

Cryoport, Inc.  
Form 10-KT  
March 13, 2017

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form 10-K**

**..ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**<sup>x</sup>TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from April 1, 2016 to December 31, 2016

**Commission File Number: 001-34632**

**CRYOPORT, INC.**

**(Exact Name of Registrant as Specified in its Charter)**

**Nevada** **88-0313393**  
**(State or other jurisdiction of (I.R.S. Employer**

**incorporation or organization) Identification No.)**

**17305 Daimler St.**

**Irvine, CA 92614**

**(Address of principal executive offices)**

**(949) 470-2300**

**(Registrant's telephone number, including area code)**

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

<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
Common Stock, \$0.001 par value	The NASDAQ Stock Market LLC
Warrants to purchase Common Stock	The NASDAQ Stock Market LLC

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

Warrants to Purchase Common Stock

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T

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(§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☐

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 ☐ Accelerated filer ☐  
Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☒

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

The aggregate market value of common stock held by non-affiliates of the registrant as of September 30, 2016 was \$29,264,742 based on the closing sale price of such common equity on such date (excluding 272,916 shares of common stock held by directors and officers, and any stockholders whose ownership exceeds five percent of the shares outstanding as of September 30, 2016).

As of March 1, 2017, there were 17,604,283 shares of the registrant's common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

None

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## EXPLANATORY NOTE REGARDING THE TRANSITION REPORT

*On September 21, 2016, Cryoport, Inc. changed its fiscal year from a fiscal year ending March 31 of each year to a fiscal year ending December 31 of each year, effective as of December 31, 2016. This change resulted in a transition period from April 1, 2016 through December 31, 2016 (the “Transition Period”). Unless otherwise indicated herein, comparisons of fiscal year results in the “Item 7 — Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Part II of this Transition Report on Form 10-K (this “Form 10-K”), and elsewhere herein, compare results for the nine-month transition period from April 1, 2016 through December 31, 2016 to the nine-month unaudited period from April 1, 2015 through December 31, 2015, and the 12-month period of the fiscal year ended March 31, 2016 to the 12-month period of the fiscal year ended March 31, 2015, respectively, and accordingly are not comparing results for a comparable period of time. Amounts included herein for the nine months ended December 31, 2015 are unaudited.*

*Unless the context otherwise requires, all references in this Form 10-K to the “Company”, “we,” “us,” “our,” or “Cryoport” refer to Cryoport, Inc. and our wholly owned subsidiary, Cryoport Systems, Inc. In addition, we own or have rights to the registered trademark Cryoport® (both alone and with a design logo) and Cryoport Express® (both alone and with a design logo). All other Company names, registered trademarks, trademarks, and service marks included in this Annual Report are trademarks, registered trademarks, service marks, or trade names of their respective owners.*

## FORWARD-LOOKING STATEMENTS

*This Form 10-K contains certain forward-looking statements. These forward-looking statements involve a number of risks and uncertainties. These forward-looking statements can generally be identified as such because the context of the statement will include certain words, including but not limited to, “believes,” “may,” “will,” “expects,” “intends,” “estimates,” “anticipates,” “plans,” “seeks,” “continues,” “predicts,” “potential,” “likely,” or “opportunity,” and also contains predictions, estimates and other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and in reliance upon the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are based on the current beliefs of the Company’s management, as well as assumptions made by and information currently available to the Company’s management. Readers of this Form 10-K should not put undue reliance on these forward-looking statements, which speak only as of the time this Form 10-K was filed with the Securities and Exchange Commission (the “SEC”). Reference is made in particular to forward-looking statements regarding the success of our products, product approvals, product sales, revenues, development timelines, product acquisitions, liquidity and capital resources and trends. Forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified. Cryoport Inc.’s actual results may differ materially from the results projected in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in this Annual Report on Form 10-K, including the “Risk Factors” in “Item 1A — Risk Factors”, and in “Item 7 —*

*Management's Discussion and Analysis of Financial Condition and Results of Operations" included in Part II.*

*Past financial or operating performance is not necessarily a reliable indicator of future performance, and you should not use our historical performance to anticipate results or future period trends. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our results of operations and financial condition. Except as required by law, we do not undertake to update any such forward-looking statements and expressly disclaim any duty to update the information contained in this Form 10-K.*

## **PART I**

### **Item 1. Business**

#### **Overview**

We provide cryogenic logistics solutions to the life sciences industry through a combination of proprietary packaging, information technology and specialized cold chain logistics knowhow. We view our solutions as disruptive to the “older technologies” of dry ice and liquid nitrogen, in that our solutions are comprehensive and combine our competencies in configurations that are customized to our client’s requirements. We provide comprehensive, reliable, economic alternatives to all existing logistics solutions and services utilized for frozen shipping in the life sciences industry (e.g., personalized medicine, cell therapies, stem cells, cell lines, vaccines, diagnostic materials, semen, eggs, embryos, cord blood, bio-pharmaceuticals, infectious substances, and other commodities that require continuous exposure to cryogenic or frozen temperatures). As part of our services we provide the ability to monitor, record and archive crucial information for each shipment that can be used for scientific and regulatory purposes.

Our Cryoport Express® Solutions include a sophisticated cloud-based logistics operating platform, which is branded as the Cryoport™. The Cryoport™ supports the management of the entire shipment and logistics process through a single interface, including initial order input, document preparation, customs clearance, courier management, shipment tracking, issue resolution, and delivery. In addition, it provides unique and incisive information dashboards and validation documentation for every shipment. The Cryoport™ records and retains a fully documented “chain-of-custody” and, at the client’s option, “chain-of-condition” for every shipment, helping ensure that quality, safety, efficacy, and stability of shipped commodities are maintained throughout the process. This recorded and archived information allows our clients to meet exacting requirements necessary for scientific work and for proof of regulatory compliance during the logistics phase.

The branded packaging for our Cryoport Express® Solutions includes our liquid nitrogen dry vapor shippers, the Cryoport Express® Shippers. The Cryoport Express® Shippers are engineered shippers that can consist of cost-effective and reusable cryogenic transport shippers, which utilizes an innovative application of “dry vapor” liquid nitrogen (“LN2”) technology and SmartPak Condition Monitoring Systems. Cryoport Express® Shippers are International Air Transport Association (“IATA”) certified and validated to maintain stable temperatures of minus 150° Celsius and below for a 10-day dynamic shipment period. The Company currently features three Cryoport Express® Shippers: the Standard Dry Shipper (holding up to 75 2.0 ml vials), the High Volume Dry Shipper (holding up to 500 2.0 ml vials) and Cryoport Express® CXVC1 Shipper (holding up to 1,500 2.0 ml vials). In addition, we assist clients with internal secondary packaging (e.g., vials, canes, straws and plates).

Our most used solution is the “turnkey” solution, which can be accessed directly through our cloud-based Cryoport™ or by contacting Cryoport Client Care for order entry. Once an order is placed and cleared, we ship a fully charged Cryoport Express® Shipper to the client who conveniently loads its frozen commodity into the inner chamber of the Cryoport Express® Shipper. The customer then closes the shipper package and reseals the shipping box displaying the next recipient’s address (“Flap A”) for pre-arranged carrier pick up. Cryoport arranges for the pick-up of the parcel by a shipping service provider, which is designated by the client or chosen by Cryoport, for delivery to the client’s intended recipient. The recipient simply opens the shipper package and removes the frozen commodity that has been shipped. The recipient then reseals the package, displaying the nearest Cryoport Staging Center address, making it ready for pre-arranged carrier pick-up. When the Cryoport Staging Center receives the Cryoport Express® Shipper, it is cleaned, put through quality assurance testing, and returned to inventory for reuse.

In late 2012, we shifted our focus to become a comprehensive cryogenic logistics solutions provider. Recognizing that clients in the life sciences industry have varying requirements, we unbundled our technologies, established customer facing solutions and took a consultative approach to the market. Today, in addition to our standard turn-key solution, described above, we also provide the following customer facing, value-added solutions to address our various clients’ needs:

**“Customer Staged Solution,”** designed for clients making 50 or more shipments per month. Under this solution, we supply an inventory of our Cryoport Express® Shippers to our customer, in an uncharged state, enabling our customer (after training/certification) to charge them with liquid nitrogen and use our Cryoport™ to enter orders with shipping and delivery service providers for the transportation of the package.

**“Customer Managed Solution,”** a limited customer implemented solution, whereby we supply our Cryoport Express® Shippers to clients in a fully charged state, but leaving it to the client to manage the shipping, including the selection of the shipping and delivery service provider and the return of the shipper to us.

**“powered by Cryoport™,”** available to providers of shipping and delivery services who seek to offer a “branded” cryogenic logistics solution as part of their service offerings, with “powered by Cryoport™” appearing prominently on the offering software interface and packaging. This solution can also be private labeled upon meeting certain

requirements, such as minimum required shipping volumes.

***“Integrated Solution,”*** which is our total outsource solution. It is our most comprehensive solution and involves our management of the entire cryogenic logistics process for our client, including Cryoport employees at the client’s site to manage the client’s cryogenic logistics function in total.

***“Regenerative Medicine Point-of-Care Repository Solution,”*** designed for allogeneic therapies. In this solution we supply our Cryoport Express® Shipper to ship and store cryogenically preserved life science products for up to six days (or longer periods with supplementary shippers) at a point-of-care site, with the Cryoport Express® Shipper serving as a temporary freezer/repository enabling the efficient and effective distribution of temperature sensitive allogeneic cell-based therapies without the expense, inconvenience, and potential costly failure of an on-sight, cryopreservation device.

***“Personalized Medicine and Cell-based Immunotherapy Solution,”*** designed for autologous therapies. In this solution our Cryoport Express® Shipper serves as an enabling technology for the safe transportation of manufactured autologous cellular-based immunotherapy market by providing a comprehensive logistics solution for the verified chain of custody and condition transport from, (a) the collection of the patient’s cells in a hospital setting, to (b) a central processing facility where they are manufactured into a personalized medicine, to (c) the safe, cryogenically preserved return of these irreplaceable cells to a point-of-care treatment facility. If required, the Cryoport Express® Shipper can then serve as a temporary freezer/repository to allow the efficient distribution of this personalized medicine to the patient when and where the medical provider needs it most without the expense, inconvenience, and potential costly failure of an on-sight, cryopreservation device.



Cryoport is continuously expanding its solutions offerings in response to its customer's needs.

In April 2016, Cryoport launched its Temperature Controlled Logistics Consulting Division to assist life sciences companies in developing strategies for global cold chain logistics management and contingency options to protect their valuable, and often irreplaceable, biological commodities. The launch of Cryoport's Temperature Controlled Logistics Consulting Division addresses the demand created by the worldwide advances in cellular based therapies, including immunotherapies, stem cells and CAR T-cells. Cell-based immunotherapies are causing broad shifts and challenges for the life sciences industry, including how to obtain, properly store and transport the growing number of new, individualized, temperature sensitive therapies. Improper temperature maintenance or temperature excursions during any portion of a logistics cycle can adversely affect the viability of these biologically based commodities. Consequently, strategic, global logistics planning for cryogenic cold chain solutions has taken on a strategic importance to the life sciences industry and a rapidly growing demand for consulting expertise.

In June 2016, Cryoport further broadened its capabilities and solutions offerings beyond cryogenic logistics and transportation services to include temperature-controlled storage solutions that include cGMP compliant biorepositories at controlled temperatures and climatized systems. Cryoport Biostorage services feature extensive management and monitoring, including controlled access to commodities, periodic temperature and activity reports, as well as 21 CFR, Part II compliant monitoring with 24/7/365 alarm response.

Also in June 2016, Cryoport announced a new Laboratory Relocation Service; for transport of complete laboratories. The Laboratory Relocation Service manages the safe, secure and proper transportation of materials that are stored in labs as well as lab equipment and instruments. Relocation projects can range in size from the relocation of a fully equipped lab to the move of a single freezer.

## **Competitive Advantages**

With our first-to-market cryogenic logistics solutions for the life sciences industry, we have established a unique lead over potential competitors. Furthermore, we are not aware of a company that offers comparable solutions and has the same capabilities Cryoport has as a global provider of advanced, validated cryogenic logistics solutions. As a solutions company working with our tools in packaging, information technology, and cryogenic logistics, we address our growing cryogenic logistics market in innovative and creative ways.

The majority of our competition utilizes "old technologies." In fact, most of our market still uses dry ice and liquid nitrogen. In the case of dry ice, the technology does not deliver cryogenic temperatures and, consequently, this medium allows cells to degrade, sometimes beyond any utility. When biology was less developed, dry ice was

believed to be acceptable and was readily available.

Liquid nitrogen, on the other hand, while effective, is bulky, expensive and has special handling requirements. Both dry ice and liquid nitrogen are classified “hazardous” by shipping companies and regulatory authorities. In addition to being ineffective and/or classified as “dangerous goods,” they are inefficient when compared to Cryoport’s solutions. Conversely, Cryoport’s solutions are classified as non-hazardous.

Having been validated and qualified as a solutions provider for hundreds of life sciences companies and institutions, Cryoport has logged over 30,000 shipments to over 100 countries with hundreds of life sciences materials. In addition, we have generally experienced minimal client attrition following such shipments.

While we look at companies such as Thermo Fisher Scientific, AmerisourceBergen Corporation and other cold-chain logistics providers as potential competitors, some of these companies are also our customers.

We think our competitive position is further enhanced by our respective “powered by Cryoport<sup>SM</sup>” partnership agreements with FedEx, DHL and UPS, who collectively, account for approximately 85% of world’s air freight and who, individually, have been expanding their offerings of cold chain logistics solutions to the life sciences industry. In short, we are the cryogenic solution for each of them, employing our packaging, our software and our logistics expertise.

The challenge for our seasoned, professional management team is to maintain what we believe to be a four year lead in the marketplace. In other words, we think it would take a serious potential competitor at least four years to build out the competencies that we possess and the knowledge we have of the marketplace.

In addition to our intellectual property consisting of three issued U.S. patents and one pending U.S. patent application and our lead as the first to market mover, we think our biggest competitive advantage is our speed to market with new solutions and our sensitivity to anticipate and react to market needs. Our solutions are comprehensive and it is in our “DNA” to maintain our market lead by employing the best people in the industry as well as our current and new technologies to maintain that lead.

Given today’s environmental concerns, we also consider the fact that we are “green” to be a competitive advantage. Our packaging materials are recyclable and the key components are reusable. The fact that the inner and outer shells of our shippers are made of aircraft-grade aluminum makes these components recyclable as well. We take our responsibility toward the environment seriously.

### **Strategic Logistics Alliances**

We have sought to establish strategic alliances as a long-term method of marketing our solutions providing minus 150° Celsius shipping condition to the life sciences industry. We have focused our efforts on leading companies in the logistics services industry as well as participants in the life sciences industry. In connection with our alliances with providers of shipping services, we refer to their offerings as “powered by Cryoport<sup>SM</sup>” to reflect our solutions being integrated into our alliance partner’s services.

Cryoport now serves and supports the three largest integrators in the world, responsible for over 85% of worldwide airfreight, with its advanced cryogenic logistics solutions for life sciences. We operate with each independently and confidentially in support of their respective market and sales strategies. In addition, we plan to establish additional strategic partnerships with integrators and freight forwarders.

**FedEx.** In January 2013, we entered into a master agreement with Federal Express Corporation (“FedEx”) (the “FedEx Agreement”) renewing these services and providing FedEx with a non-exclusive license and right to use a customized version of our Cryoport<sup>TM</sup> for the management of shipments made by FedEx customers. The FedEx Agreement became effective on January 1, 2013 and was amended in December 2015 to extend the initial term for an additional three years, expiring on December 31, 2018. FedEx has the right to terminate this agreement at any time for convenience upon 180 days’ notice.

Under our FedEx Agreement, we provide frozen shipping logistics services through the combination of our purpose-built proprietary technologies and turnkey management processes. FedEx markets and sells Cryoport’s services for frozen temperature-controlled cold chain transportation as its FedEx<sup>®</sup> Deep Frozen Shipping Solution on a non-exclusive basis and at its sole expense. As part of the solution, Cryoport has developed a FedEx branded version

of the Cryoport<sup>TM</sup> software platform, which is “powered by Cryoport<sup>SM</sup>” for use by FedEx and its customers, giving them access to the full capabilities of our cloud-based logistics management software platform.

**DHL.** In June 2014, we entered into a master agreement with LifeConEx, a part of DHL Global Forwarding (“DHL”). DHL has enhanced its cold chain logistics offerings to its life sciences and healthcare customers with Cryoport’s validated cryogenic solutions. DHL offers Cryoport’s cryogenic solutions through its worldwide Thermonet network of Certified Life Sciences Stations under the DHL brands as “powered by Cryoport<sup>SM</sup>”. In addition, DHL’s customers have direct access to our cloud-based order entry and tracking portal to order Cryoport Express<sup>®</sup> Solutions and receive preferred DHL shipping rates and discounts. Our proprietary logistics management operating platform, the Cryoport<sup>TM</sup>, is integrated with DHL’s tracking and billing systems to provide DHL life sciences and healthcare customers with a seamless way of accessing critical information regarding shipments of biological material worldwide.

**UPS.** In October 2014, we added United Parcel Services, Inc. (“UPS”) as our third major distributor by entering into an agreement with UPS Oasis Supply Corporation, a part of UPS, whereby UPS offers our validated and comprehensive cryogenic solutions to its life sciences and healthcare customers on a global basis. Over the course of rolling out our new relationship with UPS, UPS customers will have direct access to our cloud-based order entry and tracking portal to order Cryoport Express<sup>®</sup> Solutions and gain access to UPS’s broad array of domestic and international shipping and logistics solutions at competitive prices. Our proprietary logistics management operating platform, the Cryoport<sup>TM</sup>, is integrated with UPS’s tracking and billing systems to provide UPS life sciences and healthcare customers with a seamless way of accessing critical information regarding shipments of biological material worldwide.

**Worthington Industries.** In April 2016, we signed a strategic partnership with Worthington Industries, a maker of cryogenic storage vessels and equipment. Through this partnership, Worthington’s CryoScience by Taylor Wharton business will design and manufacture biostorage and logistics equipment for use in Cryoport’s life sciences cryogenic logistics solutions. With the added competencies that Worthington’s CryoScience by Taylor Wharton brings to Cryoport, we can concentrate on further advancing and expanding our cold chain solutions to meet the growing and varied demands for validated cryogenic logistics solutions in the life sciences market. Working in tandem with Worthington allows Cryoport to meet the demands of a more diverse clientele through a broader offering, which in turn increases our revenue opportunity as well as provides us the opportunity to rapidly scale to support our clients commercialization activities.

***Pacific Bio-Material Management.*** Through a strategic partnership with Pacific Bio-Material Management, Inc. ("PBMMI") entered into in May 2016, Cryoport now offers storage solutions that include cGMP compliant biorepositories at controlled temperatures and climatized systems with effective redundancies such as back-up freezers and power. Cryoport Biostorage services features extensive management and monitoring, including controlled access to commodities, periodic temperature and activity reports, as well as 21 CFR, Part 11 compliant monitoring with 24/7/365 alarm response.

### **Cryoport's Positioning in the Life Sciences Industry**

Life sciences technologies are expected to have a significant impact on global society over the next 25 years. In the United States alone, the life sciences industry is made up of 6,000 identifiable establishments. However, the industry is growing globally in a way where research and manufacturing pipelines span across the globe, which increases the need to mitigate logistics risk.

The total cold chain logistics market has historically grown 70% faster per annum than the total logistics market. For 2011, global cold chain logistics transportation costs were reported to be \$7.2 billion; about \$1.5 billion within the cryogenic range of requirements. By 2017, transportation cost alone, for global life sciences cold chain logistics, is forecasted to grow to \$9.3 billion, a 41% increase, and twice the growth of the overall market.

In addition, with the recent advancements in the development of biologics and cell-based therapies, scientists, intermediaries, and manufacturers require the means for cryogenically transporting their work. Temperatures must be maintained below the "glass point" (generally, minus 136° Celsius) while shipping these therapies to ensure that the shipped specimens are not subject to degradation that could impact the characteristics and efficacy of those specimens.

