

KILROY REALTY CORP  
Form S-3/A  
June 05, 2003  
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As filed with the Securities and Exchange Commission on June 4, 2003

Registration No. 333-104320

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## AMENDMENT NO.1

TO

FORM S-3

## REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

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# KILROY REALTY CORPORATION

(Exact name of Registrant as specified in its charter)

Maryland  
(State or Other Jurisdiction of  
Incorporation or Organization)

12200 West Olympic Boulevard, Suite 200, Los Angeles, California 90064, (310) 481-8400

95-4598246  
(I.R.S. Employer  
Identification Number)

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

Richard E. Moran Jr.

Executive Vice President and Chief Financial Officer

Kilroy Realty Corporation

12200 West Olympic Boulevard, Suite 200, Los Angeles, California 90064, (310) 481-8400

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

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*Copies to:*

J. Scott Hodgkins, Esq.

Latham & Watkins LLP

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633 West Fifth Street,

Suite 4000, Los Angeles, California 90071-2007, (213) 485-1234

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

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

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

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

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

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

**This registration statement relates to the possible issuance of 1,398,068 shares of common stock of Kilroy Realty Corporation to the holders of units representing common limited partnership interests in Kilroy Realty, L.P. and the possible resale of the shares of common stock by the selling stockholders named in this registration statement.**

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED June 4, 2003**

**PRELIMINARY PROSPECTUS**

**KILROY REALTY CORPORATION**

**1,398,068 Shares of Common Stock**

This prospectus relates to the possible issuance of up to 1,398,068 shares of common stock of Kilroy Realty Corporation, a Maryland corporation, to the holders of common units representing limited partnership interests in Kilroy Realty L.P. identified in this prospectus, and the possible resale of shares of common stock by these holders. The holders identified in this prospectus were privately issued common limited partnership units on March 25, 2002 and as of March 25, 2003 were entitled to tender their common units to Kilroy Realty, L.P. for cash redemption. We may elect to exchange the holders' tendered units on a one-for-one basis for shares of our common stock. We will not receive any of the proceeds from the issuance of the common stock to the holder or from the resale of the shares by the holders.

Our common stock is listed on the New York Stock Exchange under the symbol KRC. On June 3, 2003 the last reported sales price of our common stock on the New York Stock Exchange was \$27.20 per share.

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**Before you invest in our common stock, you should consider the risks discussed in Risk Factors beginning on page 1.**

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

**The date of this prospectus is \_\_\_\_\_, 2003.**

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*Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to we, us, our or the Company mean Kilroy Realty Corporation, including our consolidated subsidiaries.*

You should rely only on the information contained in this document or incorporated by reference. Neither we nor the holders have authorized anyone to provide you with information or make any representation that is different. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus is not an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which it relates and this prospectus is not an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make an offer or solicitation. You should not assume that the information contained in this prospectus is correct on any date after the date of the prospectus even though this prospectus is delivered or shares are sold pursuant to the prospectus at a later date. Since the date of the prospectus contained in this registration statement, our business, financial condition, results of operations and prospects may have changed.

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**RISK FACTORS**

Investment in our common stock involves risks. In addition to other information contained or incorporated by reference in this prospectus or in an accompanying prospectus supplement, you should carefully consider the following factors before acquiring shares of common stock offered by this prospectus. The occurrence of any of the following risks might cause you to lose all or a part of your investment. Please refer to the section entitled "Forward Looking Statements" on page 13.

**General economic conditions may adversely affect our financial condition and results of operations.**

Periods of economic slowdown or recession in the United States and in other countries, declining demand for leased office or industrial properties or rising interest rates, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults under existing leases, either of which could adversely affect our financial condition, results of operations, cash flow, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you.

