B common stock.

The holders of Class C common stock are entitled to elect two of our 13 directors, one of whom must be an "independent director" as defined in our charter. However, they will be entitled to elect only one director if their portion of the aggregate equity interest of us, including common stock, Class B common stock and units of limited partnership interest in the Operating Partnership considered

on an as-converted basis, decreases to less than 50% of the amount that they owned as of August 9, 1996. Shares of Class C common stock may be converted at the holder's option into an equal number of shares of common stock. If the aggregate equity interest of the DeBartolos in us on a fully diluted basis is reduced to less than 5%, the outstanding shares of Class C common stock convert automatically into an equal number of shares of common stock. Shares of Class C common stock also convert automatically into an equal number of shares of common stock upon the sale or transfer thereof to a person not affiliated with the DeBartolos. Holders of shares of Class C common stock have no sinking fund rights, redemption rights or preemptive rights to subscribe for any of our securities.

Under our charter, so long as any shares of both Class B common stock and Class C common stock are outstanding, the number of members of the Board of Directors shall be 13. The charter further provides that so long as any shares of Class B common stock, but no Class C common stock, are outstanding, or if any shares of Class C common stock, but no shares of Class B common stock, are outstanding, the number of members of the Board of Directors shall be nine. Finally, the charter provides that if no shares of Class B common stock or Class C common stock are outstanding, the number of members of the Board of Directors shall be fixed by the Board of Directors from time to time. Under the charter, at least a majority of the directors shall be independent directors. The charter further provides that, subject to any separate rights of holders of Preferred Stock or as described below, any vacancies on the Board of Directors resulting from death, disability, resignation, retirement, disqualification, removal from office, or other cause of a director shall be filled by a vote of the stockholders or a majority of the directors then in office provided that:

any vacancy relating to a director elected by the Class B common stock is to be filled by the holders of the Class B common stock; and

any vacancy relating to a director elected by the holders of Class C common stock is to be filled as provided in the charter.

The charter provides that, subject to the right of holders of any class or series separately entitled to elect one or more directors, if any such right has been granted, directors may be removed with or without cause upon the affirmative vote of holders of at least a majority of the voting power of all the then outstanding shares entitled to vote generally in the election of directors, voting together as a single class.

Transfer Agent. Mellon Investor Services LLC is the transfer agent for the shares of common stock.

Description of Series D 8% Preferred Stock

General. The following summary of the terms and provisions of the Series D 8% Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the pertinent sections of the Certificate of Designations creating the Series D 8% Preferred Stock.

Rank. The Series D 8% Preferred Stock, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our affairs, will rank (i) junior to all other shares of capital stock of Simon Property which, by their terms, rank senior to the Series D 8% Preferred Stock, (ii) on a parity with all other shares of preferred stock which are not, by their terms, junior or senior to the Series D 8% Preferred Stock and (iii) senior to the common stock, Class B common stock and Class C common stock and to all other shares of Simon Property capital stock which, by their terms, rank junior to the Series D 8% Preferred Stock. The Series D 8% Preferred Stock shall rank on a parity with the Series A Convertible Preferred Stock, Series A Excess Preferred Stock, Series B Convertible Preferred Stock, Series B Excess Preferred Stock, Series C Convertible Preferred Stock, Series E Cumulative Redeemable Preferred Stock, Series F Cumulative Redeemable Preferred Stock, Series G Cumulative Step-Up Premium Rate Preferred Stock, Series H Variable Rate Preferred Stock, Series I

Convertible Perpetual Preferred Stock and Series J Cumulative Redeemable Preferred Stock, which as of the date of this prospectus are the only authorized classes or series of our preferred stock, and any other class or series of Simon Property's capital stock that is not by its terms junior to the Series D 8% Preferred Stock.

Dividends. Holders of the Series D 8% Preferred Stock will be entitled to receive, when and as authorized by the board of directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.0% of the liquidation preference per annum (equivalent to $2.40 per share per annum). Such dividends shall be payable quarterly in arrears on the last day of each March, June, September and December. Any dividend payable on the Series D 8% Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of Simon Property at the close of business on the applicable record date, designated by the board of directors for the payment of dividends that is not more than 30 nor less than 5 days prior to such dividend payment date.

Dividends on the Series D 8% Preferred Stock will accumulate whether or not we have earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are authorized. Accumulated but unpaid dividends on the Series D 8% Preferred Stock shall not bear interest and holders of the Series D 8% Preferred Stock shall not be entitled to any dividends in excess of full cumulative dividends as described above.

No dividends will be declared or paid or set apart for payment on any capital stock of Simon Property ranking, as to dividends, on a parity with or junior to the Series D 8% Preferred Stock for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment therefor set apart for such payment on the Series D 8% Preferred Stock for all past dividend periods and the then current dividend period. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series D 8% Preferred Stock and the shares of each other series of preferred stock ranking on a parity as to dividends with the Series D 8% Preferred Stock, all dividends declared on the Series D 8% Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series D 8% Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series D 8% Preferred Stock and such other series of preferred stock shall in all cases bear to each other the same ratio that accumulated dividends per share of Series D 8% Preferred Stock and such other series of preferred stock bear to each other.

Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series D 8% Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment therefor set apart for such payment on the Series D 8% Preferred Stock for all past dividend periods and the then current dividend period, no dividends (other than in shares of common stock or other capital stock ranking junior to the Series D 8% Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the common stock, Class B common stock or Class C common stock or any other capital stock of Simon Property ranking junior to or on a parity with the Series D 8% Preferred Stock as to dividends or upon liquidation, nor shall any shares of common stock, Class B common stock or Class C common stock or any other capital stock of Simon Property ranking junior to or on a parity with the Series D 8% Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid or made available for a sinking fund for the redemption of such shares) by Simon Property (except by conversion into or exchange for other capital stock of Simon Property ranking junior to the Series D 8% Preferred Stock as to dividends and upon liquidation).

Any dividend payment made on the Series D 8% Preferred Stock shall first be credited against the earliest accumulated but unpaid dividend due with respect to such shares which remains payable.

Liquidation Preference. In the event of any liquidation, dissolution or winding up of our affairs, the holders of the Series D 8% Preferred Stock will be entitled to be paid out of the assets legally available for distribution to our stockholders liquidating distributions in cash or property at its fair market value as determined by the board of directors in the amount of a liquidation preference of $30.00 per share, plus an amount equal to any accumulated and unpaid dividends, if any, thereon to the date of such liquidation, dissolution or winding up, before any distribution of assets is made to holders of common stock, Class B common stock or Class C common stock or any other capital stock ranking junior to the Series D 8% Preferred Stock as to liquidation rights. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series D 8% Preferred Stock will have no right or claim to any of the remaining assets of Simon Property.

In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up of our affairs, our legally available assets are insufficient to pay the amount of the liquidating distributions on the Series D 8% Preferred Stock and the corresponding amounts payable on the shares of each other series of preferred stock ranking on a parity with the Series D 8% Preferred Stock in the distribution of assets upon liquidation, then the holders of the Series D 8% Preferred Stock and any other series of preferred stock ranking on a parity with the Series D 8% Preferred Stock in the distribution of assets upon liquidation shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

Conversion. The Series D 8% Preferred Stock will not be convertible into or exchangeable for any other property or securities of Simon Property.

Optional Redemption. The Series D 8% Preferred Stock shall not be redeemable prior to August 27, 2009. On and after August 27, 2009, we, at our option upon not less than 40 nor more than 70 days' written notice, may redeem the Series D 8% Preferred Stock, in whole or in part at any time or from time to time, at a redemption price of $30.00 per share, plus accumulated and unpaid dividends, if any, thereon to and including, the date fixed for redemption. The redemption price of the Series D 8% Preferred Stock (other than any portion thereof consisting of accumulated and unpaid dividends) may be paid in cash or (other than the portion thereof consisting of accrued and unpaid dividends, which shall be payable in cash) in common stock valued at the average of the closing prices of the common stock for the five consecutive trading days ending on the redemption date. Holders of Series D 8% Preferred Stock to be redeemed shall surrender such Series D 8% Preferred Stock at the place designated in the notice of redemption and shall be entitled to the redemption price upon such surrender. If notice of redemption of any Series D 8% Preferred Stock has been given and if the funds necessary for such redemption have been set apart, then from and after the redemption date dividends will cease to accumulate on such Series D 8% Preferred Stock, such stock shall no longer be deemed outstanding and all rights of the holders of such Series D 8% Preferred Stock will terminate, except the right to receive the redemption price. If fewer than all of the outstanding Series D 8% Preferred Stock are to be redeemed, the Series D 8% Preferred Stock to be redeemed shall be selected pro rata (as nearly as practicable).

Notice of redemption will be given to the respective holders of record of the Series D 8% Preferred Stock to be redeemed at their respective addresses as they appear on the books of Simon Property. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series D 8% Preferred Stock except as to the holder to whom notice was defective or not given.

The Series D 8% Preferred Stock does not have a stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

Voting Rights. Except as indicated below or except as otherwise from time to time required by applicable law, the holders of Series D 8% Preferred Stock will have no voting rights.

On any matter on which the Series D 8% Preferred Stock are entitled to vote (as expressly provided herein or as may be required by law), including any action by written consent, each share of Series D 8% Preferred Stock shall be entitled to one vote.

So long as any Series D 8% Preferred Stock remains outstanding, we will not, without the affirmative vote or consent of the holders of at least a majority in liquidation preference of the Series D 8% Preferred Stock then outstanding (voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking senior to the Series D 8% Preferred Stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of our affairs or reclassify any authorized capital stock into such capital stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such capital stock; or (ii) amend, alter or repeal the provisions of the charter (including the Certificate of Designation of the Series D 8% Preferred Stock), so as to adversely affect the holders of the Series D 8% Preferred Stock.