While we estimate that our solutions currently offer comprehensive and technology-based monitoring and tracking for a potential of six to seven million deep frozen shipments globally on an annual basis, we also believe that with investment in our services, adaptations of our solutions can be applied to a large portion of an additional fifty-five to sixty million annual shipments requiring ambient (between 20° and 25° Celsius), chilled (between 2° and 8° Celsius) or frozen (minus 10° Celsius or less) temperatures.

Cryoport's clients include companies and institutions that require reliable cryogenic logistics solutions such as therapy developers for personalized medicine, bio-pharmaceuticals, research, contract research organizations, diagnostic laboratories, contract manufacturers, cord blood repositories, vaccine manufacturers, animal husbandry related companies, and in-vitro fertilization clinics.

## Life Sciences Agreements

**Zoetis.** In December 2012, we signed an agreement with Pfizer Inc. relating to Zoetis Inc. (formerly the animal health business unit of Pfizer Inc.) pursuant to which we were engaged to manage frozen shipments of a key poultry vaccine. Under this arrangement, Cryoport provides on-site logistics personnel and its logistics management operating platform, the Cryoport<sup>TM</sup> to manage shipments from the Zoetis manufacturing site in the United States to domestic customers as well as various international distribution centers. As part of our logistics management services, Cryoport is constantly analyzing logistics data and processes to further introduce economies and reliability throughout the network, ensuring products arrive at their destinations in specified conditions, on-time and with the optimum utilization of resources. The Company manages Zoetis' total fleet of shippers used for this purpose, including liquid nitrogen shippers. In July 2013, the agreement was amended to expand Cryoport's scope to manage all logistics of Zoetis' key frozen poultry vaccine to all Zoetis' international distribution centers as well as all domestic shipments. In October 2013, the agreement was further amended to further expand Cryoport's role to include the logistics management for a second poultry vaccine. In September 2015, the agreement was further amended and extended through September 2018, subject to certain termination and extension provisions.

In summary, we serve the life sciences industry with cryogenic logistics solutions that are advanced, comprehensive, reliable, validated, and efficient. Our clients include those companies and institutions that have logistics requirements for personalized medicine, immunotherapies, stem cells, cell lines, tissue, vaccines, in-vitro fertilization, cord blood and other temperature sensitive commodities of life sciences.

## **Cryoport Express® Solutions**

Our Cryoport Express® Solutions are currently made up primarily of the Cryoport™ software platform, Cryoport Express® Shippers, Cryoport Express® SmartPak Condition Monitoring Systems and our life sciences cold chain logistics expertise. Cryoport Express® Solutions are focused on improving the reliability of frozen shipping while reducing our clients' overall operating costs. This is accomplished by providing complete end-to-end solutions for the transport and monitoring of frozen or cryogenically preserved biological or other materials shipped primarily through distribution partners, such as FedEx, UPS, and DHL, and specialty couriers.

The information technology is centered on a cryogenic logistics operating platform called the Cryoport™. The Cryoport™ is a cloud-based cryogenic logistics operating platform. Among its functions, the Cryoport™ programmatically assists in the management of all aspects of the logistics operations beginning with order entry and continuing to monitor, log data, track shipments and store vital information. The Cryoport™ is capable of producing a variety of Cryoport Express® Analytics which report shipment performance metrics and evaluates temperature-monitoring and other data collected by the Cryoport Express® SmartPak Condition Monitoring System during shipment.

Cryoport Express® Solutions are focused on improving the reliability of cryogenic logistics while reducing our clients' overall operating costs. This is accomplished by providing tailored and complete end-to-end solutions for cryogenic logistics requirements including management, transport, monitoring and data collection regarding frozen/cryogenically preserved biological commodities or pharmaceutical materials shipped primarily through integrators and Cryoport's logistics network which includes specialty couriers, brokers and other intermediaries. Certain of the intellectual property underlying our Cryoport Express® Solutions, other than that related to the Cryoport Express® Shippers, have been, and continue to be, developed under a contract with an outside software development company, with the underlying technology licensed to Cryoport for exclusive use in our field of use.

## ***Cryoportal™***

The Cryoport™ is used by Cryoport, our clients and business partners to automate the entry of orders, prepare customs documentation and to facilitate status and location monitoring of shipped orders while in transit. It is used by Cryoport to assist in managing logistics operations and to reduce administrative costs typically provisioned through manual labor relating to order-entry, order processing, preparation of shipping documents and back-office accounting. It is also used to support the high level of customer service expected by the industry. Certain features of the Cryoport™ reduce operating costs and facilitate the scaling of Cryoport's business, but more importantly they offer significant value to the customer in terms of cost avoidance and risk mitigation. Examples of these features include automation of order entry, development of Key Performance Indicators ("KPI's") to support our efforts for continuous process improvements in our business, and programmatic exception monitoring to detect and sometimes anticipate delays in

the shipping process, often before the customer or the shipping company becomes aware of them.

The Cryoport<sup>TM</sup> also serves as the communications center for the management, collection and analysis of SmartPak data collected from SmartPak Condition Monitoring System in the field. Data is converted into pre-designed reports containing valuable and often actionable information that becomes the quality control standard or “pedigree” of the shipment. This information can be utilized by Cryoport to provide valuable feedback to our clients relating to their shipments.

The Cryoport<sup>TM</sup> software platform has been developed as a “carrier-agnostic” system, allowing the client and the Cryoport Client Care team to work with a single or multiple integrators, freight forwarders, couriers and/or brokers depending on the specific requirements and client preferences. To increase operational efficiencies, Cryoport<sup>TM</sup> has already been integrated with the tracking systems of FedEx, DHL and UPS and we plan to integrate it with other key logistics providers.

The Cryoport<sup>TM</sup> was developed for time- and temperature-sensitive shipments that are required to be maintained at specific temperatures, such as ambient (between 20° and 25° Celsius), chilled (between 2° and 8° Celsius) or frozen (minus 10° Celsius or less all the way down to cryogenic temperatures (minus 150° Celsius) to ensure that the shipped specimen is not subject to degradation or out of its designated “safe” range. While our current focus is on cryogenic logistics within the life sciences industry using the logistics solutions described herein, the use of the Cryoport<sup>TM</sup> can and may be extended into other temperature ranges of the cold chain.

To our knowledge, the Cryoport<sup>TM</sup> software platform is unique to cold chain logistics in the life sciences industry. It is robust and has considerable capabilities. We frequently are complimented about the Cryoport<sup>TM</sup> and our strategic alliance partners chose to license the Cryoport<sup>TM</sup> rather than attempt to duplicate its features in their logistics management software. We have engineered in a way that gives us the ability to offer the “powered by Cryoport<sup>SM</sup>” strategy to our strategic alliance partners.



### ***The Cryoport Express® Shippers***

Our Cryoport Express® Shippers are cryogenic dry vapor shippers capable of maintaining cryogenic temperatures of minus 150° Celsius or below for a dynamic shipping period of 10 or more days. A dry vapor cryogenic shipper is a device that uses liquid nitrogen contained inside a vacuum insulated vessel which serves as a refrigerant to provide stable storage temperatures below minus 150° Celsius. Our Cryoport Express® Shippers are designed to ensure that there is no pressure build up as the liquid nitrogen evaporates. We have developed a proprietary retention system to ensure that liquid nitrogen stays inside the vacuum container, which allows the shipper to be designated as a dry vapor shipper meeting IATA requirements. Biological or pharmaceutical specimens are stored in a specimen chamber, referred to as a “well” inside the container and refrigeration is provided by gas evolving from the liquid nitrogen entrapped within the proprietary retention system. Specimens that may be transported using our cryogenic shipper include: live cells, scientific or pharmaceutical commodities such as cancer vaccines, diagnostic materials, semen, eggs, embryos, infectious substances, and other commodities that require continuous exposure to frozen/cryogenic temperatures, i.e., temperatures below minus 150° Celsius.

An important feature of our Cryoport Express® Shippers, except for the newly introduced Cryoport Express® CXVC1 Shipper, is their compliance with the stringent packaging requirements of IATA Packing Instructions 602 and 650, respectively. These specifications include meeting internal pressure (hydraulic) and drop performance requirements. Under IATA guidelines, Cryoport Express® Shippers are classified as “Non-hazardous.” Dry ice and liquid nitrogen are classified as “Dangerous Goods.” Our shippers are also in compliance with International Civil Aviation Organization (“ICAO”) regulations that prohibit egress of liquid nitrogen residue from the shipping packages. The ICAO is a United Nations organization that develops regulations for the safe transport of dangerous goods by air.

We currently offer three sizes of dry vapor shippers, the Cryoport Express® Standard Shipper with a storage capacity of up to 75 2.0 ml vials, the Cryoport Express® High Volume Shipper, which has a storage capacity of up to 500 2.0 ml vials, and the Cryoport Express® CXVC1 Shipper, which has a storage capacity of up to 1,500 2.0 ml vials. Our Cryoport Express® Shippers are composed of an aluminum (aircraft-grade) dewar flask, containing a well for holding the high value biological or other materials in its inner chamber and our proprietary retention foam that absorbs the liquid nitrogen placed in the shipper to provide it with its extreme cold temperature. The dewar flask is vacuum insulated to limit the transmission of heat from outside the flask to the liquid nitrogen captured within the absorption foam and the well.

### **Cryoport Express® Standard Shippers**

The Cryoport Express® Standard Shippers are lightweight, low-cost, re-usable dry vapor liquid nitrogen storage containers that, we believe, combine the best features of life sciences packaging, cryogenics science and vacuum insulation technology. A Cryoport Express® Standard Shipper is composed of an aluminum metallic dewar flask, with

a well for holding the biological material in the inner chamber. The dewar vessel is a device in which the conduction, convection and radiation of heat are reduced as much as possible giving it the capability of maintaining its contents at a near-constant temperature over relatively long periods of time. The inner chamber of the shipper is surrounded by a high surface, low-density material which retains the liquid nitrogen in-situ by absorption, adsorption, and surface tension. Absorption is defined as the taking up of matter in bulk by other matter, as in the dissolving of a gas by a liquid, whereas adsorption is the surface retention of solid, liquid or gas molecules, atoms or ions by a solid or liquid. This material absorbs liquid nitrogen several times faster than currently used materials, while providing the shipper with a hold time and capacity to transport biological materials safely and conveniently. The annular space between the inner and outer dewar walls is evacuated to a very high vacuum ( $10^{-6}$  Torr). The specimen-holding chamber has a primary cap to enclose the specimens/commodities, and a removable and replaceable secondary cap to further enclose the specimen/commodity-holding container and to contain the liquid nitrogen dry vapor. The entire dewar vessel is then wrapped in a plurality of insulating and cushioning materials and placed in a disposable outer packaging made of recyclable material. The Cryoport Express® Standard Shippers has a storage capacity of up to 75 2.0 ml vials.

#### Cryoport Express® High Volume Shippers

The Cryoport Express® High Volume Shipper also uses a dry vapor liquid nitrogen (LN2) technology to maintain minus 150° Celsius temperatures with a dynamic shipping endurance of 10 days. The Cryoport Express® High Volume Shipper is based on the same dry vapor technology as Cryoport's original standard dry shipper and utilizes an absorbent material to hold LN2, thus providing the extended endurance time and IATA validation as a non-hazardous shipping container. The high volume dry shipper is reusable and recyclable, making it a highly sustainable and cost effective method of transporting life science materials. The Cryoport Express® High Volume Shipper has a storage capacity of up to 500 2.0 ml vials.

#### Cryoport Express® CXVC1 Shippers

The Cryoport Express® CXVC1 Shipper is our largest shipper and can be used either as a dry vapor shipper or a liquid shipper. It is designed to focus on vaccine ampoules or cryovial shipments in canisters. In the case of dry vapor liquid nitrogen (LN2), it maintains minus 150°C temperatures with a dynamic shipping endurance of 20 days. In the case of liquid nitrogen (LN2), it maintains minus 150°C temperatures with a shipping endurance of 72 days. The Cryoport Express® CXVC1 Shipper, in dry vapor form, is based on the same technology as Cryoport's original standard dry shipper and utilizes an absorbent material to hold LN2, thus providing the extended endurance time and IATA validation as a non-hazardous shipping container. The Cryoport Express® CXVC1 Shipper, in liquid form, is a 'wet' dewar with all the characteristics attendant to a wet dewar and with a holding time of 72 days. The Cryoport Express® CXVC1 Shipper is reusable and recyclable, making it a highly sustainable and cost effective method of transporting life science materials. As a point of reference, the Cryoport Express® CXVC1 Shipper has a storage capacity of up to 1,500 0.2 ml vials.

### *Cryoport Express® Shipper Summary*

We believe Cryoport Express® Solutions are the best and most cost effective solution available in the biotechnology and life sciences markets and satisfy customer needs and scientific and regulatory requirements relating to the shipment of time- and temperature-critical, frozen and refrigerated transport of biological materials, such as stem cells, cell lines, pharmaceutical clinical trial samples, gene biotechnology, infectious materials handling, animal and human reproduction markets. Due to our proprietary technology and innovative design, our shippers are less prone to losing functional hold time when not kept in an upright position than the competing products because our proprietary dry vapor technology and innovative design prevent the spilling or leakage of the liquid nitrogen when the container is tipped or on its side which would otherwise adversely affect the functional hold time of the shipper.

### ***The Cryoport Express® SmartPak Condition Monitoring System***

Condition monitoring is a high-value feature from our client's perspective as it is an effective and reliable method to determine that the shipment materials were not damaged and did not experience degradation during shipment due to temperature fluctuations. We recently developed and launched the SmartPak II™ Condition Monitoring System. The SmartPak II™ Condition Monitoring System tracks the key aspects of each shipment that could affect the quality and/or timing of delivery of the material to its intended destination. This includes real-time tracking using GPS, cellular and Wi-Fi triangulation, monitoring of internal and external temperatures, pressure, shock, orientation of the shipper, as well as light, as a measure of security breaches, compromised packaging or shipper openings during transit. The temperature probe is positioned within our Cryoport Express® Shippers to record the most accurate reading. The resultant temperature mapping includes both the temperature inside the chamber (which is closest to the actual biomaterial) and the external temperature. This advanced condition monitoring system is engineered to work in tandem with Cryoport's logistics management platform, the Cryoport™, enabling predictive and proactive monitoring of materials shipped. The data collected and resulting analytics, combined with the mapping of shipment check-in points, provide a holistic view of the complete shipping process. At the client's election, shipments can have a full chain-of-custody and chain-of- condition with data monitoring, analysis, archival storage available for every shipment.

### ***Chain-of-Condition***

Chain-of-Condition information is essential for many life sciences materials. Monitoring starts with our custom-built condition monitoring systems (the Cryoport Express® SmartPak I and II). The Cryoport Express® SmartPak Condition Monitoring Systems provides data on the condition of the shipper and material shipped, which is critical for temperature-sensitive biologics. The Cryoport™ acts as the data repository for all shipment and condition information, which the customer can access through the Internet. Chain-of-condition service provided via Cryoport Express® SmartPak Condition Monitoring Systems is available at the client's election.

### ***Chain-of-Custody***

When overlaid with the carrier check-ins, the data monitor and analysis also provides a chain-of-custody. The report from the data monitor serves as analysis for temperature monitoring of the entire shipment as well as a tampering warning. If the client has elected to have chain-of-condition monitoring, each time the shipper is opened there is a temperature record. The report identifies outlier temperature excursions such as opening the shipment in customs or tampering and thus will allow for more conclusive investigations to ensure that specimens were not adversely impacted during shipment.

### ***Cryoport Express® Analytics***

Cryoport Express® Analytics information is captured by the Cryoport™ to provide us and our customers access to important information from the shipments recorded in the Cryoport™ to assist in management of our customers' shipping. For us, we use the information to support planned future features to allow for an expansion of our solutions offering. Analytics is a term used by IT professionals to refer to performance benchmarks or Key Performance Indicators ("KPI's") that management utilizes to measure performance against desired standards. Examples for analytics tracked through the Cryoport™ include time-based metrics for order processing time and on-time deliveries by our shipping partners, as well as profiling shipping lanes to determine average transit times and predicting potential shipping exceptions based on historical metrics. The analytical results are being utilized by Cryoport to render consultative and proactive client services.

### ***Biological Material Holders***

A containment bag is used in connection with the shipment of infectious or dangerous goods using the Cryoport Express® Shippers. Up to 75 cryovials (polypropylene vials with high-density polyethylene closures), set on aluminum canes, are placed into an absorbent pouch, which is designed to contain the entire contents of all the vials in the event of leakage. This pouch is then placed in a watertight Tyvek bag (secondary packaging) capable of withstanding cryogenic temperatures, and then sealed. This bag is then placed into the well of the Cryoport Express® Shipper.

### ***Logistics Expertise, Consulting and Support***

Cryoport's client services professionals provide 24/7/365 live logistics and monitoring services with specialized knowledge in the domestic and global logistics of life sciences material requiring cryogenic temperatures. The Cryoport logistics professionals have validated shipping lanes in and out of more than 80 countries to date to ensure shipments maintain cryogenic temperatures and arrive securely and on time.

In April 2016, Cryoport announced the launch of a new Temperature Controlled Logistics Consulting Division to assist life sciences companies in developing strategies for global cold chain logistics management and contingency options to protect their valuable, and often irreplaceable, biological commodities. The launch of Cryoport's Temperature Controlled Logistics Consulting Division addresses the demand created by the worldwide advances in cellular based therapies, including immunotherapies, stem cells and CAR T-cells. Cell-based immunotherapies are causing broad shifts and challenges for the life sciences industry, including how to obtain, properly store and transport the growing number of new, individualized, temperature sensitive therapies. Improper temperature maintenance or temperature excursions during any portion of a logistics cycle can adversely affect the viability of these biologically based commodities. Consequently, strategic, global logistics planning for cryogenic cold chain solutions has taken on a strategic importance to the life sciences industry and a rapidly growing demand for consulting expertise.

### ***Other Development Activities***

We are continuing our engineering and development efforts to further refine our current technology as well as explore opportunities with partners to offer complementary packaging solutions for frozen temperature (minus 10° Celsius or less), chilled temperature (2° and 8° Celsius) and ambient temperature (between 20° and 25° Celsius) shipping markets.

We also continue to further expand the functionality of our Cryoport<sup>TM</sup> to ensure a high level of effectiveness and efficiency in the cold chain logistics process and to allow for intelligent and easy data monitoring and analysis.

## **Government Regulation**

The shipping of diagnostic specimens, infectious substances and dangerous goods, whether via air or ground, falls under the jurisdiction of many state, federal and international agencies. The quality of the containers, packaging materials and insulation that protect a specimen determine whether or not it will arrive in a usable condition. Many of the regulations for transporting dangerous goods in the United States are determined by international rules formulated under the auspices of the United Nations.

The International Civil Aviation Organization (“ICAO”) is the United Nations organization that develops regulations (Technical Instructions) for the safe transport of dangerous goods by air. If shipment is by air, compliance with the rules established by International Air Transport Association (“IATA”) is required. IATA is a trade association made up of airlines and air cargo couriers that publishes annual editions of the IATA Dangerous Goods Regulations. These regulations interpret and add to the ICAO Technical Instructions to reflect industry practices. Additionally, the Centers for Disease Control (“CDC”) has regulations (published in the Code of Federal Regulations) for interstate shipping of specimens, and OSHA also addresses the safe handling of Class 6.2 Substances.

Our Cryoport Express<sup>®</sup> Shippers meet Packing Instructions 602 and 650 and are certified for the shipment of Class 6.2 Dangerous Goods per the requirements of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and IATA. Our present and planned future versions of the Cryoport SmartPak Condition Monitoring Systems will likely be subject to regulation by the Federal Aviation Administration (“FAA”), Federal Communications Commission (“FCC”), Food and Drug Administration (“FDA”), IATA and possibly other agencies which may be difficult to determine on a global basis.

We are also subject to numerous other federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances. We may incur significant costs to comply with such laws and regulations now or in the future.