**Future terrorist activity or declaration of war by the United States may have an adverse affect on our financial condition and operating results.**

Future terrorist attacks in the United States, such as the attacks that occurred in New York and Washington, D.C. on September 11, 2001 and other acts of terrorism or war, may result in declining economic activity, which could harm the demand for and the value of our properties. In addition, the public perception that certain locations are at greater risk for attack, such as major airports, ports and rail facilities, may decrease the demand for and the value of our properties near such sites. A decrease in demand would make it difficult for us to renew or release our properties at these sites at lease rates equal to or above historical rates. Terrorist activities also could directly impact the value of our properties through damage, destruction or loss, and the availability of insurance for such acts may be less, and cost more, which would adversely affect our financial condition. To the extent that our tenants are impacted by future attacks, their businesses similarly could be adversely affected, including their ability to continue to honor their existing leases.

Terrorist acts and a declaration of war by the United States also may adversely affect the markets in which our securities trade, and may cause further erosion of business and consumer confidence and spending and may result in increased volatility in national and international financial markets and economies. Any one of these events may cause a decline in the demand for office and industrial leased space, delay the time in which our new or renovated properties reach stabilized occupancy, increase our operating expenses, such as those attributable to increased physical security for our properties, and limit our access to capital or increase our cost of raising capital.

**We depend on significant tenants.**

As of March 31, 2003, our ten largest office tenants represented approximately 30.1% of our total annual base rental revenues and our ten largest industrial tenants represented approximately 8.9% of our total annual base rental revenues. Of this amount, our largest tenant, The Boeing Company, leased an aggregate of approximately 0.8 million rentable square feet of office space, representing approximately \$13.9 million of our total annual base rental revenues at March 31, 2003. Our second largest tenant, Peregrine Systems, Inc. leased four buildings totaling 423,900 rentable square feet under four separate leases; however, Peregrine filed for bankruptcy in September 2002, and as part of the bankruptcy filing, Peregrine filed a motion to reject two of the leases encompassing 182,127 rentable square feet. In February 2003, the bankruptcy court approved

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the rejection of these leases. We subsequently executed leases with two new tenants for 100% of the space in these two buildings during the quarter ended March 31, 2003. Of the annual base rental revenues of \$7.0 million from the two leases that were not rejected, Peregrine contributes approximately \$4.9 million, and executed subleases

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contribute approximately \$2.1 million. Although Peregrine has indicated that it may reject some of the space under the remaining leases it has with us, Peregrine continues to lease two buildings encompassing approximately 242,000 rentable square feet.

One of our other significant tenants, Brobeck, Phleger & Harrison, LLP ( Brobeck ) dissolved in February 2003 and as a result we terminated the two leases Brobeck had with us encompassing 161,500 rentable square feet. During the quarter ended March 31, 2003, Paul, Hastings, Janofsky & Walker LLP agreed to lease approximately 72,300 rentable square feet on an interim basis in one of the buildings that was previously leased to Brobeck. The interim lease will terminate when the tenant improvements at another one of our buildings previously leased to Peregrine are complete and the building is ready for occupancy. In May 2003, the Company executed a fifteen year lease with the law firm of Fish Richardson P.C. for approximately 72,300 rentable square feet at this building and for approximately 23,900 rentable square feet at the second building. This lease is expected to commence in the fourth quarter of 2003 following the relocation of Paul, Hastings, Janofsky & Walker LLP.

Although we have been able to mitigate the impact of tenant defaults to our financial condition, revenues and results of operations thus far, our financial condition, revenues and results of operations could be adversely affected if Peregrine vacates the remaining space it occupies or if we are unable to re-lease the space vacated by Brobeck on a longer-term basis. In addition, our financial condition, revenues and results of operations could be adversely affected if any of our other significant tenants fails to renew its leases, renews its leases on terms less favorable to us or if any of them becomes bankrupt or insolvent or otherwise unable to satisfy its lease obligations.