Restrictions on Transfer. Holders of Series D 8% Preferred Stock shall be subject to certain restrictions on the number of shares of Series D 8% Preferred Stock that such holder may own in order to preserve our status as a REIT. See "Restrictions on Ownership and Transfer of Securities." Each holder of Series D 8% Preferred Stock shall upon demand be required to disclose to us in writing such information as we may request in good faith in order to determine our status as a REIT.

IMPORTANT PROVISIONS OF OUR GOVERNING DOCUMENTS AND DELAWARE LAW

Partnership Agreements

The limited partnership agreement of the Operating Partnership contains voting requirements that limit the possibility that we will be acquired or undergo a change in control, even if some of our stockholders believe that a change would be in our and their best interests. Specifically, the partnership agreement provides that we must have the approval of the holders of a majority of the units of limited partnership interest held by limited partners in order to:

- merge, consolidate or engage in any combination with another person other than a general partner of the Operating Partnership, or
- sell all or substantially all of our assets.

Delaware Law and Certain Charter and By-law Provisions

Our charter and by-laws and certain provisions of the Delaware General Corporation Law may have an anti-takeover effect. These provisions may delay, defer or prevent a tender offer or takeover attempt that a stockholder would consider in its best interest. This includes an attempt that might result in a premium over the market price for the shares held by stockholders. These provisions are expected to discourage certain types of coercive takeover practices and inadequate takeover bids. They are also expected to encourage persons seeking to acquire control of us to negotiate first with our Board of Directors. We believe that the benefits of these provisions outweigh the potential disadvantages of discouraging takeover proposals because, among other things, negotiation of takeover proposals might result in an improvement of their terms.

Delaware Anti-Takeover Law. We are a Delaware corporation and are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for three years after the time at which the person became an interested stockholder unless:

- prior to that time, the Board of Directors approved either the business combination or transaction in which the stockholder became an interested stockholder; or
- upon becoming an interested stockholder, the stockholder owned at least 85% of the corporation's outstanding voting stock other than shares held by directors who are also officers and certain employee benefit plans; or
- the business combination is approved by both the Board of Directors and by holders of at least $66^{2}/_{3}\%$ of the corporation's outstanding voting stock at a meeting and not by written consent, excluding shares owned by the interested stockholder.

For these purposes, the term "business combination" includes mergers, asset sales and other similar transactions with an "interested stockholder." "Interested stockholder" means a person who, together with its affiliates and associates, owns, or under certain circumstances has owned within the prior three years, more than 15% of the outstanding voting stock. Although Section 203 permits a corporation to elect not to be governed by its provisions, we have not made this election.

Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals. Our by-laws establish an advance notice procedure for stockholders to make nominations of candidates for election as directors or bring other business before an annual meeting of stockholders. This procedure provides that

- the only persons who will be eligible for election as directors are persons who are nominated by or at the direction of the Board of Directors, or by a stockholder who has given timely written

notice containing specified information to the Secretary prior to the meeting at which directors are to be elected, and

the only business that may be conducted at an annual meeting is business that has been brought before the meeting by or at the direction of the Chairman of the Board of Directors or by a stockholder who has given timely written notice to the Secretary of the stockholder's intention to bring the business before the meeting.

In general, we must receive written notice of stockholder nominations to be made or business to be brought at an annual meeting not less than 120 days prior to the first anniversary of the date of the proxy statement for the previous year's annual meeting, in order for the notice to be timely. The notice must contain information concerning the person or persons to be nominated or the matters to be brought before the meeting and concerning the stockholder submitting the proposal.

The purposes of requiring stockholders to give us advance notice of nominations and other business include the following:

to afford the applicable Board of Directors a meaningful opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposed business;

to the extent deemed necessary or desirable by the Board of Directors, to inform stockholders and make recommendations about such qualifications or business; and

to provide a more orderly procedure for conducting meetings of stockholders.

Our by-laws do not give our Board of Directors any power to disapprove stockholder nominations for the election of directors or proposals for action. However, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if the proper procedures are not followed. Our by-laws may also discourage or deter a third party from soliciting proxies to elect its own slate of directors or to approve its own proposal, without regard to whether consideration of the nominees or proposals might be harmful or beneficial to us and our stockholders.

Director Action. Our charter and by-laws and the Delaware General Corporation Law generally require that a majority of a quorum is necessary to approve any matter to come before the Board of Directors. Certain matters, including sales of property, transactions with the Simons or the DeBartolos and certain affiliates and certain other matters, will also require approval of a majority of the independent directors on the Board of Directors.

Director Liability Limitation and Indemnification. Our charter provides that no director will be personally liable to us or to our stockholders for monetary damages for breach of fiduciary duty as a director. This will not, however, eliminate or limit the liability of a director for the following:

any breach of the director's duty of loyalty to us and our stockholders;

acts or omissions not in good faith;

any transaction from which the director derived an improper personal benefit; or

any matter in respect of which the director would be liable under Section 174 of the Delaware General Corporation Law.