## **Manufacturing and Raw Materials**

*Manufacturing.* In April 2016 we signed a strategic partnership with Worthington Industries, a maker of cryogenic storage vessels and equipment. Through this partnership, Worthington's CryoScience by Taylor Wharton business will design and manufacture biostorage and logistics equipment for use in Cryoport's life sciences cryogenic logistics solutions. With the added competencies Worthington's CryoScience by Taylor Wharton brings to Cryoport, we can concentrate on further advancing and expanding our cold chain solutions to meet the growing and varied demands for validated cryogenic logistics solutions in the life sciences market. Working in tandem with Worthington allows Cryoport to meet the demands of a more diverse clientele through a broader offering which in turn, increases our revenue opportunity as well as provides us the opportunity to rapidly scale to support our clients commercialization activities. Our current fleet of cryogenic shippers consists of shippers that were manufactured in-house as well as shippers purchased from third parties that are modified to meet our specifications using our proprietary technology and know-how. In general, cryogenic shippers are available from more than one qualified manufacturer. For some components, however, there are relatively few alternate sources of supply and the establishment of additional or replacement suppliers may not be accomplished immediately, however, we have identified alternate qualified suppliers. Should this occur, we believe that with our current level of shippers, we have enough inventory to cover our forecasted demand through the time we can secure additional cryogenic shippers through alternate qualified suppliers.

Our data loggers used in our condition monitoring systems, the SmartPak I and II, have been acquired from single sources with the calibration done by an independent third party.

*Raw Materials.* Various common raw materials are used in the manufacture of our shippers and in the development of our technologies. These raw materials are generally available from several alternate distributors and manufactures. We have not experienced any significant difficulty in obtaining these raw materials and we do not consider raw material availability to be a significant factor in our business.

## **Patents and Proprietary Rights**

In order to remain competitive, we must develop and maintain protection on the proprietary aspects of our technologies. We rely on a combination of patents, copyrights, trademarks, trade secret laws and confidentiality agreements to protect our intellectual property rights. We currently own three registered U.S. trademarks and three issued U.S. patents primarily covering various aspects of our Cryoport Express® Shippers.

The technology covered by the above indicated issued patents relates to matters specific to the use of liquid nitrogen shippers in connection with the shipment of biological materials. The concepts include those of disposability, package

configuration details, liquid nitrogen retention systems, systems related to thermal performance, systems related to packaging integrity, and matters generally relevant to the containment of liquid nitrogen. Similarly, the trademarks mentioned relate to the cryogenic temperature shipping activity. Issued patents and trademarks currently owned by us include:

Type:	No.	Issued	Expiration
Patent	6,467,642	Oct. 22, 2002	Jan. 2, 2021
Patent	6,119,465	Sep. 19, 2000	Feb. 10, 2019
Patent	6,539,726	Apr. 1, 2003	May 8, 2021
Patent	JP2002 0554433	May 18, 2007	
Trademark	3,569,471	Feb. 3, 2009	Feb. 3, 2019
Trademark	3,589,928	Mar. 17, 2009	Mar. 17, 2019
Trademark	2,632,328	Oct. 8, 2002	Oct. 8, 2022

Our success depends in part upon our ability to develop proprietary products and technologies and to obtain patent coverage for these products and technologies. We intend to file trademark and patent applications covering any newly developed products, methods and technologies. However, there can be no guarantee that any of our pending or future filed applications will be issued as patents or register as trademarks. There can be no guarantee that the U.S. Patent and Trademark Office or some third party will not initiate an interference proceeding involving any of our pending applications or issued patents. Finally, there can be no guarantee that our issued patents or future issued patents, if any, will provide adequate protection from competition.



Patents provide some degree of protection for our proprietary technology. However, the pursuit and assertion of patent rights involve complex legal and factual determinations and, therefore, are characterized by significant uncertainty. In addition, the laws governing patent issuance and the scope of patent coverage continue to evolve. Moreover, the patent rights we possess or are pursuing generally cover our technologies to varying degrees. As a result, we cannot ensure that patents will issue from any of our patent applications, or that any of its issued patents will offer meaningful protection. In addition, our issued patents may be successfully challenged, invalidated, circumvented or rendered unenforceable so that our patent rights may not create an effective barrier to competition. We must also pay maintenance fees at set intervals in order for our patents to not expire prematurely. Moreover, the laws of some foreign countries may not protect our proprietary rights to the same extent as the laws of the United States. There can be no assurance that any patents issued to us will provide a legal basis for establishing an exclusive market for our products or provide us with any competitive advantages, or that patents of others will not have an adverse effect on our ability to do business or to continue to use our technologies freely.

We may be subject to third parties filing claims that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert such claims against us or whether those claims will hurt our business. If we are forced to defend against such claims, regardless of their merit, we may face costly litigation and diversion of management's attention and resources. As a result of any such disputes, we may have to develop, at a substantial cost, non-infringing technology or enter into licensing agreements. These agreements may be unavailable on terms acceptable to such third parties, or at all, which could seriously harm our business or financial condition.

With respect to our trademarks, we file and pursue trademark registrations on words, symbols, logos, and other source identifiers that consumers use to associate our products and services with us. Although our registered trademarks carry a presumption of validity, they can be challenged and invalidated and as such, we cannot guarantee that any trademark registration is infallible.

We also rely on trade secret protection of our intellectual property. We attempt to protect trade secrets by entering into confidentiality agreements with third parties, employees and consultants, although, in the past, we have not always obtained such agreements. It is possible that these agreements may be breached, invalidated or rendered unenforceable, and if so, our trade secrets could be disclosed to our competitors. Despite the measures we have taken to protect our intellectual property, parties to such agreements may breach confidentiality provisions in our contracts or infringe or misappropriate our patents, copyrights, trademarks, trade secrets and other proprietary rights. In addition, third parties may independently discover or invent competitive technologies, or reverse engineer our trade secrets or other technology. Therefore, the measures we are taking to protect our proprietary technology may not be adequate.

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Total Stockholders' Equity (Deficit)

\$56,315 \$56,315 \$107,515

Total Capitalization

\$696,877 \$894,877 \$894,877

- (1) On February 5, 2004, the acquisition of ElderTrust was completed in an all cash transaction valued at \$184 million. The \$101 million equity portion of the purchase price was funded from: proceeds from our December 11, 2003 sale of 10 facilities to Kindred, unrestricted cash on hand at ElderTrust at the time of the acquisition and borrowings from our revolving credit facility. At the close of the transaction, ElderTrust had approximately \$33.5 million in unrestricted and restricted cash on hand.

*(footnotes continued on following page)*

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- (2) On January 29, 2004, we entered into 14 definitive purchase agreements with certain affiliates of Brookdale Living Communities, Inc. to purchase a total of 14 independent living or assisted living facilities for an aggregate purchase price of approximately \$115 million.

As of March 10, 2004, we had completed the acquisition of 10 of the Brookdale facilities for an aggregate purchase price of \$70.7 million, \$13.4 million of which was funded by the assumption of non-recourse property level debt. Our acquisition of the remaining four Brookdale facilities is expected to be completed shortly, subject to customary closing conditions. However, the consummation of each such Brookdale acquisition is not conditioned upon the consummation of any other such Brookdale acquisition and there can be no assurance which, if any, of such remaining Brookdale acquisitions will be consummated or when they will be consummated.

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**Table of Contents****PRICE RANGE OF OUR COMMON STOCK AND DISTRIBUTIONS**

Our common stock is listed and traded on the New York Stock Exchange under the symbol **VTR**. The following table sets forth the high and low sale prices for the indicated periods, as reported by the New York Stock Exchange and distributions declared per share of our common stock.

	<b>Price Per Share</b>		<b>Distributions Declared</b>
	<b>High</b>	<b>Low</b>	<b>Per Share</b>
<b>2002</b>			
First Quarter	\$ 13.00	\$ 11.35	\$ 0.2375
Second Quarter	\$ 13.60	\$ 12.59	\$ 0.2375
Third Quarter	\$ 13.46	\$ 10.55	\$ 0.2375
Fourth Quarter	\$ 13.76	\$ 10.06	\$ 0.2375
<b>2003</b>			
First Quarter	\$ 12.24	\$ 11.08	\$ 0.27
Second Quarter	\$ 15.33	\$ 11.67	\$ 0.27
Third Quarter	\$ 18.33	\$ 14.83	\$ 0.27
Fourth Quarter	\$ 22.98	\$ 17.05	\$ 0.2675
<b>2004</b>			
First Quarter (through March 10, 2004)	\$ 27.44	\$ 21.88	\$ 0.325(1)

- (1) Our Board of Directors has declared a quarterly dividend for the first quarter 2004 of \$0.325 per share of common stock, payable on March 25, 2004 to stockholders of record on March 15, 2004. Purchasers of shares of common stock in this offering, who are record holders of such shares as of March 15, 2004, are entitled to receive the March 25, 2004 dividend on shares purchased in this offering.

The reported last sale price per share for our common stock on the New York Stock Exchange on March 10, 2004 was \$ 26.16 per share.

For a description of our common stock, see **Description of Our Common Stock** and **Description of Outstanding Capital Stock** in the accompanying prospectus and our restated certificate of incorporation, which is incorporated by reference herein. On July 19, 2003, we elected to permit our preferred stock purchase rights issued pursuant to the Rights Agreement, dated July 20, 1993, as amended, with National City Bank, as Rights Agent, to expire in accordance with the terms of the rights agreement. Consequently, the shares of common stock we are offering do not include the associated preferred stock purchase rights.

**DIVIDEND POLICY**

We intend to distribute at least 100% of our taxable net income to our stockholders. We expect dividends will be paid quarterly, in cash, although we reserve the right to pay dividends by distributing a combination of cash and other property or securities. A number of factors are considered by our Board of Directors when making the final determination regarding the frequency and amount of our dividends. Therefore, there can be no assurance that we will maintain this distribution policy or that our ability to pay dividends will not be limited by the terms of our credit agreement.



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**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following is a general discussion of certain material United States federal income tax considerations relevant to holders of our common stock. This discussion is based upon the Internal Revenue Code of 1986 (the "Code"), Treasury Regulations, Internal Revenue Service ("IRS") rulings, and judicial decisions now in effect, all of which are subject to change (possibly with retroactive effect) or different interpretations.

This discussion does not deal with all aspects of United States federal income taxation that may be important to holders of our common stock, and does not deal with tax consequences arising under the laws of any foreign, state or local jurisdiction. This discussion is for general information only, and does not purport to address all tax consequences that may be important to particular purchasers in light of their personal circumstances, or to certain types of purchasers (such as certain financial institutions, insurance companies, tax-exempt entities, dealers in securities or persons who hold our common stock in connection with a straddle, hedge, conversion transaction or any similar or hybrid financial instrument) that may be subject to special rules.

PROSPECTIVE PURCHASERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THEIR PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK AND THE EFFECT THAT THEIR PARTICULAR CIRCUMSTANCES MAY HAVE ON SUCH TAX CONSEQUENCES.

**Taxation of U.S. Stockholders**

As used herein, the term "U.S. Stockholder" means a holder of our common stock that for U.S. federal income tax purposes is (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any state thereof, (iii) an estate whose income from sources without the United States is includible in gross income for U.S. federal income tax purposes regardless of its connection with the conduct of a trade or business within the United States or (iv) any trust with respect to which (A) a U.S. court is able to exercise primary supervision over the administration of such trust and (B) one or more U.S. persons have the authority to control all substantial decisions of the trust.

As long as we qualify as a REIT, distributions made to our taxable U.S. Stockholders out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be taken into account by such U.S. Stockholders as ordinary income generally and will not be eligible for taxation at the rates applicable to long-term capital gains (i.e., as qualified dividend income) generally available to individuals or for the dividends received deduction generally available to corporations. Distributions that are designated as capital gain dividends will be taxed as a capital gain (to the extent such distributions do not exceed our actual net capital gain for the taxable year) without regard to the period for which the stockholder has held its shares. The tax rates applicable to such capital gains are discussed below. Distributions in excess of current and accumulated earnings and profits will not be taxable to a stockholder to the extent that they do not exceed the adjusted basis of the stockholder's shares, but rather will reduce the adjusted basis of such shares. To the extent that distributions in excess of current and accumulated earnings and profits exceed the adjusted basis of a stockholder's shares, such distributions will be included in income as capital gains assuming the shares are capital assets in the hands of the stockholder. The tax rate applicable to such capital gain will depend on the stockholder's holding period for the shares. In addition, any distribution we declare in October, November or December of any year and that is payable to a stockholder of record on a specified date in any such month shall be treated as both paid by us and received by the stockholder on December 31 of such year, provided that we actually pay the distribution during January of the following calendar year.

If we should become a closely held REIT, we would no longer qualify as a REIT and any person owning at least 10% (by vote or value) of our stock would be required to accelerate the recognition of year-end dividends attributable to us, for purposes of such person's estimated tax

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payments. A closely held REIT is defined as one in which at least 50% (by vote or value) is owned by five or fewer individuals. Attribution rules apply to determine ownership.

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We may elect to treat all or a part of our undistributed net capital gain as if it had been distributed to our stockholders (including for purposes of the 4% excise tax discussed below under Requirements for Qualification Annual Distribution Requirements ). If we should make such an election, our stockholders would be required to include in their income as long-term capital gain their proportionate share of our undistributed net capital gain, as we designate. Each such stockholder would be deemed to have paid its proportionate share of the income tax imposed on us with respect to such undistributed net capital gain, and this amount would be credited or refunded to the stockholder. In addition, the tax basis of the stockholder's shares would be increased by its proportionate share of undistributed net capital gains included in its income, less its proportionate share of the income tax imposed on us with respect to such gains.

Stockholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, we would carry over such losses for potential offset against our future income (subject to certain limitations). Our taxable distributions and gain from the disposition of our common stock will not be treated as passive activity income and, therefore, stockholders generally will not be able to apply any passive activity losses (such as losses from certain types of limited partnerships in which the stockholder is a limited partner) against such income. In addition, our taxable distributions generally will be treated as investment income for purposes of the investment interest limitations. Capital gains from the disposition of the shares (or distributions treated as such) will be treated as investment income only if the stockholder so elects, in which case such capital gains will be taxed at ordinary income rates. We will notify stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

In general, any gain or loss realized upon a taxable disposition of the common stock by a stockholder who is not a dealer in securities will be treated as capital gain or loss. Lower marginal tax rates for individuals may apply in the case of capital gains, depending on the holding period of the shares that are sold. However, any loss upon a sale or exchange of shares by a stockholder who has held such shares for six months or less (after applying certain holding period rules) will be treated as a long-term capital loss to the extent of our distributions required to be treated by such stockholder as long-term capital gain. All or a portion of any loss realized upon a taxable disposition of shares may be disallowed if other shares are purchased within 30 days before or after the disposition.

For non-corporate taxpayers, the tax rate differential between capital gain and ordinary income may be significant. The highest marginal individual income tax rate applicable to ordinary income is currently 35%. Any capital gain generally will be taxed to a non-corporate taxpayer at a maximum rate of 15% with respect to capital assets held for more than one year. The tax rates applicable to ordinary income apply to gain attributable to the sale or exchange of capital assets held for one year or less. In the case of capital gain attributable to the sale or exchange of certain real property held for more than one year, an amount of such gain equal to the amount of all prior depreciation deductions not otherwise required to be taxed as ordinary depreciation recapture income will be taxed at a maximum rate of 25%. With respect to distributions designated by a REIT as capital gain dividends (including deemed distributions of retained capital gains), the REIT also may designate (subject to certain limits) whether the dividend is taxable to non-corporate stockholders as a 15% rate gain distribution or an unrecaptured depreciation distribution taxed at a 25% rate.

The characterization of income as capital or ordinary may affect the deductibility of capital losses. Capital losses not offset by capital gains generally may be deducted against a non-corporate taxpayer's ordinary income only up to a maximum annual amount of \$3,000. Non-corporate taxpayers may carry forward their unused capital losses. All net capital gain of a corporate taxpayer is subject to tax at ordinary corporate rates. A corporate taxpayer can deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.



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### **Treatment of Tax-Exempt Stockholders**

Tax-exempt organizations, including qualified employee pension and profit sharing trusts and individual retirement accounts (collectively, Exempt Organizations), generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income (UBTI). While many investments in real estate generate UBTI, the IRS has issued a published ruling that dividend distributions by a REIT to an exempt employee pension trust do not constitute UBTI, provided that the shares of the REIT are not otherwise used in an unrelated trade or business of the exempt employee pension trust. Based on that ruling, and subject to the exceptions discussed below, amounts we distribute to Exempt Organizations generally should not constitute UBTI. However, if an Exempt Organization finances its acquisition of the common stock with debt, a portion of its income from us will constitute UBTI pursuant to the debt-financed property rules. Furthermore, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under paragraphs (7), (9), (17) and (20), respectively, of Section 501(c) of the Code are subject to different UBTI rules, which generally will require them to characterize distributions from us as UBTI. In addition, in certain circumstances, a pension trust that owns more than 10% of our stock is required to treat a percentage of the dividends from us as UBTI (the UBTI Percentage). The UBTI Percentage is the gross income, less related direct expenses we derive from an unrelated trade or business (determined as if we were a pension trust) divided by our gross income, less related direct expenses, for the year in which the dividends are paid. The UBTI rule applies to a pension trust holding more than 10% of our stock only if (i) the UBTI Percentage is at least 5%, (ii) we qualify as a REIT by reason of the modification of the 5/50 Rule (as defined below) that allows the beneficiaries of the pension trust to be treated as holding our shares in proportion to their actuarial interests in the pension trust and (iii) either (A) one pension trust owns more than 25% of the value of our stock or (B) a group of pension trusts individually holding more than 10% of the value of our stock collectively own more than 50% of the value of our stock.

### **Special Tax Considerations for Non-U.S. Stockholders**

The rules governing U.S. federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships and other foreign stockholders (collectively, Non-U.S. Stockholders) are complex, and no attempt will be made herein to provide more than a summary of such rules. Non-U.S. stockholders should consult with their own tax advisors to determine the impact of federal, state and local income tax laws with regard to their ownership of the common stock, including any reporting requirements.

For purposes of this discussion, the term Non-U.S. Stockholder does not include any foreign stockholder whose investment in our stock is effectively connected with the conduct of a trade or business in the United States. Such a foreign stockholder, in general, will be subject to United States federal income tax with respect to its investment in our stock in the same manner as a U.S. Stockholder is taxed (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, a foreign corporation receiving income that is treated as effectively connected with a U.S. trade or business also may be subject to an additional 30% branch profits tax, unless an applicable tax treaty provides a lower rate or an exemption. Certain certification requirements must be satisfied in order for effectively connected income to be exempt from withholding.

Distributions to Non-U.S. Stockholders that are not attributable to gain from sales or exchanges of U.S. real property interests and are not designated by us as capital gain dividends (or deemed distributions of retained capital gains) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to a withholding tax equal to 30% of the gross amount of the distribution unless an applicable tax treaty reduces or eliminates that tax. Distributions in excess of our current and accumulated earnings and profits will not be taxable to a stockholder to the extent that such distributions do not exceed the adjusted basis of the stockholder's shares, but rather will reduce the adjusted basis of such shares. To the extent that distributions in excess of current and accumulated earnings and profits exceed the adjusted basis of a Non-U.S. Stockholder's shares, such distributions will give rise to tax liability if the Non-U.S. Stockholder would otherwise be subject to tax on any gain from the sale or disposition of its shares, as described below.



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For any year in which we qualify as a REIT, distributions that are attributable to our gain from sales or exchanges of U.S. real property interests will be taxed to a Non-U.S. Stockholder under the provisions of the Foreign Investment in Real Property Tax Act of 1980 ( "FIRPTA" ). Under FIRPTA, distributions attributable to gain from sales of U.S. real property interests are taxed to a Non-U.S. Stockholder as if such gain were effectively connected with a U.S. business. Non-U.S. Stockholders thus would be taxed at the normal capital gain rates applicable to U.S. Stockholders (subject to a special alternative minimum tax in the case of nonresident alien individuals). Distributions subject to FIRPTA also may be subject to 30% branch profits tax in the hands of a foreign corporate stockholder not entitled to treaty relief or exemption.