### **Downturns in our tenants' businesses may reduce our cash flows.**

For the three months ended March 31, 2003, we derived 91.6% of our revenues from continuing operations from rental income and tenant reimbursements. A tenant may experience a downturn in its business, which may weaken its financial condition and result in its failure to make timely rental payments. In the event of default by a tenant, we may experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment. As discussed under the caption "We depend on significant tenants," our second largest tenant, Peregrine, filed for bankruptcy in September 2002. Prior to filing for bankruptcy and rejecting two of the four leases it had with us, the leases with Peregrine represented approximately 7.9% of our annual base rental revenues. In addition, as discussed above, Brobeck dissolved and began winding up its operations in February 2003.

The bankruptcy or insolvency of a major tenant also may adversely affect the income produced by our properties. If any tenant becomes a debtor in a case under the Bankruptcy Code, we cannot evict the tenant solely because of the bankruptcy. In addition, the bankruptcy court might authorize the tenant to reject and terminate its lease. Our claim against the tenant for unpaid, future rent would be subject to a statutory cap that might be substantially less than the remaining rent actually owed under the lease. Even so, our claim for unpaid rent would likely not be paid in full. Any losses resulting from the bankruptcy of any of our other tenants could adversely impact our financial condition, results from operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you.

### **We may be unable to renew leases or re-let available space.**

As of March 31, 2003, we had office and industrial space available for lease representing approximately 7.8% of the total square footage of our properties. Leases which represented 2.2% of the leased square footage of our properties were leased by Peregrine, which may also become available for lease within the next 12 months. In addition, leases representing approximately 5.6% and 10.5% of the leased square footage of our properties are scheduled to expire during the remainder of 2003 and in 2004, respectively. Above market rental rates on some of our properties may force us to renew or re-lease expiring leases at rates below current lease rates. We believe that the average rental





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rates for all of our properties generally are equal to the current average quoted market rate across all of the submarkets in which our properties are located, although individual properties within any particular submarket presently may be leased at above or below the rental rates within that submarket. We cannot give any assurance that leases will be renewed or that available space will be re-leased at rental rates equal to or above the current rental rates. If the average rental rates for our properties decrease, our existing tenants do not renew their leases or we do not re-lease a significant portion of our available space, our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you would be adversely affected.

### **Most of our properties depend upon the Southern California economy.**

As of March 31, 2003, 93.1% of the aggregate square footage of our stabilized portfolio and 94.2% of our annualized base rent, excluding expense reimbursements and rental abatements, came from properties located in Southern California. In addition, as of March 31, 2003, all of our lease-up, in-process and future development projects were located in Southern California. Our ability to make expected distributions to you depends on our ability to generate Funds From Operations, as defined by NAREIT, in excess of scheduled principal payments on debt, payments on the preferred limited partnership units issued by Kilroy Realty, L.P. and capital expenditure requirements. Events and conditions applicable to owners and operators of real property that are beyond our control may decrease funds available for distribution and the value of our properties. These events include:

local oversupply or reduction in demand of office, industrial or other commercial space;

inability to collect rent from tenants;

vacancies or our inability to rent spaces on favorable terms;

inability to finance property development and acquisitions on favorable terms;

increased operating costs, including insurance premiums, utilities and real estate taxes;

costs of complying with changes in governmental regulations;

the relative illiquidity of real estate investments;

changing submarket demographics; and

property damage resulting from seismic activity.

The geographic concentration of our properties may expose us to greater economic risks than if we owned properties in several geographic regions. Any adverse economic or real estate developments in the Southern California region could adversely impact our financial condition, results from operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you.

**Increasing utility costs and power outages in California may have an adverse effect on our operating results and occupancy levels.**

The State of California continues to address issues related to the supply of electricity and natural gas. Since June 2000, shortages of electricity have resulted in increased costs for consumers and certain interruptions in service. Increased consumer costs and consumer perception that the State is not able to effectively manage its energy needs may reduce demand for leased space in California office and industrial properties. A significant reduction in demand for office and industrial space would adversely affect our future financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you.