These provisions may discourage stockholders' actions against directors. Directors' personal liability for violating the federal securities laws is not limited or otherwise affected. In addition, these provisions do not affect the ability of stockholders to obtain injunctive or other equitable relief from the courts with respect to a transaction involving gross negligence on the part of a director.

Our charter provides that we shall indemnify to the fullest extent permitted under and in accordance with Delaware law any person who was or is a party or is threatened to be made a party to

any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that

- he is or was our director or officer, or
- is or was serving at our request as a director, officer or trustee of or in any other capacity with another corporation, partnership, joint venture, trust or other enterprise.

With respect to such persons, we shall indemnify against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the following standards are met:

- the person acted in good faith and in a manner he reasonably believed to be in or not opposed to our best interests, and,
- with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

The Delaware General Corporation Law provides that indemnification is mandatory where a director or officer has been successful on the merits or otherwise in the defense of any proceeding covered by the indemnification statute.

The Delaware General Corporation Law generally permits indemnification for expenses incurred in the defense or settlement of third-party actions or action by or in right of the corporation, and for judgments in third-party actions, provided the following determination is made:

- the person seeking indemnification acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, or
- in a criminal proceeding, the person had no reason to believe his or her conduct to be unlawful.

The determination must be made by directors who were not parties to the action, or if directed by such directors, by independent legal counsel or by a majority vote of a quorum of the stockholders. Without court approval, however, no indemnification may be made in respect of any action by or in right of the corporation in which such person is adjudged liable.

Under Delaware law, the indemnification provided by statute shall not be deemed exclusive of any rights under any by-law, agreement, vote of stockholders or disinterested directors or otherwise. In addition, the liability of officers may not be eliminated or limited under Delaware law.

The right of indemnification, including the right to receive payment in advance of expenses, conferred by our charter is not exclusive of any other rights to which any person seeking indemnification may otherwise be entitled.

RESTRICTIONS ON OWNERSHIP AND TRANSFER

Our charter contains certain restrictions on the number of shares of capital stock that individual stockholders may own. Certain requirements must be met for Simon Property to maintain its status as a REIT, including the following:

- not more than 50% in value of the outstanding capital stock of Simon Property may be owned, directly or indirectly, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities, during the last half of a taxable year other than the first year, and

- the capital stock also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year.

In part because we currently believe it is essential for Simon Property to maintain its status as a REIT, the provisions of its charter with respect to Excess Stock contain restrictions on the acquisition of its capital stock intended to ensure compliance with these requirements.

Our charter provides that, subject to certain specified exceptions, no stockholder may own, or be deemed to own by virtue of the attribution rules of the Internal Revenue Code, more than the ownership limit. The ownership limit is equal to 8%, or 18% in the case of the Simons, of any class of capital stock. The ownership limit is calculated based on the lower of outstanding shares, voting power or value. The Board of Directors may exempt a person from the ownership limit if the Board of Directors receives a ruling from the Internal Revenue Service or an opinion of tax counsel that such ownership will not jeopardize Simon Property's status as a REIT.

Anyone acquiring shares in excess of the ownership limit will lose control over the power to dispose of the shares, will not receive dividends declared and will not be able to vote the shares. In the event of a purported transfer or other event that would, if effective, result in the ownership of shares of stock in violation of the ownership limit, the transfer or other event will be deemed void with respect to that number of shares that would be owned by the transferee in excess of the ownership limit. The intended transferee of the excess shares will acquire no rights in those shares of stock. Those shares of stock will automatically be converted into shares of Excess Stock according to rules set forth in the charter.

Upon a purported transfer or other event that results in Excess Stock, the Excess Stock will be deemed to have been transferred to a trustee to be held in trust for the exclusive benefit of a qualifying charitable organization designated by Simon Property. The Excess Stock will be issued and outstanding stock, and it will be entitled to dividends equal to any dividends which are declared and paid on the stock from which it was converted. Any dividend or distribution paid prior to the discovery by Simon Property that stock has been converted into Excess Stock is to be repaid upon demand. The recipient of the dividend will be personally liable to the trust. Any dividend or distribution declared but unpaid will be rescinded as void with respect to the shares of stock and will automatically be deemed to have been declared and paid with respect to the shares of Excess Stock into which the shares were converted. The Excess Stock will also be entitled to the voting rights as are ascribed to the stock from which it was converted. Any voting rights exercised prior to discovery by Simon Property that shares of stock were converted to Excess Stock will be rescinded and recast as determined by the trustee.

While Excess Stock is held in trust, an interest in that trust may be transferred by the purported transferee, or other purported holder with respect to the Excess Stock, only to a person whose ownership of the shares of stock would not violate the ownership limit. Upon such transfer, the Excess Stock will be automatically exchanged for the same number of shares of stock of the same type and class as the shares of stock for which the Excess Stock was originally exchanged.