Unless a reduced rate of withholding applies under an applicable tax treaty, we generally will withhold from distributions to Non-U.S. Stockholders, and remit to the IRS, 30% of all distributions out of current or accumulated earnings and profits, subject to the application of FIRPTA withholding rules discussed below. In addition, we are required to withhold 10% of any distribution in excess of our current and accumulated earnings and profits. Because we generally cannot determine at the time a distribution is made whether or not it will be in excess of earnings and profits, we intend to withhold 30% of the entire amount of any distribution (other than distributions subject to the 35% withholding discussed below). Generally, however, a Non-U.S. Stockholder will be entitled to a refund from the IRS to the extent an amount is withheld from a distribution that exceeds the amount of U.S. tax owed by such Non-U.S. Stockholder.

Under FIRPTA, we are required to withhold 35% of any distribution that is designated as a capital gain dividend or which could be designated as a capital gain dividend. Thus, if we designate previously made distributions as capital gain dividends, subsequent distributions (up to the amount of such prior distributions) will be treated as capital gain dividends for purposes of FIRPTA withholding.

For so long as the common stock continues to be regularly traded on an established securities market, the sale of such stock by any Non-U.S. Stockholder who is not a Five Percent Non-U.S. Stockholder (as defined below) generally will not be subject to United States federal income tax (unless the Non-U.S. Stockholder is a nonresident alien individual who was present in the United States for more than 182 days during the taxable year of the sale and certain other conditions apply, in which case such gain will be subject to a 30% tax on a gross basis). A "Five Percent Non-U.S. Stockholder" is a Non-U.S. Stockholder who, at some time during the five-year period preceding such sale or disposition, beneficially owned (including under certain attribution rules) more than 5% of the total fair market value of our common stock (as outstanding from time to time) or owned shares of another class of our stock that represented value greater than 5% of the common stock (measured at the time such shares were acquired).

In general, the sale or other taxable disposition of the common stock by a Five Percent Non-U.S. Stockholder also will not be subject to United States federal income tax if we are a "domestically controlled REIT." A REIT is a "domestically controlled REIT" if, at all times during the five-year period preceding the relevant testing date, less than 50% in value of its shares is held directly or indirectly by Non-U.S. Stockholders (taking into account those persons required to include our dividends in income for United States federal income tax purposes). Although we believe that we currently qualify as a "domestically controlled REIT," because our common stock is publicly traded, no assurance can be given that we will qualify as a domestically controlled REIT at any time in the future. If we do not constitute a domestically controlled REIT, a Five Percent Non-U.S. Stockholder will be taxable in the same manner as a U.S. Stockholder with respect to gain on the sale of the common stock (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

## **Information Reporting Requirements and Backup Withholding Tax**

We will report to our U.S. Stockholders and to the IRS the amount of distributions paid during each calendar year and distributions required to be treated as so paid during a calendar year, and the amount of tax withheld, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding at the



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applicable rate (currently 28%) with respect to distributions paid unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (ii) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding and otherwise complies with the applicable requirements of the backup withholding rules. A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify to us their non-foreign status.

U.S. Stockholders should consult their own tax advisors regarding their qualifications for an exemption from backup withholding and the procedure for obtaining such an exemption. Backup withholding is not an additional tax. Rather, the amount of any backup withholding with respect to a payment to a U.S. Stockholder will be allowed as a credit against the U.S. Stockholder's United States federal income tax liability and may entitle the U.S. Stockholder to a refund, provided that the required information is furnished to the IRS.

Backup withholding tax and information reporting generally will not apply to distributions paid to Non-U.S. Stockholders outside the United States that are treated as (i) dividends subject to the 30% (or lower treaty rate) withholding tax discussed above, (ii) capital gain dividends or (iii) distributions attributable to our gain from the sale or exchange of U.S. real property interests. As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of the common stock by or through a foreign office of a foreign broker. Information reporting (but not backup withholding) will apply, however, to a payment of the proceeds of a sale of the common stock by a foreign office of a broker that (i) is a United States person, (ii) derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States, or (iii) is a controlled foreign corporation for United States tax purposes, unless the broker has documentary evidence in its records that the holder is a Non-U.S. Stockholder and certain other conditions are satisfied, or the stockholder otherwise establishes an exemption. Payment to or through a United States office of a broker of the proceeds of a sale of the common stock is subject to both backup withholding and information reporting unless the stockholder certifies under penalties of perjury that the stockholder is a Non-U.S. Stockholder or otherwise establishes an exemption. A Non-U.S. Stockholder may obtain a refund of any amounts withheld under the backup withholding rules by filing the appropriate claim for a refund with the IRS.

## **Other Tax Considerations**

We, along with our stockholders, may be subject to state and local tax in states and localities in which we do business or own property. Our tax treatment and the tax treatment of our stockholders in such jurisdictions may differ from the federal income tax treatment described above. Consequently, stockholders should consult their own tax advisors regarding the effect of state and local tax laws on their ownership of shares of the common stock.

## **Federal Income Taxation of Ventas**

The Code provisions governing the federal income tax treatment of REITs are highly technical and complex, and this summary is qualified in its entirety by the applicable Code provisions, rules and Treasury regulations promulgated thereunder, and administrative and judicial interpretations thereof. The following discussion is based on current law, which could be changed at any time, possibly retroactively. The law firm of Willkie Farr & Gallagher LLP has acted as our tax counsel in connection with our election to continue to be taxed as a REIT. Willkie Farr & Gallagher LLP will render an opinion to our underwriters to the effect that, commencing with our taxable year ended December 31, 1999, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. This opinion will be rendered as of the closing of this offering, and Willkie Farr & Gallagher LLP will have no obligation to update its opinion subsequent to that date.

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The opinion of Willkie Farr & Gallagher LLP will be based on various assumptions and representations made by us as to factual matters, including representations made by us in this prospectus supplement and the accompanying prospectus and the documents incorporated by reference herein and therein and a factual certificate provided by one of our officers. Moreover, our qualification and taxation as a REIT depends upon our ability to meet the various qualification tests imposed under the Code and discussed below, relating to our actual annual operating results, asset diversification, distribution levels, and diversity of stock ownership, the results of which have not been and will not be reviewed by Willkie Farr & Gallagher LLP. Accordingly, neither Willkie Farr & Gallagher LLP nor we can assure you that the actual results of our operations for any particular taxable year will satisfy these requirements.

We elected to qualify as a REIT for federal income tax purposes for the year ended December 31, 1999. We believe that we have satisfied the requirements to qualify as a REIT for the years ended December 31, 1999, 2000, 2001, 2002 and 2003. Although we intend to continue to qualify as a REIT for federal income tax purposes for the year ended December 31, 2004 and subsequent years, it is possible that economic, market, legal, tax or other considerations may cause us to fail, or elect not, to continue to qualify as a REIT. Our continued qualification and taxation as a REIT will depend upon our ability to meet on a continuing basis, through actual annual operating results, distribution levels, and stock ownership, the various qualification tests imposed under the Code. These tests are discussed below. No assurance can be given that the actual results of our operations for any particular taxable year will satisfy such requirements. Although we believe we have satisfied the requirements to continue to qualify as a REIT for years ended December 31, 1999, 2000, 2001, 2002 and 2003 and although we currently intend to continue to qualify as a REIT for the year ended December 31, 2004 and subsequent years, it is possible that economic, market, legal, tax or other considerations may cause us to fail, or elect not, to continue to qualify as a REIT. For a discussion of the tax consequences of failing to continue to qualify as a REIT, see [Failure to Continue to Qualify](#) below.

As a REIT, we generally will not be subject to federal corporate income tax on net income that we currently distribute to stockholders. This treatment substantially eliminates the [double taxation](#) (i.e., taxation at both the corporate and stockholder levels) that generally results from investment in a corporation. Notwithstanding our qualification as a REIT, we will be subject to federal income tax in the following circumstances.

First, we will be taxed at regular corporate rates on any undistributed taxable income, including undistributed net capital gains;

Second, under certain circumstances, we may be subject to the [alternative minimum tax](#) on our undistributed items of tax preference;

Third, if we have (i) net income from the sale or other disposition of [foreclosure property](#) (which is, in general, property acquired by foreclosure or otherwise on default of a loan secured by the property or property we repossess upon dispossessing a tenant after a lease default) that is held primarily for sale to customers in the ordinary course of business or (ii) other non-qualifying income from foreclosure property, it will be subject to tax at the highest corporate rate on such income;

Fourth, if we have net income from [prohibited transactions](#) (which are, in general, certain sales or other dispositions of property (other than foreclosure property) held primarily for sale to customers in the ordinary course of business), such income will be subject to a 100% tax;

Fifth, if we should fail to satisfy the 75% gross income test or the 95% gross income test (as discussed below), and have nonetheless maintained our qualification as a REIT because certain other requirements have been met, we will be subject to a 100% tax on the product of (a) the gross income attributable to the greater of the amount by which we fail the 75% or 95% gross income test, and (b) a fraction intended to reflect our profitability;

Sixth, if we should fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year (other than



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retained long-term capital gain we elect to treat as having been distributed to stockholders), and (iii) any undistributed taxable income from prior years, we would be subject to a non-deductible 4% excise tax on the excess of such required distribution over the amounts actually distributed;

Seventh, if we should receive rents from a tenant deemed not to be fair market value rents, or if we value our assets incorrectly, we may be liable for valuation penalties; and

Eighth, if we acquire any asset from a C corporation (i.e., a corporation generally subject to full corporate level tax) in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset (or any other asset) in the hands of the C corporation, and we recognize gain on the disposition of such asset during the 10-year period (the Recognition Period) beginning on the date on which we acquired such asset, then, to the extent of such asset's Built-in Gain (i.e., the excess of the fair market value of such property at the time of acquisition by us over the adjusted basis of such asset at such time), such gain will be subject to tax at the highest regular corporate rate (the Built-in Gain Rules).

We own appreciated assets that we held on January 1, 1999, the effective date of our REIT election. These assets are subject to the Built-in Gain Rules discussed above because we were a taxable C corporation prior to January 1, 1999. If we recognize taxable gain upon the disposition of any of these assets within the ten-year Recognition Period, we generally will be subject to regular corporate income tax on the gain equal to the lower of (a) the recognized gain at the time of the disposition and (b) the Built-in Gain in that asset as of January 1, 1999. The total amount of gain on which we can be taxed under the Built-in Gain Rules is limited to our net built-in gain at the time we became a REIT, i.e., the excess of the aggregate fair market value of our assets at the time we became a REIT over the adjusted tax bases of those assets at that time. Some but not all of such capital gains realized would be offset by the amount of any available capital loss carryforwards. In connection with the sale of any assets, all or a portion of such gain could be treated as ordinary income instead of capital gain and be subject to taxation and/or the minimum REIT distribution requirements. See Requirements for Qualification Annual Distribution Requirements below.

## **Requirements for Qualification**

To continue to qualify as a REIT, we must continue to meet the requirements discussed below, relating to the organization, sources of income, nature of assets and distributions of income to stockholders.

## ***Organizational Requirements***

The Code defines a REIT as a corporation, trust or association (i) that is managed by one or more directors or trustees; (ii) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest; (iii) that would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code; (iv) that is neither a financial institution nor an insurance company subject to certain provisions of the Code; (v) the beneficial ownership of which is held 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 (the 100 Shareholder Rule); (vi) not more than 50% in value of the outstanding stock of which is owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of each taxable year (the 5/50 Rule); (vii) that makes an election to be a REIT (or has made such election for a previous taxable year) and satisfies all relevant filing and other administrative requirements established by the IRS that must be met in order to elect and to maintain REIT status; (viii) that uses a calendar year for federal income tax purposes; and (ix) that meets certain other tests, described below, regarding the nature of its income and assets.



## Edgar Filing: Cryoport, Inc. - Form 10-KT

For purposes of the 5/50 Rule, an unemployment compensation benefits plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes generally is considered an individual. A trust that is a qualified trust under Section 401(a) of the Code, however, generally is not considered

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an individual and the beneficiaries of such trust are treated as holding shares of a REIT in proportion to their actuarial interests in such trust for purposes of the 5/50 Rule. Certain entities, including entities that file Schedules 13 D, F or G with the Commission, are not treated as a single owner under the 5/50 Rule. For purposes of the 5/50 Rule, the beneficial owners of such entities are deemed to be the owners of our common stock. A REIT will be treated as having satisfied the 5/50 Rule if it complies with certain regulations for ascertaining the ownership of its stock and if it did not know (or after the exercise of reasonable diligence would not have known) that its stock was sufficiently closely held to cause it to violate the 5/50 Rule. See Requirements for Qualification Annual Record Keeping Requirements below.

In order to prevent a concentration of ownership of our stock that would cause us to fail the 5/50 Rule or the 100 Shareholder Rule, we amended our certificate of incorporation on April 30, 1998 to provide that, except with the consent of our Board of Directors, no holder (with certain exceptions) is permitted to own, either actually or constructively under the applicable attribution rules of the Code, more than 9.0% of the common stock or 9.9% of any class of preferred stock issued by us. No holder, however, is permitted to own, either actually or constructively under the applicable attribution rules of the Code, any shares of any class of our stock if such ownership would cause more than 50% in value of our outstanding stock to be owned by five or fewer individuals or would result in our stock being beneficially owned by fewer than 100 persons (determined without reference to any rule of attribution).

As permitted by our certificate of incorporation, we have granted a waiver of the ownership limitations to Cohen & Steers Capital Management, Inc. This waiver permits Cohen & Steers to own over 10% of our common stock but in no event more than 14% of our common stock. We believe that no stockholder, other than Cohen & Steers, owns 10% or more of our issued and outstanding common stock, as measured by the Code.

To qualify as a REIT, a corporation may not have (as of the end of the taxable year) any earnings and profits that were accumulated in periods before it elected REIT status. We believe that at December 31, 1999 we did not have any accumulated earnings and profits that are attributable to periods during which we were not a REIT, although the IRS would be entitled to challenge that determination. For taxable years beginning after 2000 (and we believe for the taxable year 2000), a distribution made to meet the requirement that a REIT may not have non-REIT earnings and profits will be treated, on a first-in, first-out basis, as made from earnings and profits. Thus, such earnings and profits are deemed distributed first from earnings and profits that would cause such a failure, starting with the earliest Company year for which such failure would occur.

In the case of a REIT that is a partner in a partnership, Treasury regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. In addition, the character of the assets and gross income of the partnership will retain the same character in the hands of the REIT for purposes of the income and asset tests described below. If and when Ventas Realty were to admit a partner other than Ventas or an entity that is treated for tax purposes as an entity separate from Ventas, Ventas's proportionate share of the assets and gross income of Ventas Realty would be treated as the assets and gross income of Ventas for purposes of applying the requirements described herein.

### ***Income Tests***

To continue to qualify as a REIT, we must satisfy certain annual gross income requirements. First, at least 75% of our gross income (excluding gross income from prohibited transactions) for each taxable year must consist of defined types of income derived directly or indirectly from investments relating to real property or mortgages on real property (including rents from real property (defined below) and, in certain circumstances, interest on certain types of temporary investment income). Second, at least 95% of our gross income (excluding gross income from prohibited transactions) for each taxable year must be derived from such real property or temporary investments, dividends, interest and gain from the sale or disposition of stock or securities, or from any combination of the foregoing.



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Substantially all of our gross income is derived from leasing our properties under our master leases with Kindred. Rents we received or deemed received under our leases (including our master leases with Kindred) will qualify as rents from real property in satisfying the gross income requirements described above only if our leases are respected as true leases for federal income tax purposes and are not treated as service contracts, joint ventures, or some other type of arrangement. The determination of whether our leases are true leases depends on an analysis of all the surrounding facts and circumstances. In making such a determination, courts have considered a variety of factors, including the following: (i) the intent of the parties, (ii) the form of the agreement, (iii) the degree of control over the property that is retained by the property owner (*e.g.*, whether the lessee has substantial control over the operation of the property or whether the lessee was required to use its best efforts to perform its obligations under the agreement), and (iv) the extent to which the property owner retains the risk of loss with respect to the property (*e.g.*, whether the lessee bears the risk of increases in operating expenses or the risk of damage to the property) or the potential for economic gains (*e.g.*, appreciation) with respect to the property. Based upon advice of counsel at the time our master leases with Kindred and Trans Healthcare, Inc. or THI, were negotiated, we believe that our leases should be treated as true leases for federal income tax purposes. Investors should be aware, however, that there are no controlling Treasury regulations, published rulings, or judicial decisions involving leases with terms substantially the same as our leases that discuss whether such leases constitute true leases for federal income tax purposes. If the leases are recharacterized as service contracts or partnership agreements, rather than true leases, part or all of the payments that we receive from our tenants would not be considered rent or would not otherwise satisfy the various requirements for qualification as rents from real property. If that were to be the case with our master leases with Kindred, we likely would not be able to satisfy either the 75% or the 95% gross income tests, and, as a result, would lose our REIT status.

Assuming that our leases are true leases for tax purposes, rents we receive will qualify as rents from real property for purposes of the REIT gross income tests only if several additional conditions are satisfied. First, the amount of rent generally 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.

Second, amounts received from a tenant will not qualify as rents from real property if we, or an owner of 10% or more of us, directly or constructively is deemed to own 10% or more of the ownership interests in the tenant (a Related Party Tenant).

Third, 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 (based on the fair market values after 2000), then the portion of rent attributable to such personal property will not qualify as rents from real property.

Finally, for rents received to qualify as rents from real property, we generally must not operate or manage the property or furnish or render services to the tenants of such property, other than through an independent contractor who is adequately compensated and from whom we derive no income. The independent contractor requirement, however, does not apply to the extent that the services we provided are usually or customarily rendered in connection with the rental of space for occupancy only, which are services of a type that a tax-exempt organization can provide to its tenants without causing its rental income to be UBTI. In addition, the independent contractor requirement does not apply to noncustomary services we provided, the annual value of which does not exceed 1% of the gross income derived from the property with respect to which the services are provided (the 1% de minimis exception). For this purpose, such services may not be valued at less than 150% of our direct cost of providing the services. An independent contractor is defined as an entity that does not own (directly or indirectly) more than 35% of our stock or an entity not more than 35% owned (directly or indirectly) by persons who own more than 35% of our stock. If any class of our stock or the person being tested as an independent contractor is regularly traded on an established securities market, only persons who directly or indirectly own 5% or more of such class of stock shall be counted in determining whether the 35% ownership limitations have been exceeded. In addition to providing the above services to tenants through an

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independent contractor, we may also provide such services to tenants of our property through one or more of our taxable REIT subsidiaries without causing rents from such tenants to fail to qualify as rents from real property. See Asset Tests Taxable REIT Subsidiaries.

We do not believe that we have, and do not anticipate that we will in the future, (i) charged/charge rent that is based in whole or in part on the income or profits of any person (except by reason of being based on a fixed percentage or percentages of receipts or sales consistent with the rule described above), (ii) derived/derive rent attributable to personal property leased in connection with real property that exceeds 15% of the total rents, (iii) derived/derive rent attributable to a Related Party Tenant, or (iv) provided/provide any noncustomary services to tenants other than through qualifying independent contractors, except as permitted by the 1% de minimis exception or to the extent that the amount of resulting nonqualifying income would not cause us to fail to satisfy the 95% and 75% gross income tests.

### ***Related Party Tenant***

We lease substantially all of our properties to Kindred and Kindred is the primary source of our rental revenues. Under the Code, if we own 10% or more of any class of Kindred's issued and outstanding voting securities or 10% or more of the value of any class of Kindred's issued and outstanding securities (the 10% securities test), Kindred would be a Related Party Tenant. As a Related Party Tenant, our rental revenue from Kindred would not qualify as rents from real property and we would lose our REIT status because we likely would not be able to satisfy either the 75% or the 95% gross income test. Our loss of REIT status would have a material adverse effect on us.

Under Kindred's plan of reorganization, Ventas Realty received 1,498,500 shares of Kindred common stock on the date Kindred emerged from bankruptcy. As of August 14, 2003, Ventas Realty had disposed of all shares of its Kindred common stock. Based upon applicable tax authorities and decisions and advice from the IRS, we believe that for purposes of the 10% securities test, our ownership percentage in Kindred was less than 9.99%.