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**Our debt level reduces cash available for distribution and may expose us to the risk of default under our debt obligations.**

Payments of principal and interest on borrowings may leave us with insufficient cash resources to operate our properties or to pay the distributions necessary to maintain our REIT qualification. Our level of debt and the limitations imposed on us by our debt agreements may have important consequences, including the following:

we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;

cash flow may be insufficient to meet required principal and interest payments;

we may be forced to dispose of one or more of our properties, possibly on disadvantageous terms;

we may default on our obligations and the lenders or mortgagees may foreclose on our properties that secure their loans and receive an assignment of rents and leases; and

our default under one mortgage loan with cross default provisions could result in a default on other indebtedness.

If any one or more of these events were to occur, our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you could be adversely affected. In addition, foreclosures could create taxable income without accompanying cash proceeds, a circumstance which could hinder our ability to meet the strict REIT distribution requirements imposed by the Internal Revenue Code of 1986, as amended (the Internal Revenue Code ). As of March 31, 2003, we had approximately \$777 million aggregate principal amount of indebtedness, \$81.6 million of which is contractually due prior to December 31, 2003. Our total debt represented 47.6% of our total market capitalization at March 31, 2003.

**We face significant competition which may decrease the occupancy and rental rates of our properties.**

We compete with several developers, owners and operators of office, industrial and other commercial real estate, many of which own properties similar to ours in the same submarkets in which our properties are located, but which have lower occupancy rates than our properties. For instance, occupancy rates for our El Segundo stabilized office property portfolio at March 31, 2003 was 92.7% in comparison to 82.6% for the El Segundo office submarkets in total. Leases representing approximately 7,000 and 330,000 square feet, or 1.0% and 46.3% of the total leased square feet in our El Segundo office property portfolio, are scheduled to expire during the remainder of 2003 and in 2004, respectively. In addition, we have one development project in the lease-up phase and one redevelopment office project under construction in El Segundo encompassing approximately 133,700 and 248,000 rentable square feet, respectively. We believe that our higher occupancy rates mean that, on average, our competitors have more space currently available for lease than we do. As a result, our competitors have an incentive to decrease rental rates until their available space is leased. If our competitors offer space at rental rates below the rates currently charged by us for comparable space, we may be pressured to reduce our rental rates below those currently charged in order to retain tenants when our tenant leases expire. As a result, our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you may be adversely affected.

**Potential losses may not be covered by insurance.**

We carry comprehensive liability, fire, extended coverage and rental loss insurance covering all of our properties. We believe the policy specifications and insured limits are appropriate given the relative risk of loss, the cost of the coverage and industry practice. We do not carry insurance for generally uninsurable losses such as loss from riots or acts of God. Some of our policies, like those covering losses due to floods, are subject to limitations involving large deductibles or co-payments and policy limits.

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***Earthquake damage to our Properties could have an adverse effect on our financial condition and operating results.*** We carry earthquake insurance on our properties located in areas known to be subject to earthquakes in an amount and with deductibles which we believe are commercially reasonable. As of March 31, 2003, 133 of our 134 properties, representing approximately 99.3% of our stabilized portfolio based on aggregate square footage and approximately 99.5% based on annualized base rent, were located in areas known to be subject to earthquakes. While we presently carry earthquake insurance on these properties, the amount of our earthquake insurance coverage may not be sufficient to cover losses from earthquakes. In addition, we may discontinue earthquake insurance on some or all of our properties in the future if the cost of premiums for earthquake insurance exceeds the value of the coverage discounted for the risk of loss. If we experience a loss which is uninsured or which exceeds policy limits, we could lose the capital invested in the damaged properties as well as the anticipated future cash flows from those properties. In addition, if the damaged properties are subject to recourse indebtedness, we would continue to be liable for the indebtedness, even if the properties were irreparable.