Our charter contains provisions that are designed to ensure that the purported transferee or other purported holder of the Excess Stock may not receive in return for such a transfer an amount that

reflects any appreciation in the shares of stock for which the Excess Stock was exchanged during the period that the Excess Stock was outstanding. Any amount received by a purported transferee or other purported holder in excess of the amount permitted to be received must be paid over to the trust. If the foregoing restrictions are determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the intended transferee or holder of any Excess Stock may be deemed, at the option of Simon Property, to have acted as an agent on behalf of the trust in acquiring or holding the Excess Stock and to hold the Excess Stock on behalf of the trust.

Our charter further provides that Simon Property may purchase, for a period of 90 days during the time the Excess Stock is held by the trustee in trust, all or any portion of the Excess Stock from the original transferee-stockholder at the lesser of the following:

the price paid for the stock by the purported transferee, or if no notice of such purchase price is given, at a price to be determined by the Board of Directors, in its sole discretion, but no lower than the lowest market price of such stock at any time prior to the date Simon Property exercises its purchase option, and

the closing market price for the stock on the date Simon Property exercises its option to purchase.

The 90-day period begins on the date of the violative transfer or other event if the original transferee-stockholder gives notice to Simon Property of the transfer or, if no notice is given, the date the Board of Directors determines that a violative transfer or other event has occurred.

Our charter further provides that in the event of a purported issuance or transfer that would, if effective, result in Simon Property being beneficially owned by fewer than 100 persons, such issuance or transfer would be deemed null and void, and the intended transferee would acquire no rights to the stock.

All certificates representing shares of any class of our stock bear a legend referring to the restrictions described above.

All persons who own, directly or by virtue of the attribution rules of the Internal Revenue Code, more than 5%, or such other percentage as may be required by the Internal Revenue Code or regulations promulgated thereunder, of the outstanding stock must file an affidavit with Simon Property containing the information specified in the charter before January 30 of each year. In addition, each stockholder shall, upon demand, be required to disclose to Simon Property in writing such information with respect to the direct, indirect and constructive ownership of shares as the Board of Directors deems necessary to comply with the provisions of the charter or the Internal Revenue Code applicable to a REIT.

The Excess Stock provision will not be removed automatically even if the REIT provisions of the Internal Revenue Code are changed so as to no longer contain any ownership concentration limitation or if the ownership concentration limitation is increased. In addition to preserving Simon Property's status as a REIT, the ownership limit may have the effect of precluding an acquisition of control of Simon Property without the approval of its Board of Directors.

IMPORTANT FEDERAL INCOME TAX CONSIDERATIONS

The following summary of important federal income tax considerations associated with an investment in the securities we are registering is based on current law, is for general information only and is not tax advice. The tax treatment will vary depending on a holder's particular situation, and this discussion does not purport to deal with all aspects of taxation that may be relevant to a holder in light of his or her personal investments or tax circumstances, or to certain types of stockholders subject to special treatment under the federal income tax laws, except to the extent discussed under the headings " Taxation of Tax-Exempt U.S. Stockholders" and " Special Tax Considerations for Foreign Stockholders." Stockholders subject to special treatment include, without limitation:

- insurance companies;
- financial institutions or broker-dealers;
- tax-exempt organizations;
- stockholders holding securities as part of a conversion transaction, or a hedge or hedging transaction, or as a position in a straddle for tax purposes;
- foreign corporations or partnerships; and
- persons who are not citizens or residents of the United States.

In addition, the summary below does not consider the effect of any foreign, state, local or other tax laws that may be applicable to holders of our common stock.

We have received an opinion from our counsel, Baker & Daniels, that Simon Property has been organized and operated in a manner so as to qualify as a REIT and that our proposed method of operation as described in this prospectus will enable Simon Property to remain qualified as a REIT. Baker & Daniels' opinion and the information in this section are based on:

- the Internal Revenue Code,
- current, temporary and proposed Treasury Regulations promulgated under the Internal Revenue Code,
- the legislative history of the Internal Revenue Code,
- current administrative interpretations and practices of the Internal Revenue Service, including its practices and policies as expressed in certain private letter rulings which are not binding on the Internal Revenue Service except with respect to the particular taxpayers who requested and received such rulings, and
- court decisions,

all as of the date of this prospectus. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect, perhaps retroactively, the tax considerations described herein. The statements in this prospectus are not binding on the Internal Revenue Service or any court. Thus, we can provide no assurance that Baker & Daniels' opinion and these statements will not be challenged by the Internal Revenue Service or sustained by a court if challenged by the Internal Revenue Service.

YOU SHOULD CONSULT YOUR OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES TO YOU OF BUYING, OWNING OR SELLING OUR SECURITIES.

Taxation of Simon Property

General. Simon Property has elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code. We believe Simon Property has been organized and operated in a manner which allows it to qualify for taxation as a REIT under the Internal Revenue Code. Simon Property intends to continue to operate in this manner. However, Simon Property's qualification and taxation as a REIT depend upon its ability to meet, through actual annual operating results, asset diversification, distribution levels and diversity of stock ownership, the various qualification tests imposed under the Internal Revenue Code. Accordingly, there is no assurance that Simon Property has operated or will continue to operate in a manner so as to qualify or remain qualified as a REIT. See " Failure to Qualify."