We have implemented a number of arrangements, including adopting provisions in our certificate of incorporation and negotiating limitations with third parties, all intended to minimize the risk of a violation of the 10% securities test. While we believe that the safeguards which we have instituted will enable us to satisfy the 10% securities test, there can be no assurances that such safeguards will be adequate to prevent us from violating the 10% securities test. If we should ever violate the 10% securities test, we would lose our status as a REIT which would have a material adverse effect on our business, financial condition, results of operation and liquidity and, on our ability to service our indebtedness.

Under the Code, rents we receive from any of our taxable REIT subsidiaries will qualify as rents from real property even if we own 10% or more of its issued and outstanding securities or 10% or more of the value of any class of its issued and outstanding securities as long as: (i) at least 90% of the leased space of the property is rented to third parties at comparable rents, or (ii) the property leased to the Taxable REIT Subsidiary is a qualified lodging facility managed and operated by an independent contractor. See Asset Tests Taxable REIT Subsidiaries. We believe all rents we received for our taxable subsidiaries qualified as rents from real property.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless continue to qualify as a REIT for such year if we are entitled to relief under certain provisions of the Code. These relief provisions generally will be available if our failure to meet such tests was due to reasonable cause and not due to willful neglect, we attach a schedule of the sources of our income to our return and any incorrect information on the schedule was not due to fraud with intent to evade tax. It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. Even if these relief provisions were to apply, a tax would be imposed with respect to the excess net income.

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### ***Foreclosure Property***

#### ***General***

The foreclosure property rules permit us (by our election) to foreclose or repossess properties without being disqualified as a result of receiving income that does not qualify under the gross income tests; however, a corporate tax is imposed upon net income from foreclosure property that is not otherwise good REIT income. Detailed rules specify the calculation of the tax. The after tax amount increases the amount the REIT must distribute each year.

Foreclosure property includes any real property and any personal property incident to such real property acquired by bid at foreclosure or by agreement or process of law after there was a default or a default was imminent on the leased property. During a 90-day grace period, we may operate the foreclosed property without an independent contractor or qualifying lessee. The 90-day grace period will begin on the date we acquire possession of the property.

To maintain foreclosure property treatment after the 90-day grace period, we must cause the property to be managed by an independent contractor (from whom we derive or receive no income) or lease the property pursuant to a lease qualifying as a true lease for income tax purposes to an unrelated third party. Ownership of the tenant must not be attributed to us in violation of the related tenant rule of Section 856(d)(2)(B) (relating to 10% or more owned tenants). If the property is leased to a third party under a true lease, the foreclosure property rules are not then relevant.

Foreclosure property treatment will end on the first day on which the REIT enters into a lease of the property that will give rise to income that is not good rental income under Section 856(c)(3). In addition, foreclosure property treatment will end if any construction takes place on the property (other than completion of a building, or other improvement more than 10 percent complete before default became imminent). Foreclosure property treatment is available for an initial period of three years, provided that such treatment may be extended up to six years.

#### ***Healthcare Properties***

We are permitted to terminate leases of qualified healthcare properties other than by reason of default or imminent default. In addition, we may treat qualified healthcare properties as foreclosure property at the time a lease comes to an end. Except as noted below, healthcare foreclosure properties are subject to the foreclosure property tax and other rules under the general foreclosure property rules.

The differences between this special healthcare rule and the general foreclosure rule are that (i) the initial foreclosure property period is for two rather than three years, although it may be extended for the same aggregate six years, (ii) the lease may be terminated without requirement of default, and (iii) income from the independent contractor is disregarded to the extent such income is attributable to any lease of property in effect on the date of acquisition or any lease of property entered into after such date if on such date a lease of the new property from the REIT was in effect, and under the terms of the new lease, the REIT receives no more than substantially the same benefit in comparison to the lease previously in effect.

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A qualified healthcare property includes any real property and any personal property incident to such real property which is a healthcare facility or is necessary or incidental to the use of a healthcare facility. The qualified healthcare facility may be operated by an independent contractor from whom the REIT does not derive or receive any income other than certain qualifying lease income from an independent contractor.

### *Asset Tests*

At the close of each quarter of our taxable year, we must satisfy two tests relating to the nature of our assets. First, at least 75% of the value of our total assets must be represented by cash or cash items (including certain

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receivables), government securities, real estate assets or, in cases where we raise new capital through stock or long-term (maturity of at least five years) debt offerings, temporary investments in stock or debt instruments during the one-year period following our receipt of such capital (the 75% asset test). The term real estate asset includes interests in real property, interests in mortgages on real property to the extent the mortgage balance does not exceed the value of the associated real property, and shares of other REITs. For purposes of the 75% asset test, the term interest in real property includes an interest in land and improvements thereon, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures), a leasehold in real property and an option to acquire real property (or a leasehold in real property). Second, of the investments not included in the 75% asset class, the value of any one issuer's debt and equity securities owned by us (other than our interest in any entity classified as a partnership for federal income tax purposes, or the stock of a qualified REIT subsidiary, or the stock of a Taxable REIT Subsidiary) may not exceed 5% of the value of our total assets (the 5% asset test), and we may not own more than 10% of any one issuer's outstanding voting securities or 10% of the value of any one issuer's outstanding securities, subject to limited safe harbor exceptions for certain straight debt obligations (except for our ownership interest in an entity that is disregarded for federal income tax purposes, that is classified as a partnership for federal income tax purposes or that is the stock of a qualified REIT subsidiary or stock of a Taxable REIT Subsidiary) (previously defined as the 10% securities test). In addition, no more than 20% of the value of our assets can be represented by securities of Taxable REIT Subsidiaries (as defined below).

If we should fail to satisfy the asset tests at the end of a calendar quarter except for our first calendar quarter, such a failure would not cause us to fail to qualify as a REIT or to lose our REIT status if (i) we satisfied all of the asset tests at the close of the preceding calendar quarter and (ii) the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by an acquisition of nonqualifying assets. If the condition described in clause (ii) of the preceding sentence was not satisfied, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose. We intend to maintain adequate records of the value of our assets to ensure compliance with the asset tests and to take such other actions as may be required to comply with those tests.

We believe we have been and will continue to be in compliance with the 10% securities test and the 5% asset test. However, there can be differing opinions as to the methods of calculating compliance with these tests and as to the value of our assets for purposes of these tests. Therefore, there can be no assurance we are or will continue to be in compliance with either of these tests. If we failed to satisfy either of these tests, we would lose our REIT status. If we lost our status as a REIT, it would have a material adverse effect on our business, financial condition, results of operation and liquidity and, on our ability to service our indebtedness.

### ***Taxable REIT Subsidiaries***

We are permitted to own up to 100% of a Taxable REIT Subsidiary. To qualify as a Taxable REIT Subsidiary, both we and the subsidiary corporation must join in an election to treat the subsidiary corporation as a Taxable REIT Subsidiary. In addition, any corporation (other than a REIT or a qualified REIT subsidiary) of which a Taxable REIT Subsidiary owns, directly or indirectly, more than 35% of the vote or value is automatically treated as a Taxable REIT Subsidiary. We currently own two Taxable REIT Subsidiaries, Ventas Capital Corporation and Ventas TRS, LLC.

A Taxable REIT Subsidiary can provide services to tenants of our properties (even if such services were not considered services customarily furnished in connection with the rental of real property), and can manage or operate properties, generally for third parties, without causing amounts received or accrued directly or indirectly by us for such activities to fail to be treated as rents from real property. However, rents paid to us generally are not qualified rents if we own more than 10% (by vote or value) of the corporation paying the rents. Nevertheless, qualified rents do include rents that are paid by taxable REIT subsidiaries and that also meet a limited rental exception (where 90% of space is leased to third parties at comparable rents) and an exception for rents from certain lodging facilities (operated by an independent contractor).



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Moreover, the Taxable REIT Subsidiary cannot directly or indirectly operate or manage a lodging or healthcare facility, subject to special rules for certain lodging facilities.

Also, the Taxable REIT Subsidiary generally cannot provide to any person rights to any brand name under which hotels or healthcare facilities are operated, unless the rights are provided to an independent contractor to operate or manage a lodging facility, if the rights are held by the Taxable REIT Subsidiary as licensee or franchisee and the lodging facility is owned by the Taxable REIT Subsidiary or leased to it by us.

The Taxable REIT Subsidiary cannot deduct interest paid or accrued (directly or indirectly) to the REIT in any years that would exceed 50% of the Taxable REIT Subsidiary's adjusted gross income. If any amount of interest, rent, or other deductions of the Taxable REIT Subsidiary for amounts paid to us is determined to be other than at arm's length (redetermined items pursuant to Section 482), an excise tax of 100% is imposed on the portion that was excessive, with limited safe harbor exceptions.

A 100% excise tax would be imposed on us for: (i) redetermined rents, (ii) redetermined deductions, and (iii) excess interest. Redetermined rents include rents from real property that would have been adjusted under Section 482 (but for the imposition of the 100% tax) in an IRS audit to clearly reflect income as a result of services furnished by a Taxable REIT Subsidiary to the tenants of a REIT. Redetermined rents, however, would only include rents attributable to impermissible services that exceed 1% of the total rents from the property. In addition, redetermined rents would not include rents which qualify for the following safe harbors: (i) the Taxable REIT Subsidiary charges the same amounts for its services to the REIT and its tenants similar to other third parties; (ii) the rents paid to the REIT by tenants (leasing at least 25% of the net leasable space in the property) who are not receiving a service from the Taxable REIT Subsidiary are substantially comparable to the rents paid by tenants leasing comparable space and receiving such service from the Taxable REIT Subsidiary, and the charge for such service is separately stated; and (iii) the Taxable REIT Subsidiary recognizes income for its services at least equal to 150% of its direct costs in furnishing or rendering the service.

Redetermined deductions include deductions (other than redetermined rents) of a Taxable REIT Subsidiary that would have been adjusted under Section 482 (but for the imposition of the 100% tax) in an IRS audit to clearly reflect income between the Taxable REIT Subsidiary and REIT.

Excess interest would include any deduction for interest payments by a Taxable REIT Subsidiary to the REIT to the extent such interest payments are in excess of a rate that is commercially reasonable. Loans from the REIT to a Taxable REIT Subsidiary would be made subject to the Section 163(j) earnings stripping rules in full (i.e., the rules would apply to the Taxable REIT Subsidiary regardless of whether the Taxable REIT subsidiary and the REIT are related persons as defined in Section 267(b) or 707(b)(i) of the Code.

## ***Annual Distribution Requirements***

In order to be taxed as a REIT, we are required to distribute dividends (other than capital gain dividends) to our stockholders in an amount at least equal to (i) the sum of (A) 90% of our REIT taxable income (computed without regard to the dividends paid deduction and our net capital gain) and (B) 90% of the net income (after tax), if any, from foreclosure property, minus (ii) the sum of certain items of noncash income. Such distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for such year and if paid on or before the first regular dividend payment after such declaration. To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, it will be subject to tax on the undistributed amount at regular capital gains and ordinary corporate tax rates except to the extent of net operating loss or capital loss carryforwards. If any taxes are paid in connection with the Built-In Gain Rules, these taxes will be deductible in computing REIT taxable income. Furthermore, if we should fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for such

year, (ii) 95% of our REIT capital gain net income for such year (other than long-term capital gain we elect to retain and treat as having been

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distributed to stockholders), and (iii) any undistributed taxable income from prior periods, we will be subject to a 4% nondeductible excise tax on the excess of such required distribution over the amounts actually distributed.

It is expected that our REIT taxable income will be less than our cash flow due to the allowance of depreciation and other noncash deductions in computing REIT taxable income. We anticipate that we generally will have sufficient cash or liquid assets to enable us to satisfy the 90% distribution requirement. It is possible, however, that we, from time to time, may not have sufficient cash or other liquid assets to meet the 90% distribution requirement or to distribute such greater amount as may be necessary to avoid income and excise taxation, as a result of timing differences between (i) the actual receipt of income and actual payment of deductible expenses and (ii) the inclusion of such income and deduction of such expenses in arriving at our taxable income, or as a result of nondeductible expenses such as principal amortization or repayments, or capital expenditures in excess of noncash deductions. In the event that such timing differences or other cash needs occur, we may find it necessary to borrow funds or to issue equity securities (there being no assurance that we will be able to do so) or, if possible, to pay taxable stock dividends, distribute other property or securities or engage in a transaction intended to enable us to meet the REIT distribution requirements. Our ability to engage in certain of these transactions may be restricted by the terms of our indentures or our credit facility. Any such transaction may require the consent of the lenders under our credit facility, and there can be no assurance that such consent would be obtained. Our ability to engage in certain of these transactions is also restricted by the registration requirements under the Securities Act, the rules and regulations of the New York Stock Exchange and the Commission and by other applicable laws, rules and regulations. In addition, the failure of Kindred to make rental payments under master leases would impair materially our ability to make required distributions. Consequently, there can be no assurance that we will be able to make distributions at the required distribution rate or any other rate.

Under certain circumstances, we may be able to rectify a failure to meet the distribution requirement for a year by paying deficiency dividends to stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Although we may be able to avoid being taxed on amounts distributed as deficiency dividends, we will be required to pay a 4% excise tax and interest to the IRS based upon the amount of any deduction taken for deficiency dividends.

### ***Annual Record Keeping Requirements***

In our first taxable year in which we qualify as a REIT and thereafter, we are required to maintain certain records and request on an annual basis certain information from our stockholders designed to disclose the actual ownership of our outstanding shares. We believe that we have complied with these requirements for the 1999-2003 tax years. We will be subject to a penalty of \$25,000 (\$50,000 for intentional violations) for any year in which we do not comply with the rules.

### ***Failure to Continue to Qualify***

If our election to be taxed as a REIT is revoked or terminated (*e.g.*, due to a failure to meet the REIT qualification tests), we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates except to the extent of net operating loss and capital loss carryforwards. Distributions to stockholders will not be deductible by us, nor will they be required to be made. To the extent of current and accumulated earnings and profits, all distributions to stockholders will be taxable as dividend income, and, subject to certain limitations in the Code, corporate stockholders may be eligible for the dividends received deduction and individual stockholders may be eligible for taxation at the rates generally applicable to long-term capital gains (currently at a maximum rate of 15%) with respect to distributions. In addition, we would be prohibited from re-electing REIT status for the four taxable years following the year during which we ceased to qualify as a REIT, unless certain relief provisions of the Code apply. It is impossible to predict whether we would be entitled to such statutory relief.



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**UNDERWRITING**

Subject to the terms and conditions contained in an underwriting agreement among us, Ventas Realty, Limited Partnership, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as underwriter, we have agreed to sell to the underwriter, and the underwriter has agreed to purchase from us, 2,000,000 shares of our common stock.

The underwriter has agreed to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased.

We have agreed to indemnify the underwriter against specified liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriter may be required to make in respect of those liabilities.

The underwriter is offering the shares, subject to prior sale, when, as and if issued to and accepted by it, subject to approval of legal matters by counsel and other conditions. The underwriter reserves the right to withdraw, cancel or modify this offer and to reject orders in whole or in part.

**Commissions and Discounts**

The underwriter has advised us that it proposes initially to offer the shares to the public at the public offering price appearing on the cover page of this prospectus supplement, and to dealers at that price less a concession not in excess of \$.20 per share. After this offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us.

	<b><u>Per Share</u></b>	<b><u>Total</u></b>
Public offering price	\$25.95	\$51,900,000
Underwriting discount	\$.26	\$520,000
Proceeds, before expenses	\$25.69	\$51,380,000

The expenses of the offering, exclusive of the underwriting discount, are estimated at approximately \$180,000 and are payable by us.

**No Sales of Similar Securities**

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We and each of our executive officers have agreed, with limited exceptions, not to sell or transfer any common stock for 60 days after the date of this prospectus supplement without first obtaining the written consent of Merrill Lynch. However, Debra A. Cafaro, our Chairman, President and CEO, and T. Richard Riney, our Executive Vice President and General Counsel, will be permitted to continue to sell certain shares of common stock pursuant to previously adopted non-discretionary, written trading plans that comply with Commission Rule 10b5-1. Specifically, we and each of our executive officers have agreed not to directly or indirectly

offer, pledge, sell or contract to sell any common stock;

sell any option or contract to purchase any common stock;

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purchase any option or contract to sell any common stock;

grant any option, right or warrant for the sale of any common stock;

otherwise dispose of or transfer any common stock; or

enter into any swap or other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of any common stock, whether any such swap or transaction is to be settled by delivery of common stock or other securities, in cash or otherwise.

This lockup provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock, however it does not prevent the exercise of any options or warrants to acquire shares of our common stock issued pursuant to employee stock option plans existing on the date we enter into the underwriting agreement or the pledging of stock to secure certain loans. The lockup would prevent the sale of shares received upon the exercise of such options. The lockup applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

In the event that we notify the underwriter in writing that we do not intend to proceed with this offering, if the underwriting agreement does not become effective, or if the underwriting agreement is terminated prior to payment for and delivery of our common stock, the lockup provisions will be released.

## **New York Stock Exchange Listing**

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

## **Price Stabilization and Short Positions**

Until the distribution of the shares is completed, Commission rules may limit the ability of the underwriter to bid for or purchase our common stock. However, the underwriter may engage in transactions that stabilize the price of our common stock, such as bids or purchases to peg, fix or maintain that price.

If the underwriter creates a short position in the common stock in connection with the offering, i.e., if it sells more shares than are listed on the cover of this prospectus supplement, the underwriter may reduce that short position by purchasing shares in the open market. Purchases of the common stock to stabilize its price or to reduce a short position could cause the price of the common stock to be higher than it might be in the absence of those purchases.

Neither we nor the underwriter makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor the underwriter makes any representation that the

underwriter will engage in those transactions or that those transactions, once commenced, will not be discontinued without notice.

#### **Other Relationships**

The underwriter and its affiliates have engaged in, and may in the future engage in, investment banking, commercial banking and other commercial dealings in the ordinary course of business with us. It has received customary fees and commissions for these transactions. In addition, the underwriter provided certain advisory services to us in connection with our July 1, 2003 sale of 16 facilities to Kindred and our acquisition of ElderTrust.

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**LEGAL MATTERS**

T. Richard Riney, our general counsel, and Willkie Farr & Gallagher LLP, New York, New York, will provide us with an opinion as to legal matters in connection with the common stock offered by this prospectus supplement and the accompanying prospectus. Debevoise & Plimpton LLP, New York, New York, will pass upon certain legal matters for the underwriters.

**EXPERTS**

The consolidated financial statements (including the financial statement schedule) of Ventas, Inc. at December 31, 2003 and 2002, and for each of the three years in the period ended December 31, 2003, incorporated by reference in this prospectus supplement have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon incorporated by reference herein. The financial statements referred to above are included in this prospectus supplement in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Commission. We have also filed with the Commission a registration statement on Form S-3 to register the common stock being offered in this prospectus supplement and the accompanying prospectus by us. This prospectus supplement and the accompanying prospectus, which forms part of the registration statement, does not contain all of the information included in the registration statement. For further information about us and the common stock offered in this prospectus supplement and the accompanying prospectus, you should refer to the registration statement and its exhibits.

Our Commission filings are available on the Commission's website at [www.sec.gov](http://www.sec.gov). You also may read and copy any documents we file at the Commission's public reference rooms in Washington, D.C. Please call the Commission at 1-800-SEC-0330 for further information about their public reference rooms, including copy charges. You can also obtain information about us from the New York Stock Exchange at 20 Broad Street, New York, New York 10005. Information about us is also available on our website at [www.venatsreit.com](http://www.venatsreit.com). Information on our website is not incorporated by reference herein and our web address is included in this prospectus supplement as an inactive textual reference only.

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**INCORPORATION BY REFERENCE**

We are incorporating by reference in this prospectus supplement the information we file with the Commission. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus supplement. To the extent that the information presented in this prospectus supplement revises, modifies, or updates the information contained in the accompanying prospectus or any document incorporated by reference to this prospectus supplement or the accompanying prospectus prior to the date of this prospectus supplement, the information presented in this prospectus supplement shall supercede and control. To the extent that any information incorporated by reference into this prospectus supplement after the date hereof revises, modifies or updates the information contained in this prospectus supplement or in the accompanying prospectus, such later information shall be deemed to revise, modify or update the language contained herein or therein.