The sections of the Internal Revenue Code that relate to the qualification and operation as a REIT are highly technical and complex. The following sets forth the material aspects of the sections of the Internal Revenue Code that govern the federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Internal Revenue Code provisions, relevant rules and regulations promulgated under the Internal Revenue Code, and administrative and judicial interpretations of the Internal Revenue Code.

If Simon Property qualifies for taxation as a REIT, it generally will not be subject to federal corporate income taxes on its net income that is currently distributed to its stockholders. This treatment substantially eliminates the "double taxation," once at the corporate level when earned and once again at the stockholder level when distributed, that generally results from investment in a corporation. However, Simon Property will be subject to federal income tax as follows:

Simon Property will be taxed at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.

Simon Property may be subject to the "alternative minimum tax" on its items of tax preference under certain circumstances.

If Simon Property has (a) net income from the sale or other disposition of "foreclosure property" which is held primarily for sale to customers in the ordinary course of business; or (b) other nonqualifying income from foreclosure property, Simon Property will be subject to tax at the highest corporate rate on this income. Foreclosure property is defined generally as property acquired through foreclosure or after a default on a loan secured by the property or a lease of the property.

Simon Property will be subject to a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, certain sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property.

If Simon Property fails to satisfy the 75% gross income test or the 95% gross income test but has maintained its qualification as a REIT because it satisfied certain other requirements, Simon Property will be subject to a 100% tax on an amount equal to (a) the gross income attributable to the greater of (i) the amount by which it fails the 75% gross income test, discussed below and (ii) the excess of 90% of the gross income of Simon Property over the amount of such income attributable to sources which qualify under the 95% income test discussed below (b) multiplied by a fraction intended to reflect its profitability.

Simon Property will be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed, or deemed distributed, during each calendar year. The required distribution for a calendar year equals the sum of (i) 85% of its REIT ordinary income for the year, (ii) 95% of its REIT capital gain net income for the year, and (iii) any undistributed taxable income from prior periods.

If Simon Property acquires any asset from a corporation which is or has been a C corporation, *i.e.*, generally a corporation subject to full corporate-level tax, in a transaction such as a merger or other reorganization in which the basis of the acquired asset in its hands is determined by reference to the basis of the asset in the hands of the C corporation, then the acquired asset will be treated as a built-in gain asset. If Simon Property subsequently recognizes gain on the disposition of the built-in gain asset during the ten-year period beginning on the date on which Simon Property acquired the asset, then Simon Property will be subject to tax at the highest regular corporate tax rate on this gain to the extent of the built-in gain. The built-in gain is equal to the excess of (a) the fair market value of the asset over (b) Simon Property's adjusted basis in the asset, in each case determined as of the beginning of the ten-year period. The results described in this paragraph with respect to the recognition of built-in gain assume that the C Corporation from which the built-in gain asset was acquired will not make an election pursuant to section 1.337(d)-7(c)(5) of the Treasury Regulations. An election pursuant to section 1.337(d)-7(c)(5) of the Treasury Regulations would cause the C corporation to recognize gain as if it had sold the property acquired by Simon Property to an unrelated party at fair market value. In the event of such an election, the property acquired by Simon Property would not be treated as a built-in gain asset and Simon Property would not be subject to a corporate level tax if it sold the property within ten years.

Simon Property could be subject to a 100% tax attributable to certain non-arm's length transactions with any of its taxable REIT subsidiaries or with tenants that receive services from such taxable REIT subsidiaries.

Requirements for Qualification as a REIT. The Internal Revenue Code defines a REIT as a corporation, trust or association that:

is managed by one or more trustees or directors;

issues transferable shares or transferable certificates to evidence its beneficial ownership;

would be taxable as a domestic corporation, but for Sections 856 through 859 of the Internal Revenue Code;

is not a financial institution or an insurance company within the meaning of certain provisions of the Internal Revenue Code;

is beneficially owned by 100 or more persons;

not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities, during the last half of each taxable year; and

meets certain other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Internal Revenue Code provides that the first four conditions must be met during the entire taxable year and that the fifth condition must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months. The fifth and sixth conditions do not apply until after the first taxable year for which an election is made to be

taxed as a REIT. For purposes of the sixth condition, pension funds and certain other tax-exempt entities are treated as individuals, subject to a "look-through" exception with respect to pension funds.

We believe that Simon Property has satisfied each of the above conditions. In addition, Simon Property's charter provides for restrictions regarding ownership and transfer of shares. These restrictions are intended to assist Simon Property in continuing to satisfy the share ownership requirements described above. These ownership and transfer restrictions are described in "Restrictions on Ownership and Transfer." These restrictions, however, may not ensure that Simon Property will, in all cases, be able to satisfy the share ownership requirements. If Simon Property fails to satisfy these share ownership requirements, its status as a REIT will terminate. However, if Simon Property complies with the rules contained in applicable Treasury Regulations that require Simon Property to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that Simon Property failed to meet the requirement described in the sixth condition, Simon Property will be treated as having met this requirement.

In addition, a corporation may not elect to become a REIT unless its taxable year is the calendar year. Simon Property has and will continue to have a calendar taxable year.

Ownership of Interests in Partnerships and Qualified REIT Subsidiaries. In the case of a REIT which is a partner in a partnership, the Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership. Also, the REIT will be deemed to be entitled to the income of the partnership attributable to its proportionate share of such assets. The character of the assets and gross income of the partnership retain the same character in the hands of the REIT for purposes of Section 856 of the Internal Revenue Code, including satisfying the gross income tests and the asset tests. Thus, Simon Property's proportionate share of the assets and items of income of the Operating Partnership, including the Operating Partnership's share of these items of any partnership in which it owns an interest, are treated as Simon Property's assets and items of income for purposes of applying the requirements described in this prospectus, including the income and asset tests described below. We have included a brief summary of the rules governing the federal income taxation of partnerships and their partners below in " Tax Aspects of the Operating Partnership and the Joint Ventures." Simon Property has direct control of the Operating Partnership and will continue to operate it consistent with the requirements for Simon Property's qualification as a REIT. However, the Operating Partnership has non-managing ownership interests in certain joint ventures. If a joint venture takes or expects to take actions which could jeopardize Simon Property's status as a REIT or subject Simon Property to tax, we may be forced to dispose of our interest in such joint venture. In addition, it is possible that a joint venture could take an action which could cause Simon Property to fail a REIT income or asset test, and that we would not become aware of such action in a time frame which would allow us to dispose of our interest in the joint venture or take other corrective action on a timely basis. In such a case, Simon Property could fail to qualify as a REIT.

Simon Property owns 100% of the stock of several subsidiaries that are qualified REIT subsidiaries and may acquire stock of one or more new subsidiaries. A corporation will qualify as a qualified REIT subsidiary if 100% of its stock is held by Simon Property and Simon Property does not elect to treat the subsidiary as a taxable REIT subsidiary. A qualified REIT subsidiary will not be treated as a separate corporation, and all assets, liabilities and items of income, deduction and credit of a qualified REIT subsidiary will be treated as assets, liabilities and such items, as the case may be, of Simon Property for all purposes of the Internal Revenue Code, including the REIT qualification tests. For this reason, references under "Certain Federal Income Tax Considerations" to Simon Property's income and assets include the income and assets of each qualified REIT subsidiary. A qualified REIT subsidiary will not be subject to federal income tax, and our ownership of the voting stock of a qualified REIT subsidiary will not violate the restrictions against ownership of securities of any one issuer which constitute more than 10% of the value or total voting power of such issuer or more than 5% of the value of our total assets, as described below under " Asset Tests."

Ownership of Interests in Taxable REIT Subsidiaries. The Internal Revenue Code provides that for taxable years beginning after December 31, 2000, REITs may own more than ten percent of the voting power and value of securities in taxable REIT subsidiaries. A corporation is treated as a taxable REIT subsidiary if a REIT owns stock in the corporation and the REIT and the corporation jointly elect such treatment. In the event such an election is made, any corporation of which the taxable REIT subsidiary owns 35% of the total voting power or value of the outstanding securities is also treated as a taxable REIT subsidiary.

Although the activities and income of taxable REIT subsidiaries are subject to tax, taxable REIT subsidiaries are permitted to engage in activities that the REIT could not engage in itself. Additionally, under certain limited conditions, a REIT may receive income from a taxable REIT subsidiary that would be treated as rent. See the discussion under " Income Tests" below. As discussed more fully under " Asset Tests" below, not more than 20% of the fair market value of a REIT's assets can be composed of securities of taxable REIT subsidiaries and stock of a taxable REIT subsidiary is not a qualified asset for purposes of the 75% asset test.

The amount of interest on related party debt a taxable REIT subsidiary may deduct is limited. Further, a 100% excise tax applies to any interest payments by a taxable REIT subsidiary to its affiliated REIT to the extent the interest rate is set above a commercially reasonable level. A taxable REIT subsidiary is permitted to deduct interest payments to unrelated parties without any such restrictions.

The Internal Revenue Code allows the Internal Revenue Service to reallocate costs between a REIT and its taxable REIT subsidiary. Any deductible expenses allocated away from a taxable REIT subsidiary would increase its tax liability, and the amount of such increase would be subject to interest charges. Further, any amount by which a REIT understates its deductions and overstates those of its taxable REIT subsidiary will, subject to certain exceptions, be subject to a 100% excise tax.