We are incorporating by reference our documents listed below and any future filings we make with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus supplement. These documents update and supercede the information that we have previously incorporated by reference.

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2003;

Our Current Reports on Forms 8-K filed January 8, 2004, February 5, 2004, February 10, 2004 and February 19, 2004; and

The description of our common stock set forth in our registration statement on Form 8-A filed with the Commission on January 23, 1992.

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

General Counsel

Ventas, Inc.

10350 Ormsby Park Place,

Suite 300

Louisville, Kentucky 40223

(502) 357-9000

You should rely only on the information incorporated by reference or provided in this prospectus supplement and the accompanying prospectus. We have not authorized anyone else to provide you with different information. We are not making an offer of our common stock in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of those documents.



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PROSPECTUS

**\$651,000,000**

**Ventas, Inc.**

Preferred Stock, Depositary Shares,

Common Stock and Warrants

**Ventas Realty, Limited Partnership and**

**Ventas Capital Corporation**

Debt Securities

Fully and Unconditionally Guaranteed by Ventas, Inc.

Additional Full and Unconditional Guarantees

of

Ventas Realty, Limited Partnership and

Ventas Capital Corporation Debt Securities

by

Ventas LP Realty, L.L.C., Ventas Healthcare Properties, Inc.

and Ventas TRS, LLC

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We may offer and sell, from time to time, in one or more offerings:

preferred stock  
depository shares  
common stock  
warrants

These securities may be offered and sold separately, together or as units with other securities described in this prospectus.

Ventas Realty, Limited Partnership and Ventas Capital Corporation may offer and sell, from time to time, in one or more offerings, debt securities which will be fully and unconditionally guaranteed by us and any additional guarantors, which may include Ventas LP Realty, L.L.C., Ventas Healthcare Properties, Inc. and Ventas. These debt securities and any such guarantees may be senior or subordinated. These debt securities may be offered and sold separately, together or as units with other securities described in this prospectus.

The securities described in this prospectus may be issued in one or more series or issuances. The total offering price of securities offered by us, in the aggregate, will not exceed \$651,000,000.

We will provide the specific terms of these securities and their offering prices in supplements to this prospectus. You should carefully read this prospectus and the applicable prospectus supplement before you decide to invest in any of these securities.

**See Risk Factors on page 5 for a discussion of matters that you should consider before investing in these securities.**

Our common stock is listed on the New York Stock Exchange under the symbol VTR. The closing price of our common stock on the New York Stock Exchange was \$16.91 per share on August 29, 2003. None of the other securities are currently publicly traded.

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.*

The date of this prospectus is September 5, 2003.

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### **About This Prospectus**

This prospectus is part of two registration statements. The first registration statement is one that we, Ventas Realty, Ventas LLC, and Ventas Capital filed with the Securities and Exchange Commission (the "Commission") using a "shelf" registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus from time to time in one of more offerings up to a total dollar amount of \$651,000,000 or the equivalent denominated in foreign currencies or units of foreign currencies. The second registration statement is one that we have filed with the Commission also using a "shelf" registration process for the guarantees by Ventas Healthcare Properties, Inc. and Ventas TRS, LLC of debt securities of Ventas Realty, Limited Partnership and Ventas Capital Corporation.

This prospectus provides you only with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of that offering. The prospectus supplement may also add to, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information" and "Incorporation by Reference."

You should rely only on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer of these securities in any jurisdiction where it is unlawful. You should assume that the information in this prospectus or any prospectus supplement, as well as the information we have previously filed with the Commission and incorporated by



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reference in this prospectus, is accurate only as of the date of the documents containing the information.

References in this prospectus to we, us, our or Ventas mean Ventas, Inc. References in this prospectus to Ventas Realty mean Ventas Realty Limited Partnership. References in this prospectus to Ventas LLC mean Ventas LP Realty, L.L.C. References in this prospectus to Ventas Capital mean Ventas Capital Corporation. References in this prospectus to Ventas Healthcare Properties mean Ventas Healthcare Properties, Inc. References in this prospectus to Ventas TRS mean Ventas TRS, LLC.

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**CAUTIONARY STATEMENTS**

**Forward-Looking Statements**

This prospectus and the documents incorporated by reference herein include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements regarding our and our subsidiaries' expected future financial position, results of operations, cash flows, funds from operations, dividends and dividend plans, financing plans, business strategy, budgets, projected costs, capital expenditures, competitive positions, growth opportunities, expected lease income, continued qualification as a real estate investment trust, or REIT, plans and objectives of management for future operations and statements that include words such as anticipate, if, believe, plan, estimate, expect, intend, may, could, should, will and others are forward-looking statements. Such forward-looking statements are inherently uncertain, and you should recognize that actual results may differ from our expectations. We do not undertake any duty to update such forward-looking statements.

Actual future results and trends for us may differ materially depending on a variety of factors discussed in this prospectus and elsewhere in our filings with the Commission. Factors that may affect our plans or results include, without limitation:

the ability and willingness of Kindred Healthcare, Inc. and certain of its affiliates, which we refer to collectively as Kindred, to continue to meet and honor their obligations under their contractual arrangements with us, including the lease agreements and various agreements entered into by us and Kindred at the time of our spin-off of Kindred on May 1, 1998, or the 1998 Spin Off, as such agreements may have been amended and restated in connection with Kindred's emergence from bankruptcy on April 20, 2001;

the ability and willingness of Kindred to continue to meet and/or honor its obligation to indemnify and defend us for all litigation and other claims relating to the healthcare operations and other assets and liabilities transferred to Kindred in the 1998 Spin Off;

the ability of Kindred and our other operators to maintain the financial strength and liquidity necessary to satisfy their respective obligations and duties under the leases and other agreements with us and their existing credit agreements;

our success in implementing our business strategy;

the nature and extent of future competition;

the extent of future healthcare reform and regulation, including cost containment measures and changes in reimbursement policies and procedures;

increases in our cost of borrowing;

the ability of our operators to deliver high quality care and to attract patients;

the results of litigation affecting us;

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changes in general economic conditions or economic conditions in the markets in which we may, from time to time, compete;

our ability to pay down, refinance, restructure, and extend our indebtedness as it becomes due;

the movement of interest rates and the resulting impact on the value of our interest rate swap agreements and our net worth;

our ability and willingness to maintain our qualification as a REIT due to economic, market, legal, tax or other considerations;

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the final determination of our taxable net income for our tax year ended December 31, 2003;

the ability and willingness of our tenants to renew their leases with us upon expiration of the leases and our ability to relet our properties on the same or better terms in the event such leases expire and are not renewed by the existing tenants; and

the impact on the liquidity, financial condition and results of operations of Kindred and our other operators resulting from increased operating costs and uninsured liabilities for professional liability claims, and the ability of Kindred and our other operators to accurately estimate the magnitude of such liabilities.

Many of these factors are beyond our control and the control of our management. For a discussion of these and other factors, see Risk Factors and our Annual Report on Form 10-K for the year ended December 31, 2002 and subsequent filings with the Commission.

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**VENTAS AND VENTAS REALTY**

We are a healthcare real estate investment trust with a geographically diverse portfolio of healthcare-related facilities. As of June 30, 2003, this portfolio consisted of 44 hospitals, 204 nursing facilities and nine other healthcare and senior housing facilities in 37 states. We lease these facilities to healthcare operating companies under triple-net or absolute-net leases. As of June 30, 2003, Kindred leased 194 of our nursing facilities and all but one of our hospitals. We also have investments in 25 additional healthcare and senior housing facilities.

Our business strategy is comprised of two primary objectives: diversifying our portfolio of properties and increasing our earnings. We intend to diversify our portfolio by operator, facility type and reimbursement source. We intend to invest in or acquire additional healthcare-related and/or senior housing properties, which could include hospitals, nursing centers, assisted or independent living facilities and ancillary healthcare facilities, that are operated by qualified providers in their industries.

We conduct substantially all of our business through Ventas Realty, a wholly owned operating partnership, and Ventas Finance I, LLC, an indirect, wholly owned limited liability company. As of June 30, 2003, Ventas Finance owned 40 of our skilled nursing facilities, we owned two hospitals and Ventas Realty owned all of our other properties and investments.

Our and Ventas Realty's principal executive offices are located at 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642, and our telephone number is (502) 357-9000.

**VENTAS CAPITAL**

Ventas Capital is a wholly owned subsidiary of Ventas Realty that was incorporated in Delaware for the purpose of serving as co-issuer with Ventas Realty of debt securities in order to facilitate the offering of such securities. Ventas Realty believes that certain prospective purchasers of the debt securities may be restricted in their ability to purchase debt securities of partnerships, such as Ventas Realty, unless such debt securities are jointly issued by a corporation. Ventas Capital will not have any substantial operations or assets and will not have any revenues. As a result, prospective purchasers of the debt securities of Ventas Realty and Ventas Capital should not expect Ventas Capital to participate in servicing the interest and principal obligations on those debt securities.

Ventas Capital's principal executive offices are located at 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642, and its telephone number is (502) 357-9000.

**VENTAS LLC**

Ventas LLC is a limited liability company that is organized under the laws of Delaware. Ventas is the sole member of Ventas LLC. Ventas LLC owns a 1% limited partnership interest in Ventas Realty and conducts no other business and owns no other assets.

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Ventas LLC's principal executive offices are located at 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642, and its telephone number is (502) 357-9000.

### **VENTAS TRS**

Ventas TRS is a limited liability company that is organized under the laws of Delaware. Ventas Realty is the sole member of Ventas TRS.

Ventas TRS's principal executive offices are located at 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642, and its telephone number is (502) 357-9000.

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**VENTAS HEALTHCARE PROPERTIES**

Ventas Healthcare Properties is a corporation that is organized under the laws of the state of Delaware. It is a wholly owned direct subsidiary of Ventas.

Ventas Healthcare Properties' s principal executive offices are located at 4360 Brownsboro Road, Suite 115, Louisville, Kentucky 40207-1642, and its telephone number is (502) 357-9000.

**Table of Contents****RISK FACTORS**

Before you invest in our securities, you should carefully consider the risks involved. These risks include, but are not limited to:

the risks described in our Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference in this prospectus; and

any risks that may be described in other filings we make with the Commission or in the prospectus supplements relating to specific offerings of securities.

**USE OF PROCEEDS**

Unless otherwise described in a prospectus supplement, we intend to use the net proceeds from the sale of any securities under this prospectus by us for general business purposes, which may include acquiring and investing in additional properties and the repayment of borrowings under our credit facility or other debt. Until the proceeds from a sale of securities by us, Ventas Realty and/or Ventas Capital are applied to their intended purposes, they may be invested in short-term investments, including repurchase agreements, some or all of which may not be investment grade.

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

Our ratio of earnings to fixed charges and preferred stock dividends for each of the periods indicated was as follows:

	Period From May 1, 1998 to  December 31,  1998	Year Ended December 31,				Six Months Ended June 30, 2003
		1999	2000	2001	2002	
Ratio of earnings to fixed charges and preferred stock dividends (a)	1.79	1.47	0.24	1.58	1.47	2.39

(a) Earnings were insufficient to cover fixed charges by \$68.7 million in 2000. Earnings in 2000 were reduced by \$96.5 million for the United States Settlement.

For this ratio, earnings consist of earnings (loss) before income taxes, minority interest and discontinued operations plus fixed charges excluding capitalized interest. Fixed charges consist of interest expensed and capitalized, plus the portion of rent expense under operating leases deemed by us to be representative of the interest factor.





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### **DESCRIPTION OF DEBT SECURITIES OF VENTAS REALTY AND VENTAS CAPITAL**

This section describes the general terms and provisions of the debt securities of Ventas Realty and Ventas Capital. The applicable prospectus supplement will describe the specific terms of the debt securities offered through that prospectus supplement as well as any general terms described in this section that will not apply to those debt securities.

The senior debt securities offered under this prospectus may be issued by Ventas Realty and Ventas Capital:

under one or both of the indentures dated April 17, 2002 among us (as guarantor), Ventas Realty, Ventas Capital, Ventas LLC and U.S. Bank National Association, as trustee, as heretofore supplemented; or

under one or more other indentures to be entered into among us (as guarantor), Ventas Realty, Ventas Capital, any additional guarantors and a trustee.

The subordinated debt securities offered under this prospectus may be issued under one or more indentures to be entered into among us (as guarantor), Ventas Realty, Ventas Capital, any additional guarantors and a trustee. Ventas Realty and Ventas Capital are collectively referred to in this section as the issuers. The debt securities will be the direct obligation of the applicable issuer or issuers, may be secured or unsecured and may constitute senior or subordinated indebtedness. Any indenture will be subject to and governed by the Trust Indenture Act of 1939, as amended. The statements made in this prospectus relating to any indenture and the debt securities to be issued under the indentures are summaries of either certain provisions contained in our existing indentures or certain anticipated provisions of the indentures that we will enter into and are not complete.

We have filed our existing indentures and the supplements thereto and the forms of indentures as exhibits to the registration statements of which this prospectus is a part. You should read the indentures for provisions that may be important to you before you buy any debt securities. We will file any final indentures and/or supplemental indentures with the Commission if we issue any debt securities.

## **General**

The issuers may issue debt securities that rank senior or subordinated. The debt securities that we refer to as senior will be the direct obligations of the issuers and will rank equally and ratably in right of payment with the issuers' other indebtedness that is not subordinated. The issuers may issue debt securities that will be subordinated in right of payment to the prior payment in full of senior debt, as defined in the applicable indenture, and may rank equally and ratably with other subordinated indebtedness. We refer to these as subordinated debt securities.

Under each of our existing indentures, we must obtain the consent of the holders of a majority of the aggregate principal amount of senior debt securities outstanding under such indenture in order to issue additional securities under that indenture.

Under any indenture that we will enter into, the issuers:

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may issue debt securities without limit as to aggregate principal amount, in one or more series, in each case as established in one or more supplemental indentures;

need not issue all debt securities of a series at the same time; and

may reopen a series, without the consent of holders of the series, for issuances of additional securities of that series.

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U.S. Bank National Association is the trustee under our existing indentures. We anticipate that any other indenture that we will enter into will provide that the issuers may, but need not, designate more than one trustee under such indenture, each with respect to one or more series of debt securities. Any trustee under any indenture may resign or be removed with respect to one or more series of debt securities, and the issuers may appoint a successor trustee to act with respect to that series.

The applicable prospectus supplement will describe the specific terms relating to the series of debt securities the issuers will offer, including, where applicable, the following:

the title and series designation and whether they are senior debt securities or subordinated debt securities;

the aggregate principal amount of the debt securities;

the percentage of the principal amount at which the issuers will issue the debt securities and, if other than the principal amount of the debt securities, the portion of the principal amount of the debt securities payable upon maturity of the debt securities;

if convertible into other securities, the initial conversion price, the conversion period and any other terms governing such conversion;

the stated maturity date;

any fixed or variable interest rate or rates per annum;

the place where principal, premium, if any, and interest will be payable and where the debt securities can be surrendered for transfer, exchange or conversion;

the date from which interest may accrue and any interest payment dates;

any sinking fund requirements;

any provisions for redemption, including the redemption price and any remarketing arrangements;

whether the debt securities are denominated or payable in United States dollars or a foreign currency or units of two or more foreign currencies;

the events of default and covenants of such debt securities, including the required conditions to our ability to merge or consolidate or sell substantially all of our assets, to the extent different from or in addition to those described in this prospectus;

whether the issuers will issue the debt securities in certificated or book-entry form;

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whether the debt securities will be in registered or bearer form and, if in registered form, the denominations if other than in even multiples of \$1,000 and, if in bearer form, the denominations and terms and conditions relating thereto;

whether the issuers will issue any of the debt securities in permanent global form and, if so, the terms and conditions, if any, upon which interests in the global security may be exchanged, in whole or in part, for the individual debt securities represented by the global security;

the applicability, if any, of the legal defeasance and covenant defeasance provisions described in this prospectus or any prospectus supplement;

whether the issuers will pay additional amounts on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether they will have the option to redeem the debt securities instead of making this payment;

the subordination provisions, if any, relating to the debt securities;

if the debt securities are to be issued upon the exercise of debt warrants, the time, manner and place for them to be authenticated and delivered;

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whether any of our subsidiaries will be bound by the terms of the indenture, in particular any restrictive covenants;

the provisions relating to any security provided for the debt securities; and

the provisions relating to any guarantee of the debt securities.

The issuers may issue debt securities at less than the principal amount payable at maturity. We refer to these securities as original issue discount securities. If material or applicable, we will describe in the applicable prospectus supplement special U.S. federal income tax, accounting and other considerations applicable to original issue discount securities.

Except as may be described in the applicable prospectus supplement, any indenture under which the issuers issue debt securities will not contain any other provisions that would limit the ability of us or our restricted subsidiaries to incur indebtedness or that would afford holders of the debt securities protection in the event of a highly leveraged or similar transaction involving us or our restricted subsidiaries or in the event of a change of control. You should review carefully the applicable prospectus supplement for information with respect to events of default and covenants applicable to the debt securities being offered.

## **Denominations, Interest, Registration and Transfer**

The issuers will issue the debt securities of any series that are registered securities in denominations that are even multiples of \$1,000, other than global securities, which may be of any denomination.

The issuers will pay the interest, principal and any premium at the corporate trust office of the trustee. At the option of the issuers, however, payment of interest may be made by check mailed to the address of the person entitled to the payment as it appears in the applicable register or by wire transfer of funds to that person at an account maintained within the United States.

If the issuers do not punctually pay or otherwise provide for interest on any interest payment date, the defaulted interest will be paid either:

to the person in whose name the debt security is registered at the close of business on a special record date the trustee or the applicable issuer or issuers will fix; or

in any other lawful manner, all as the applicable indenture describes.

You may have your debt securities divided into more debt securities of smaller denominations or combined into fewer debt securities of larger denominations, so long as the total principal amount is not changed. This is referred to as an exchange.

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You may exchange or transfer debt securities at the office of the applicable trustee. The trustee acts as the agent of the issuers for registering debt securities in the names of holders and transferring debt securities. The issuers may change this appointment to another entity or perform it themselves. The entity performing the role of maintaining the list of registered holders is called the registrar. It will also perform transfers.

You will not be required to pay a service charge to transfer or exchange debt securities, but you may be required to pay for any tax or other governmental charge associated with the exchange or transfer. The security registrar will make the transfer or exchange only if it is satisfied with your proof of ownership.

### **Guarantees**

Unless otherwise described in the applicable prospectus supplement, the debt securities will be fully and unconditionally guaranteed by us, Ventas LLC, Ventas Healthcare Properties, Ventas TRS, and certain other

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future subsidiaries of ours. These guarantees will be joint and several obligations of the guarantors. If a series of debt securities is so guaranteed, an indenture, or a supplemental indenture thereto, will be executed by the guarantor. We, Ventas LLC, Ventas Healthcare Properties and Ventas TRS are guarantors under our existing indentures, as supplemented. The obligations of each guarantor under its guarantee will be limited as necessary to prevent that guarantee from constituting a fraudulent conveyance under applicable law. The terms of any guarantee will be set forth in the applicable prospectus supplement.

## **Merger, Consolidation or Sale of Assets**

We generally will be permitted to consolidate or merge with another company, to sell substantially all of our assets to another company, or to buy substantially all of the assets of another company. However, we may not take any of these actions unless the following, among other, conditions are met:

If we merge out of existence or sell our assets, the other company must be an entity organized under the laws of a State or the District of Columbia or under federal law and must agree to be legally responsible for our obligations under the debt securities; and

Immediately after the merger, sale of assets or other transaction, we and our restricted subsidiaries may not be in default on the debt securities. A default for this purpose would include any event that would be an event of default if the requirements for giving the applicable default notice or the requirement that the default exist for a specific period of time were disregarded.

## **Certain Covenants**

*Existence.* Except as permitted as described above under **Merger, Consolidation or Sale of Assets**, we and our restricted subsidiaries will agree to do all things necessary to preserve and keep our corporate existence, rights and franchises; provided, however, that we may terminate the existence of any such subsidiary if we determine that it is in our best interests to do so.

*Provisions of Financial Information.* Whether or not we remain required to do so under the Securities Exchange Act of 1934, as amended, to the extent permitted by law, we will agree to file all annual, quarterly and other reports and financial statements with the Commission and an indenture trustee on or before the applicable Commission filing dates as if we were required to do so.

## **Events of Default and Related Matters**

*Events of Default.* The term **event of default** for any series of debt securities means any of the following:

The issuers do not pay the principal or any premium on a debt security of that series;

The issuers do not pay interest on a debt security of that series within 30 days after its due date;



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The issuers do not deposit any sinking fund payment for that series within 30 days after its due date;

We or our restricted subsidiaries remain in breach of any other term of the applicable indenture (other than a term added to the indenture solely for the benefit of other series) for 60 days after we receive a notice of default stating we are in breach. Either the trustee or holders of more than 25% in principal amount of debt securities of the affected series may send the notice;

We or our restricted subsidiaries default under any of our other indebtedness in an aggregate principal amount exceeding \$15,000,000 after the expiration of any applicable grace period, which default results in the acceleration of the maturity of such indebtedness. Such default is not an event of default if the other indebtedness is discharged, or the acceleration is rescinded or annulled, within a period of 10 days after we or our restricted subsidiaries receive notice specifying the default and requiring that they

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discharge the other indebtedness or cause the acceleration to be rescinded or annulled. Either the trustee or the holders of more than 25% in principal amount of debt securities of the affected series may send the notice;

We or one of our significant subsidiaries, files for bankruptcy or certain other events in bankruptcy, insolvency or reorganization occur; or

Any other event of default described in the applicable prospectus supplement occurs.

The term significant subsidiary means each of our significant subsidiaries, if any, as defined in Regulation S-X under the Securities Act of 1933, as amended.

*Remedies if an Event of Default Occurs.* If an event of default has occurred and has not been cured, the trustee or the holders of at least 25% in principal amount of the debt securities of the affected series may declare the entire principal amount of all the debt securities of that series to be due and immediately payable. If an event of default occurs because of certain events in bankruptcy, insolvency or reorganization, the principal amount of all the debt securities of that series will be automatically accelerated, without any action by the trustee or any holder. At any time after the trustee or the holders have accelerated any series of debt securities, but before a judgment or decree for payment of the money due has been obtained, the holders of at least a majority in principal amount of the debt securities of the affected series may, under certain circumstances, rescind and annul such acceleration.

The trustee will be required to give notice to the holders of debt securities within 90 days after a default under the applicable indenture unless the default has been cured or waived. The trustee may withhold notice to the holders of any series of debt securities of any default with respect to that series, except a default in the payment of the principal of or interest on any debt security of that series, if specified responsible officers of the trustee in good faith determine that withholding the notice is in the interest of the holders.

Except in cases of default, where the trustee has some special duties, the trustee is not required to take any action under the applicable indenture at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability. We refer to this as an indemnity. If reasonable indemnity is provided, the holders of a majority in principal amount of the outstanding securities of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee. These majority holders may also direct the trustee in performing any other action under the applicable indenture, subject to certain limitations.

Before you bypass the trustee and bring your own lawsuit or other formal legal action or take other steps to enforce your rights or protect your interests relating to the debt securities, the following must occur:

you must give the trustee written notice that an event of default has occurred and remains uncured;

the holders of at least a majority in principal amount of all outstanding securities of the relevant series must make a written request that the trustee take action because of the default, and must offer reasonable indemnity to the trustee against the cost and other liabilities of taking that action;

the trustee must have not taken action for 60 days after receipt of the notice and offer of indemnity; and

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the holders of at least a majority in principal amount of all outstanding securities of the relevant series must not have given the trustee a direction inconsistent within such request within such 60-day period.

However, you are entitled at any time to bring a lawsuit for the payment of money due on your security after its due date.

Every year we will furnish to the trustee a written statement by certain of our officers certifying that to their knowledge we are in compliance with the applicable indenture and the debt securities, or otherwise specifying any default.

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### **Modification of an Indenture**

There are three types of changes the issuers can make to the indentures and the debt securities:

*Changes Requiring Your Approval.* Neither the issuers nor the trustee can make the following types of changes to your debt securities without your specific approval:

changes to the stated maturity of the principal or interest on a debt security (which does not include the making of mandatory offers to purchase the debt security);

changes to reduce any amounts due on a debt security;

changes to reduce the amount of principal payable upon acceleration of the maturity of a debt security following a default;

changes to the currency of payment on a debt security;

changes to impair your right to sue for payment;

changes to the subordination provisions, if any, in a manner that is adverse to you;

changes to reduce the percentage of holders of debt securities whose consent is needed to modify or amend an indenture or to waive compliance with certain provisions of an indenture;

changes to reduce the percentage of holders of debt securities whose consent is needed to waive past defaults or changes to certain provisions of the indenture relating to waivers of default;

changes to effect a waiver of a default or event of default in the payment of principal or premium, if any, or interest on the debt securities (other than a default arising as a result of the acceleration of the debt security which has since been rescinded);

changes to release any guarantor from any of its obligations under its guarantee or an indenture, except in accordance with the terms of such indenture; or

changes to any of the foregoing provisions.

*Changes Requiring a Majority Vote.* The second type of change to an indenture and the debt securities issued under that indenture is the kind that requires a vote in favor by holders of debt securities owning a majority of the principal amount of the particular series affected. Most changes fall into this category, except for the changes listed above under *Changes Requiring Your Approval* or below under *Changes Not Requiring Approval* or as otherwise described in the applicable prospectus supplement.

*Changes Not Requiring Approval.* The third type of change does not require any vote by holders of debt securities. Unless otherwise described in the applicable prospectus supplement, changes not requiring approval are limited to clarifications and certain other changes that would not materially adversely affect holders of the applicable series of debt securities.

*Further Details Concerning Voting.* Debt securities are not considered outstanding, and holders of debt securities may not be able to vote, if the issuers have deposited or set aside in trust money for their payment or redemption or if we or one of our affiliates own them. As described immediately below under Discharge, Legal Defeasance and Covenant Defeasance, you also will not be able to vote your debt securities if:

your securities have been discharged; or

all securities of the same series of your debt securities have been legally defeased.

For original issue discount securities, issuers will use the principal amount that would be due and payable on the voting date if the maturity of the debt securities were accelerated to that date because of a default.

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### **Discharge, Legal Defeasance and Covenant Defeasance**

*Discharge.* The issuers may discharge some obligations to holders of any series of debt securities that either have become due and payable or will become due and payable within one year, or scheduled for redemption within one year, by irrevocably depositing with the trustee, in trust, funds in the applicable currency in an amount sufficient to pay such debt securities, including any premium and interest thereon.

*Legal Defeasance.* The issuers can, under particular circumstances, effect a legal defeasance of your series of debt securities. By this we mean the issuers, us, and any guarantors will be released from any payment or other obligations on a series of debt securities if, among other things, they put in place the arrangements described below to repay you and all other holders of that series of debt securities and deliver certain certificates and opinions to the trustee:

The issuers must deposit in trust for your benefit and the benefit of all other direct holders of that series of debt securities a combination of money or U.S. government or U.S. government agency notes or bonds (or, in some circumstances, depositary receipts representing these notes or bonds) that will generate enough cash to make interest, principal and any other payments on all debt securities of that series on their various due dates;

The current federal tax law must be changed or an IRS ruling must be issued permitting the above deposit without causing you to be taxed on the debt securities any differently than if the issuers did not make the deposit and just repaid the debt securities themselves. Under current federal income tax law, the deposit and the legal release of the issuers from the debt securities would be treated as though the issuers took back your debt securities and gave you your share of the cash and notes or bonds deposited in trust. Therefore, under the current law, you could recognize gain or loss on the debt securities you were deemed to have given back; and

The issuers must deliver to the trustee a legal opinion confirming the tax law change described above.

If the issuers did accomplish legal defeasance with respect to your series of debt securities, you would have to rely solely on the trust deposit for repayment on the debt securities. You could not look to the issuers or any guarantor for repayment in the unlikely event of any shortfall. Conversely, the trust deposit would most likely be protected from claims of the lenders of the issuers and other creditors if they ever became bankrupt or insolvent. You would also be released from any subordination provisions.

*Covenant Defeasance.* Under current federal income tax law, the issuers can make the same type of deposit described above and be released from some of the restrictive covenants applicable to your series of debt securities. This is called covenant defeasance. In that event, you would lose the protection of those restrictive covenants but would gain the protection of having money and securities set aside in trust to repay the debt securities and you would be released from any subordination provisions.

If the issuers accomplish covenant defeasance, the following provisions of an indenture (as applicable to the series of debt securities being defeased) and the applicable series of debt securities would no longer apply:

any covenants applicable to that series of debt securities and described in the applicable prospectus supplement;

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any subordination provisions applicable to that series of debt securities and described in the applicable prospectus supplement; and

certain events of default relating to breach of covenants and acceleration of the maturity of other debt set forth in any prospectus supplement.

If the issuers accomplish covenant defeasance, you can still look to them and us and our other guarantors for repayment of the debt securities if a shortfall in the trust deposit occurred. If one of the remaining events of

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default occurs, for example, the bankruptcy of the issuers, and the debt securities become immediately due and payable, there may be a shortfall. Depending on the event causing the default, you may not be able to obtain payment of the shortfall.

## **Subordination**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which any series of subordinated securities is subordinated to debt securities of another series or to our and any guarantors' other indebtedness. The terms will include a description of:

the indebtedness ranking senior to the debt securities being offered;

the restrictions, if any, on payments to the holders of the debt securities being offered while a default with respect to the senior indebtedness is continuing;

the restrictions, if any, on payments to the holders of the debt securities being offered following an event of default; and

provisions requiring holders of the debt securities being offered to remit some payments to holders of senior indebtedness.

## **Global Securities**

The issuers will issue the debt securities of a series in whole or in part in the form of one or more global securities that will be deposited with a depository identified in the prospectus supplement. The issuers may issue global securities in either registered or bearer form and in either temporary or permanent form. The specific terms of the depository arrangement with respect to any series of debt securities will be described in the prospectus supplement.

## **DESCRIPTION OF OUR COMMON STOCK**

We may issue, either separately or together with other securities, shares of our common stock. Under our Certificate of Incorporation, we are authorized to issue up to 180,000,000 shares of common stock. A prospectus supplement relating to an offering of common stock, or other securities convertible or exchangeable for, or exercisable into, common stock, will describe the relevant terms, including the number of shares offered, any initial offering price, and market price and dividend information, as well as, if applicable, information on other related securities. Unless otherwise indicated in the applicable prospectus supplement, any shares of common stock offered will include rights (the "Rights") to purchase certain shares of Ventas, Inc. Series A Participating Preferred Stock. See "Description of Outstanding Capital Stock" below.

## **DESCRIPTION OF OUR PREFERRED STOCK**



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This section describes the general terms and provisions of our preferred stock. The applicable prospectus supplement will describe the specific terms of the preferred stock offered through that prospectus supplement as well as any general terms described in this section that will not apply to those shares of preferred stock.

We have summarized certain selected terms of the preferred stock in this section. The summary is not complete. You should read our Certificate of Incorporation that is an exhibit to our annual report on Form 10-K and the certificate of designation relating to the applicable series of the preferred stock that we will file with the Commission for additional information before you buy any shares of preferred stock.

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### **General**

Our board of directors will determine the designations, preferences, limitations and relative rights of each series of our authorized and unissued preferred stock. These may include:

the distinctive designation of each series and the number of shares that will constitute the series;

the voting rights, if any, of shares of the series;

the dividend rate on the shares of the series, any restriction, limitation or condition upon the payment of the dividend, whether dividends will be cumulative, and the dates on which dividends are payable;

the prices at which, and the terms and conditions on which, the shares of the series may be redeemed, if the shares are redeemable;

the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of the series;

any preferential amount payable upon shares of the series upon our liquidation or the distribution of our assets; and

if the shares are convertible or exchangeable, the price or rates of conversion or exchange at which, and the terms and conditions on which, the shares of the series may be converted into or exchanged for other securities.

The issuance of shares of preferred stock, or the issuance of rights to purchase shares of preferred stock, could discourage an unsolicited acquisition proposal. In addition, the rights of holders of shares of common stock will be subject to, and may be adversely affected by, the rights of holders of any shares of preferred stock that we may issue in the future.

The preferred stock will have the rights described in this section unless the applicable prospectus supplement provides otherwise. You should read the prospectus supplement relating to the particular series of the preferred stock it offers for specific terms, including:

the description of the shares of preferred stock;

the number of shares of preferred stock offered;

the voting rights, if any, of the holders of the shares of preferred stock;

the offering price of the shares of preferred stock;

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the distribution rate, when distributions will be paid, or the method of determining the distribution rate if it is based on a formula or not otherwise fixed;

the date from which distributions on the shares of preferred stock shall accumulate;

the provisions for any auctioning or remarketing, if any, of the shares of preferred stock;

the provision, if any, for redemption or a sinking fund;

the liquidation preference per share;

any listing of the shares of preferred stock on a securities exchange;

whether the shares of preferred stock will be convertible or exchangeable and, if so, the security into which they are convertible or exchangeable and the terms and conditions of conversion or exchange, including the conversion price or exchange rate or the manner of determining it;

whether interests in the shares of preferred stock will be represented by depositary shares as more fully described below under  
Description of Depositary Shares;

a discussion of federal income tax considerations;

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the relative ranking and preferences of the shares of preferred stock as to distribution and liquidation rights;

any limitations on issuance of any shares of preferred stock ranking senior to or on a parity with the series of preferred stock being offered as to distribution and liquidation rights;

any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and

any other specific terms, preferences, rights, limitations or restrictions of the shares of preferred stock.

As described under "Description of Depositary Shares," we may, at our option, elect to offer depositary shares evidenced by depositary receipts. If we elect to do this, each depositary receipt will represent a fractional interest in a share of the particular series of preferred stock issued and deposited with a depositary. The applicable prospectus supplement will specify that fractional interest.

## **Rank**

Unless our board of directors otherwise determines and we so specify in the applicable prospectus supplement, we expect that the shares of preferred stock will, with respect to distribution rights and rights upon liquidation or dissolution, rank senior to all our shares of common stock.

## **Dividends**

Holders of shares of preferred stock of each series will be entitled to receive cash and/or share dividends at the rates and on the dates shown in the applicable prospectus supplement. Even though the preferred stock may specify a fixed rate of distribution, our board of directors must authorize and declare those dividends and they may be paid only out of assets legally available for payment. We will pay each dividend to holders of record as they appear on our share transfer books on the record dates fixed by our board of directors. In the case of shares of preferred stock represented by depositary receipts, the records of the depositary referred to under "Description of Depositary Shares" will determine the persons to whom dividends are payable.

Dividends on any series of preferred stock may be cumulative or noncumulative, as provided in the applicable prospectus supplement. We refer to each particular series, for ease of reference, as the applicable series. Cumulative dividends will be cumulative from and after the date shown in the applicable prospectus supplement. If our board of directors fails to authorize a dividend on any applicable series that is noncumulative, the holders will have no right to receive, and we will have no obligation to pay, a dividend in respect of the applicable dividend period, whether or not dividends on that series are declared payable in the future.

If the applicable series is entitled to a cumulative dividend, we may not declare, or pay or set aside for payment, a dividend on any other series of preferred stock ranking, as to dividends on a parity with or junior to the applicable series, unless we declare, and either pay or set aside for payment, full cumulative dividends on the applicable series for all past dividend periods and the then current dividend period. If the applicable series does not have a cumulative dividend, we must declare, and pay or set aside for payment, full dividends for the then current dividend period only. When dividends are not paid, or set aside for payment, in full on any applicable series and the shares of any other series ranking on a parity as to dividends with the applicable series, we must declare, and pay or set aside for payment, all dividends upon the applicable series and

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any other parity series proportionately, in accordance with accrued and unpaid dividends of the several series. For these purposes, accrued and unpaid dividends do not include unpaid dividend periods on noncumulative shares of preferred stock. No interest will be payable in respect of any dividend payment that may be in arrears.

Except as provided in the immediately preceding paragraph, unless we declare, and pay or set aside for payment, full cumulative dividends, including for the then current period, on any cumulative applicable series,

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we may not declare, or pay or set aside for payment, any dividends on common stock or any other equity securities ranking junior to or on a parity with the applicable series as to dividends or upon liquidation. The foregoing restriction does not apply to dividends paid in common stock or other equity securities ranking junior to the applicable series as to dividends and upon liquidation. If the applicable series is noncumulative, we need only declare, and pay or set aside for payment, the dividend for the then current period, before declaring dividends on shares of common stock or junior or parity securities. In addition, under the circumstances in which we could not declare a dividend, we may not redeem, purchase or otherwise acquire for any consideration any shares of common stock or other parity or junior equity securities, except upon conversion into or exchange for shares of common stock or other junior equity securities. We may, however, make purchases and redemptions otherwise prohibited pursuant to certain redemptions or pro rata offers to purchase the outstanding shares of the applicable series and any other parity series of preferred stock.

We will credit any dividend payment made on an applicable series first against the earliest accrued but unpaid dividend due with respect to the series.

## **Redemption**

We may have the right or may be required to redeem one or more series of preferred stock, as a whole or in part, in each case upon the terms, if any, and at the times and at the redemption prices shown in the applicable prospectus supplement.

If a series of preferred stock is subject to mandatory redemption, we will specify in the applicable prospectus supplement the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid dividends, except in the case of noncumulative preferred stock. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series is payable only from the net proceeds of our issuance of capital stock, the terms of the preferred stock may provide that, if no shares of capital stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, the shares of preferred stock will automatically and mandatorily be converted into shares of capital stock pursuant to conversion provisions specified in the applicable prospectus supplement.

## **Liquidation Preference**

The applicable prospectus supplement will describe the liquidation preference of the applicable series. Upon our voluntary or involuntary liquidation, before any distribution may be made to the holders of shares of our common stock or any other shares of capital stock ranking junior to the applicable series, in the distribution of assets upon any liquidation the holders of that series will be entitled to receive, out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of the liquidation preference, plus an amount equal to all distributions accrued and unpaid. In the case of a noncumulative applicable series, accrued and unpaid dividends include only the then current dividend period. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of shares of preferred stock will have no right or claim to any of our remaining assets. If liquidating distributions shall have been made in full to all holders of shares of preferred stock, our remaining assets will be distributed among the holders of any other shares of capital stock ranking junior to the preferred stock upon liquidation, according to their rights and preferences.

If, upon any voluntary or involuntary liquidation, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of any series and the corresponding amounts payable on all shares of capital stock ranking on a parity in the distribution of assets with that series, then the holders of that series and all other equally ranking shares of capital stock shall share ratably in the distribution in

proportion to the full liquidating distributions to which they would otherwise be entitled.

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### **Voting Rights**

Holders of shares of preferred stock will not have any voting rights, except as otherwise from time to time required by law or as specified in the applicable prospectus supplement.

As more fully described under **Description of Depositary Shares** below, if we elect to issue depositary shares, each representing a fraction of a share of a series of preferred stock, each depositary will in effect be entitled to a fraction of a vote per depositary share.

### **Conversion Rights**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which you may, or we may require you to, convert shares of any series of preferred stock into shares of common stock or any other class or series of shares of capital stock. The terms will include the number of shares of common stock or other securities into which the shares of preferred stock are convertible, the conversion price (or the manner of determining it), the conversion period, provisions as to whether conversion will be at the option of the holders of the series or at our option, the events requiring an adjustment of the conversion price, and provisions affecting conversion upon the redemption of shares of the series.

### **Our Exchange Rights**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which we can require you to exchange shares of any series of preferred stock for debt securities. If an exchange is required, you will receive debt securities with a principal amount equal to the liquidation preference of the applicable series of preferred stock. The other terms and provisions of the debt securities will not be materially less favorable to you than those of the series of preferred stock being exchanged.

## **DESCRIPTION OF OUR OUTSTANDING CAPITAL STOCK**

The summary of the terms of our outstanding common stock set forth below does not purport to be complete and is subject to and qualified in its entirety by reference to our Certificate of Incorporation, as amended from time to time, and our Third Amended and Restated Bylaws, as amended and/or restated from time to time, each of which is incorporated herein by reference. You should read our Certificate of Incorporation and our Third Amended and Restated Bylaws for additional information before you purchase any of our capital stock.