Affiliated REIT. Simon Property owns, indirectly through the Operating Partnership, more than 99% of the outstanding stock of Retail Property Trust, a Massachusetts business trust, and Chelsea Property Group, Inc., a Maryland corporation, each of which has elected to be taxed as a REIT, and Simon Kravco LLC, a Delaware limited liability company that has elected to be taxed as a corporation and which we anticipate will elect to be taxed as a REIT beginning with the 2004 tax year. Each of these subsidiaries must meet the tests discussed above with respect to Simon Property. Each of them may be subject to tax on certain of its income as discussed above. See, " Taxation of Simon Property General." The failure of any or all of them to qualify as a REIT, once such status has been elected, would cause Simon Property to fail to qualify as a REIT because it would own more than 10% of the voting securities and value of an issuer that was not a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary. We believe that each of these subsidiaries has been organized and operated in a manner that will permit it to qualify as a REIT.

Income Tests. Simon Property must satisfy two gross income requirements annually to maintain qualification as a REIT. First, in each taxable year Simon Property must derive directly or indirectly at least 75% of its gross income, excluding gross income from prohibited transactions, from investments relating to real property or mortgages on real property, including "rents from real property," dividends from other REITs, but not taxable REIT subsidiaries, and, in certain circumstances, interest, or from certain types of temporary investments. Second, each taxable year Simon Property must derive at least 95% of its gross income, excluding gross income from prohibited transactions, from these real property investments, dividends, including dividends from taxable REIT subsidiaries, interest and gain from the sale or disposition of stock or securities, or from any combination of the foregoing. The term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of the amount depends in whole or in part on the income or profits of any person. However, an

amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents Simon Property receives will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if the following conditions are met:

- the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales;

- except for rents received from a taxable REIT subsidiary as discussed below, rents received from a tenant will not qualify as "rents from real property" in satisfying the gross income tests if the REIT, or an actual or constructive owner of 10% or more of the REIT, actually or constructively owns, in the case of a corporate tenant, 10% or more of the stock by vote or value of such tenant, and, in the case of any other tenant, 10% or more of the profits or capital of such tenant;

- if such rent is received from a taxable REIT subsidiary with respect to any property, no more than 10% of the leased space at the property may be leased to taxable REIT subsidiaries and related party tenants and rents received from such property must be substantially comparable to rents paid by other tenants, except related party tenants, of the REIT's property for comparable space;

- if rent attributable to personal property, leased in connection with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to personal property will not qualify as "rents from real property;" and

- for rents received to qualify as "rents from real property," the REIT generally must not furnish or render services to the tenants of the property, subject to a 1% *de minimis* exception, other than through an independent contractor from whom the REIT derives no revenue or through a taxable REIT subsidiary. The REIT may, however, directly perform certain services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property.

Simon Property does not and will not, and as the general partner of the Operating Partnership, will not permit the Operating Partnership to:

- charge rent for any property that is based in whole or in part on the income or profits of any person, except by reason of being based on a percentage of receipts or sales, as described above;

- lease any property to a related party tenant unless we determine that the income from such lease would not jeopardize Simon Property's status as a REIT;

- lease any property to a taxable REIT subsidiary, unless we determine not more than 10% of the leased space at such property is leased to related party tenants and Simon Property's taxable REIT subsidiaries and the rents received from such lease are substantially comparable to those received from other tenants, except rent from related party tenants, of Simon Property for comparable space;

- derive rental income attributable to personal property, other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease; or

- perform services considered to be rendered to the occupant of the property, other than through an independent contractor from whom we derive no revenue or through a taxable REIT

subsidiary, unless we determine that the income from such services would not jeopardize Simon Property's status as a REIT.

Although members of the Simon family may own up to a 10% interest in our tenants, the Simon family does not currently own a sufficient interest to cause any of our tenants to become a related party tenant with the exception of one small tenant in Circle Center Mall in Indianapolis, Indiana. Income from a related party tenant does not qualify in satisfying our 75% income test or our 95% income test. As previously indicated, we will not lease property to any related party tenant unless we determine that the income from such tenant would not jeopardize Simon Property's status as a REIT.

Although the Operating Partnership and other affiliates of Simon Property will perform all development, construction and leasing services for, and will operate and manage, wholly-owned properties directly without using an "independent contractor," we believe that, in almost all instances, the only services to be provided to lessees of these properties will be those usually or customarily rendered in connection with the rental of space for occupancy only. To the extent any noncustomary services are provided, such services shall generally, but not necessarily in all cases, be performed by a taxable REIT subsidiary. In any event, Simon Property intends that the amounts received by Simon Property for noncustomary services that may constitute "impermissible tenant service income" from any one property will not exceed 1% of the total amount collected from such property during the taxable year.

A REIT is subject to a 100% excise tax on any rents it receives from tenants receiving services from the REIT's taxable REIT subsidiary to the extent such rents are above the amount that would be charged to tenants not receiving such services, unless:

the taxable REIT subsidiary provides a substantial amount of services to third parties at the same prices offered to tenants of the REIT;

rents for comparable leased space at the REIT's property received from tenants not receiving such services and leasing at least 25% of the REIT's net leasable space are comparable to rents charged to tenants who receive services from the taxable REIT subsidiary and