Our Certificate of Incorporation provides that we may issue up to 190,000,000 shares of stock, consisting of 180,000,000 shares of common stock and 10,000,000 shares of preferred stock. As of July 21, 2003, 79,388,947 shares of common stock and no shares of preferred stock were issued and outstanding.



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All shares of common stock offered hereby will be duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other shares of capital stock and to certain provisions of our Certificate of Incorporation, holders of shares of common stock are entitled to receive distributions if, as and when authorized and declared by the Board of Directors out of assets legally available therefore and to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding-up after payment of, or adequate provision for, all of our known debts and liabilities. We currently expect to make quarterly distributions, and from time to time we may make additional distributions.

Holders of shares of common stock have no conversion, sinking fund, redemption or preemptive rights to subscribe for any of our securities. Subject to certain provisions of our Certificate of Incorporation, shares of common stock have equal distribution, liquidation and other rights.

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In order to preserve our ability to maintain REIT status, our Certificate of Incorporation provides that if a person acquires beneficial ownership of greater than 9% of our outstanding stock, the shares that are beneficially owned in excess of such 9% limit are considered to be excess shares. Excess shares are automatically deemed transferred to a trust for the benefit of a charitable institution or other qualifying organization selected by our Board of Directors. The trust is entitled to all dividends with respect to the excess shares and the trustee may exercise all voting power over the excess shares. We have the right to buy the excess shares for a purchase price equal to the lesser of (1) the price per share in the transaction that created the shares, or (2) the market price on the date we buy the shares. We have the right to defer payment of the purchase price for the excess shares for up to five years. If we do not purchase the excess shares, the trustee of the trust is required to transfer the excess shares at the direction of the Board of Directors. The owner of the excess shares is entitled to receive the lesser of the proceeds from the sale of the excess shares or the original price for such excess shares; any additional amounts are payable to the beneficiary of the trust. The Board of Directors may grant waivers from the excess share limitations. On June 24, 2003, we granted such a waiver from the 9% ownership limitation provisions of Article XII of the our Certificate of Incorporation to Cohen & Steers Capital Management, Inc. Under the waiver, Cohen & Steers may beneficially own, in the aggregate, up to 14%, in number of shares or value, of our common stock.

We have issued preferred stock purchase rights under a Rights Agreement, dated July 20, 1993, as amended, with National City Bank as the Rights Agent. The Rights have certain anti-takeover effects and are intended to cause substantial dilution to a person or group that attempts to acquire us without the approval of our Board of Directors. For more information on the Rights, see Note 15 to the Consolidated Financial Statements incorporated by reference in our Annual Report on Form 10-K for the year ended December 31, 2002.

## **DESCRIPTION OF OUR DEPOSITARY SHARES**

This section describes the general terms and provisions of shares of preferred stock represented by depositary shares. The applicable prospectus supplement will describe the specific terms of the depositary shares offered through that prospectus supplement and any general terms outlined in this section that will not apply to those depositary shares.

We have summarized in this section certain terms and provisions of the deposit agreement, the depositary shares and the receipts representing depositary shares. The summary is not complete. You should read the forms of deposit agreement and depositary receipt for additional information before you buy any depositary shares.

### **General**

We may, at our option, elect to offer fractional interests in shares of preferred, rather than shares of preferred stock. If we exercise this option, we will appoint a depositary to issue depositary receipts representing those fractional interests. Shares of preferred stock of each series represented by depositary shares will be deposited under a separate deposit agreement between us and the depositary. The prospectus supplement relating to a series of depositary shares will provide the name and address of the depositary. Subject to the terms of the applicable deposit agreement, each owner of depositary shares will be entitled to all of the dividend, voting, conversion, redemption, liquidation and other rights and preferences of the shares of preferred stock represented by those depositary shares.

Depositary receipts issued pursuant to the applicable deposit agreement will evidence ownership of depositary shares. Upon surrender of depositary receipts at the office of the depositary, and upon payment of the charges provided in and subject to the terms of the deposit agreement, a holder of depositary shares will be entitled to receive the shares of preferred stock underlying the surrendered depositary receipts.



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### **Dividends and Other Distributions**

A depositary will be required to distribute all dividends or other cash distributions received in respect of the applicable shares of preferred stock to the record holders of depositary receipts evidencing the related depositary shares in proportion to the number of depositary receipts owned by the holders. Fractions will be rounded down to the nearest whole cent.

If the distribution is other than in cash, a depositary will be required to distribute property received by it to the record holders of depositary receipts entitled thereto, unless the depositary determines that it is not feasible to make the distribution. In that case, the depositary may, with our approval, sell the property and distribute the net proceeds from the sale to the holders of depositary shares.

Depositary shares that represent shares of preferred stock converted or exchanged will not be entitled to distributions. The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of shares of preferred stock will be made available to holders of depositary shares. All distributions will be subject to obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the depositary.

### **Withdrawal of Shares of Preferred Stock**

You may receive the number of whole shares of your series of preferred stock and any money or other property represented by your depositary receipts after surrendering your depositary receipts at the corporate trust office of the depositary. Partial shares of preferred stock will not be issued. If the depositary shares that you surrender exceed the number of depositary shares that represent the number of whole shares of preferred stock you wish to withdraw, then the depositary will deliver to you at the same time a new depositary receipt evidencing the excess number of depositary shares. Once you have withdrawn your shares of preferred stock, you will not be entitled to re-deposit those shares of preferred stock under the deposit agreement in order to receive depositary shares. We do not expect that there will be any public trading market for withdrawn shares of preferred stock.

### **Redemption of Depositary Shares**

If we redeem a series of the preferred stock underlying the depositary shares, the depositary will redeem those shares from the proceeds it receives. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to the series of the preferred stock. The redemption date for depositary shares will be the same as that of the preferred stock. If we are redeeming less than all of the depositary shares, the depositary will select the depositary shares we are redeeming by lot or pro rata as the depositary may determine.

After the date fixed for redemption, the depositary shares called for redemption will no longer be deemed outstanding. All rights of the holders of the depositary shares and the related depositary receipts will cease at that time, except the right to receive the money or other property to which the holders of depositary shares were entitled upon redemption. Receipt of the money or other property is subject to surrender to the depositary of the depositary receipts evidencing the redeemed depositary shares.

**Voting of the Underlying Shares of Preferred Stock**

Upon receipt of notice of any meeting at which the holders of the preferred stock are entitled to vote, a depositary will be required to mail the information contained in the notice of meeting to the record holders of the depositary shares representing such preferred stock. Each record holder of depositary receipts on the record date will be entitled to instruct the depositary as to how the holder's depositary shares will be voted. The record date for the depositary shares will be the same as the record date for the preferred stock. The depositary will vote the

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shares as you instruct. We will agree to take all reasonable action that the depositary deems necessary in order to enable it to vote the preferred stock in that manner. If you do not instruct the depositary how to vote your shares, the depositary will abstain from voting those shares. The depositary will not be responsible for any failure to carry out any voting instruction, or for the manner or effect of any vote, as long as its action or inaction is in good faith and does not result from its negligence or willful misconduct.

## **Liquidation Preference**

Upon our liquidation, whether voluntary or involuntary, each holder of depositary shares will be entitled to the fraction of the liquidation preference accorded each share of preferred stock represented by the depositary shares, as described in the applicable prospectus supplement.

## **Conversion or Exchange of Shares of Preferred Stock**

The depositary shares will not themselves be convertible into or exchangeable for shares of common stock or preferred stock or any of our other securities or property. Nevertheless, if so specified in the applicable prospectus supplement, the depositary receipts may be surrendered by holders to the applicable depositary with written instructions to it to instruct us to cause the conversion of the preferred stock represented by the depositary shares. Similarly, if so specified in the applicable prospectus supplement, we may require you to surrender all of your depositary receipts to the applicable depositary upon our requiring the conversion or exchange of the preferred stock represented by the depositary shares into our debt securities. We will agree that, upon receipt of the instruction and any amounts payable in connection with the conversion or exchange, we will cause the conversion or exchange using the same procedures as those provided for delivery of shares of preferred stock to effect the conversion or exchange. If you are converting only a part of the depositary shares, the depositary will issue you a new depositary receipt for any unconverted depositary shares.

## **Taxation**

As owner of depositary shares, you will be treated for U.S. federal income tax purposes as if you were an owner of the series of preferred stock represented by the depositary shares. Therefore, you will be required to take into account for U.S. federal income tax purposes income and deductions to which you would be entitled if you were a holder of the underlying series of preferred stock. In addition:

no gain or loss will be recognized for U.S. federal income tax purposes upon the withdrawal of shares of preferred stock in exchange for depositary shares provided in the deposit agreement;

the tax basis of each share of preferred stock to you as exchanging owner of depositary shares will, upon exchange, be the same as the aggregate tax basis of the depositary shares exchanged for shares of preferred stock; and

if you held the depositary shares as a capital asset at the time of the exchange for shares of preferred stock, the holding period for shares of the preferred stock will include the period during which you owned the depositary shares.

## **Amendment and Termination of a Deposit Agreement**

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We and the applicable depositary are permitted to amend the provisions of the depositary receipts and the deposit agreement. However, the holders of at least a majority of the applicable depositary shares then outstanding must approve any amendment that adds or increases fees or charges or prejudices an important right of holders. Every holder of an outstanding depositary receipt at the time any amendment becomes effective, by continuing to hold the receipt, will be bound by the applicable deposit agreement, as amended.

Any deposit agreement may be terminated by us upon not less than 30 days prior written notice to the applicable depositary if (1) the termination is necessary to preserve our status as a REIT or (2) a majority of each

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series of preferred stock affected by the termination consents to the termination. When either event occurs, the depositary will be required to deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by the holder, the number of whole or fractional shares of preferred stock as are represented by the depositary shares evidenced by the depositary receipts, together with any other property held by the depositary with respect to the depositary receipts. In addition, a deposit agreement will automatically terminate if:

all depositary shares have been redeemed;

there shall have been a final distribution in respect of the related preferred stock in connection with our liquidation and the distribution has been made to the holders of depositary receipts evidencing the depositary shares underlying the preferred stock; or

each related share of preferred stock shall have been converted or exchanged into securities not represented by depositary shares.

## **Charges of a Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of a deposit agreement. In addition, we will pay the fees and expenses of a depositary in connection with the initial deposit of the preferred stock and any redemption of preferred stock. However, holders of depositary receipts will pay any transfer or other governmental charges and the fees and expenses of a depositary for any duties the holders request to be performed that are outside of those expressly provided for in the applicable deposit agreement.

## **Resignation and Removal of Depositary**

A depositary may resign at any time by delivering to us notice of its election to do so. In addition, we may at any time remove a depositary. Any resignation or removal will take effect when we appoint a successor depositary and it accepts the appointment. We must appoint a successor depositary within 60 days after delivery of the notice of resignation or removal. A depositary must be a bank or trust company having its principal office in the United States that has a combined capital and surplus of at least \$50 million.

## **Miscellaneous**

A depositary will be required to forward to holders of depositary receipts any reports and communications from us that it receives with respect to the related shares of preferred stock. Holders of depositary receipts will be able to inspect the transfer books of the depositary and the list of holders of receipts upon reasonable notice.

Neither a depositary nor our company will be liable if it is prevented from or delayed in performing its obligations under a deposit agreement by law or any circumstances beyond its control. Our obligations and those of the depositary under a deposit agreement will be limited to performing duties in good faith and without gross negligence or willful misconduct. Neither we nor any depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary receipts, depositary shares or related shares of preferred stock unless satisfactory indemnity is furnished. We and each depositary will be permitted to rely on written advice of counsel or accountants, on information provided by persons presenting shares of preferred stock for deposit, by holders of depositary receipts, or by other persons believed in good faith to be competent to



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give the information, and on documents believed in good faith to be genuine and signed by a proper party.

If a depositary receives conflicting claims, requests or instructions from any holder of depositary receipts, on the one hand, and us, on the other hand, the depositary shall be entitled to act on the claims, requests or instructions received from us.

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**DESCRIPTION OF OUR WARRANTS**

This section describes the general terms and provisions of the warrants. The applicable prospectus supplement will describe the specific terms of the warrants offered through that prospectus supplement and any general terms outlined in this section that will not apply to those warrants.

We have summarized in this section certain terms and provisions of the warrant agreement and the warrants. The summary is not complete. You should read the forms of warrant and warrant agreement that we will file with the Commission at or before the time of the offering of the applicable series of warrants for additional information before you buy any warrants.

We may issue, together with any other securities being offered or separately, warrants entitling the holder to purchase from or sell to us, or to receive from us the cash value of the right to purchase or sell, debt securities, preferred stock, depositary shares, common stock or trust preferred shares. We and a warrant agent will enter a warrant agreement pursuant to which the warrants will be issued. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

In the case of each series of warrants, the applicable prospectus supplement will describe the terms of the warrants being offered thereby. These include the following, if applicable:

the offering price;

the number of warrants offered;

the securities underlying the warrants;

the exercise price, the procedures for exercise of the warrants and the circumstances, if any, that will cause the warrants to be automatically exercised;

the date on which the warrants will expire;

federal income tax consequences;

the rights, if any, we have to redeem the warrants;

the name of the warrant agent; and

the other terms of the warrants.

Warrants may be exercised at the appropriate office of the warrant agent or any other office indicated in the applicable prospectus supplement. Before the exercise of warrants, holders will not have any of the rights of holders of the securities underlying the warrants and will not be entitled to payments made to holders of those securities.

The warrant agreements may be amended or supplemented without the consent of the holders of the warrants to which the amendment or supplement applies to effect changes that are not inconsistent with the provisions of the warrants and that do not adversely affect the interests of the holders of the warrants. However, any amendment that materially and adversely alters the rights of the holders of warrants will not be effective unless the holders of at least a majority of the applicable warrants then outstanding approve the amendment. Every holder of an outstanding warrant at the time any amendment becomes effective, by continuing to hold the warrant, will be bound by the applicable warrant agreement, as amended thereby. The prospectus supplement applicable to a particular series of warrants may provide that certain provisions of the warrants, including the securities for which they may be exercisable, the exercise price, and the expiration date may not be altered without the consent of the holder of each warrant.

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**PLAN OF DISTRIBUTION**

We, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS may sell the offered securities in and outside the United States (a) through underwriters or dealers, (b) directly to purchasers, including to a limited number of institutional purchasers, to a single purchaser or to our affiliates and stockholders, (c) through agents or (d) through a combination of any of these methods. A prospectus supplement relating to such sales will be filed that will include, as applicable, the following information:

the terms of the offering;

the names of any underwriters or agents;

the name or names of any managing underwriter or underwriters;

the purchase price or initial public offering price of the securities;

the net proceeds from the sale of the securities;

any delayed delivery arrangements;

any underwriting discounts, commissions and other items constituting underwriters' compensation;

any initial public offering price;

any discounts or concessions allowed or reallocated or paid to dealers; and

any commissions paid to agents.

**Sale Through Underwriters or Dealers**

If underwriters are used in the sale, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

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In order to facilitate the offering of securities, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, the underwriters may over-allot in connection with the offering, creating a short position in the securities for their account. In addition, to cover over-allotments or to stabilize the price of the shares, the underwriters may bid for, and purchase, shares in the open market. Finally, an underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed shares in transactions to cover syndicate short positions, in stabilization transactions, or otherwise. Any of these activities may stabilize or maintain the market price of the offered securities above independent market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

Some or all of the securities that we, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS sell securities for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities offered pursuant to this prospectus.

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If dealers are used in the sale of securities, we, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

### **Direct Sales and Sales Through Agents**

We, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS may sell the securities directly. If the securities are sold directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act of 1933 with respect to any sale of those securities, we will describe the terms of any such sales in the prospectus supplement. We, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

### **Remarketing Arrangements**

Offered securities may also be offered and sold, if we so indicate in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters of the offered securities under the Securities Act of 1933.

### **Delayed Delivery Contracts**

If we so indicate in the prospectus supplement, we, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

### **General Information**

We, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS may have agreements with the agents, dealers, underwriters and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act of 1933, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers, underwriters and remarketing firms may be customers of, engage in transactions with or perform services for us, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS in the ordinary course of their businesses.

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Each underwriter, dealer and agent participating in the distribution of any of the securities that are issuable in bearer form will agree that it will not offer, sell or deliver, directly or indirectly, securities in bearer form in the United States or to United States persons, other than qualifying financial institutions, during the restricted period, as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7).

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**VALIDITY OF THE OFFERED SECURITIES**

Willkie Farr & Gallagher LLP, New York, New York will issue an opinion for us, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties and/or Ventas TRS about the legality of certain of the offered securities. Any underwriters will be advised about other issues relating to any offering by their own legal counsel.

**EXPERTS**

The consolidated financial statements (including the financial statement schedule) of Ventas, Inc. at December 31, 2002 and 2001, and for each of the three years in the period ended December 31, 2002, incorporated by reference in this prospectus and the registration statements of which this prospectus is a part have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon, incorporated by reference herein. The financial statements referred to above are incorporated by reference in this prospectus and such registration statements in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Commission. We have also filed with the Commission two registration statements on Form S-3 to register the securities being offered in this prospectus. This prospectus, which forms part of the registration statements, does not contain all of the information included in the registration statements. For further information about us, Ventas Realty, Ventas LLC, Ventas Capital, Ventas Healthcare Properties, Ventas TRS and/or and the securities offered in this prospectus, you should refer to the registration statements and their exhibits.

Our filings are available on the Commission's website at [www.sec.gov](http://www.sec.gov). You also may read and copy any documents we file at the Commission's public reference rooms in Washington, D.C. Please call the Commission at 1-800-SEC-0330 for further information about their public reference rooms, including copy charges. You can also obtain information about us from the New York Stock Exchange at 20 Broad Street, New York, New York 10005. Information about us is also available on our website at [www.ventasreit.com](http://www.ventasreit.com). Information on our website is not incorporated by reference herein and our web address is included as an inactive textual reference only.

**INCORPORATION BY REFERENCE**

We are incorporating by reference in the prospectus the information we file with the Commission. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the Commission will automatically update and supersede this information. We are incorporating by reference our documents listed below and any future filings we make with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of the registration statements of which this prospectus is a part and before the effective date of the registration statements or after the date of this prospectus until all of the securities offered under this prospectus are sold.



## Edgar Filing: Cryoport, Inc. - Form 10-KT

Annual Report on Form 10-K for the fiscal year ended December 31, 2002;

Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2003;

Our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2003;

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Our Current Reports on Forms 8-K filed January 6, 2003, January 27, 2003 (other than with respect to the information furnished under Item 9 of that report), January 30, 2003, February 24, 2003, March 12, 2003, March 28, 2003 (other than with respect to the information furnished under Item 9 of that report), April 2, 2003 (other than with respect to the information furnished under Item 9 of that report), April 3, 2003, May 5, 2003 (other than with respect to Item 9 of that report), May 15, 2003, May 16, 2003, May 30, 2003 (other than with respect to the information furnished under Item 9 of that report) June 5, 2003, July 2, 2003 (other than with respect to the information furnished under Item 9 of that report), July 2, 2003 (other than with respect to the information furnished under Item 9 of that report), July 24, 2003 (other than with respect to the information furnished under Item 9 of that report) and August 13, 2003.

Our Amended Proxy Statement filed on March 31, 2003 for our 2003 Annual Meeting of Stockholders; and

The descriptions of our common stock set forth in our registration statement on Form 8-A filed with the Commission on January 23, 1992 and of our rights to purchase Series A Participating Preferred Stock set forth in our registration statement on Form 8-A filed with the Commission on July 21, 1993, as amended on August 11, 1995, February 2, 1998, July 28, 1998, April 19, 1999, December 22, 1999, May 24, 2000 and October 16, 2002.

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

General Counsel

Ventas, Inc.

4360 Brownsboro Road

Suite 115

Louisville, Kentucky 40207

(502) 357-9000

You should rely only on the information incorporated by reference or provided in this prospectus. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of those documents.

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**2,000,000 Shares**

**Ventas, Inc.**

**Common Stock**

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**PROSPECTUS SUPPLEMENT**

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**Merrill Lynch & Co.**

**March 10, 2004**

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