### **We may be unable to complete acquisitions and successfully operate acquired properties.**

We continue to evaluate the market of available properties and may acquire office and industrial properties when strategic opportunities exist. Our ability to acquire properties on favorable terms and successfully operate them is subject to the following risks:

potential inability to acquire a desired property because of competition from other real estate investors with significant capital, including both publicly traded REITs and institutional investment funds;

even if we enter into agreements for the acquisition of office and industrial properties, these agreements are subject to customary conditions to closing, including completion of due diligence investigations to our satisfaction;

we may be unable to finance the acquisition on favorable terms;

we may spend more than budgeted amounts to make necessary improvements or renovations to acquired properties; and

we may lease the acquired properties at below expected rental rates.

If we cannot finance property acquisitions on favorable terms or operate acquired properties to meet our financial expectations, our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you could be adversely affected.

### **We may be unable to successfully complete and operate developed properties.**

Property development involves the following significant risks:

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we may be unable to obtain construction financing on favorable terms or at all;

we may be unable to obtain permanent financing at all or on advantageous terms if we finance development projects through construction loans;

we may be unable to lease developed properties at expected rental rates or within projected timeframes;

we may not complete development projects on schedule or within budgeted amounts;

we may expend funds on and devote our time to projects which we may not complete; and

we may encounter delays or refusals in obtaining all necessary zoning, land use, building, occupancy and other required governmental permits and authorizations.

For example, during the fourth quarter of 1998, we withdrew our participation from a master planned commercial development prior to the commencement of construction. Also, during the third quarter of 2000, we delayed commencement of construction on one of our projects by four months. The project was an assemblage in

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an urban infill location that required the relocation of some existing businesses. We encountered delays when one of the existing tenants experienced difficulty in relocating as a result of the high leasing demand and tight supply constraints in that submarket.

If one or more of these events were to occur in connection with our projects currently planned for development, our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you could be adversely affected.

While we primarily develop office and industrial properties in Southern California markets, we may in the future develop properties for retail or other use and expand our business to other geographic regions where we expect the development of property to result in favorable risk-adjusted returns on our investment. Presently, we do not possess the same level of familiarity with development of other property types or outside markets, which could adversely affect our ability to develop properties or to achieve expected performance.

### **We could default on leases for land on which some of our properties are located.**

As of March 31, 2003 we owned eleven office buildings located on various parcels, each of which we lease on a long-term basis. If we default under the terms of any particular lease, we may lose the property subject to the lease. Upon expiration of a lease and all of its options, we may not be able to renegotiate a new lease on favorable terms, if at all. The loss of these properties or an increase of our rental expense would have an adverse effect on our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you. As of March 31, 2003 we had approximately 1.6 million aggregate rentable square feet of rental space located on these leased parcels. The leases for the land under the Kilroy Airport Center, Long Beach expire in 2084. The leases for the land under the SeaTac Office Center, including renewal options, expire in 2062. The primary lease for the land under 12312 West Olympic Boulevard in Santa Monica expires in January 2065 with a smaller secondary lease expiring in September 2011.

### **Real estate assets are illiquid and we may not be able to sell our properties when we desire.**

Our investments in our properties are relatively illiquid which limits our ability to sell our properties quickly in response to changes in economic or other conditions. In addition, the Internal Revenue Code generally imposes a 100% prohibited transaction tax on profits we derive from sales of properties held primarily for sale to customers in the ordinary course of business, which could affect our ability to sell properties. These restrictions on our ability to sell our properties could have an adverse effect on our financial condition, results of operations, cash flows, quoted per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you.

### **Existing conditions at some of our properties may expose us to liability related to environmental matters.**

Independent environmental consultants have conducted Phase I or similar environmental site assessments on all of our properties. We generally obtain these assessments prior to the acquisition of a property and may later update them as required for subsequent financing of the property or as requested by a tenant. Site assessments generally include a historical review, a public records review, an investigation of the surveyed site and surrounding properties, and the issuance of a written report. These assessments do not generally include soil samplings or subsurface investigations. Through March 31, 2003, Phase I site assessments revealed that 33, or 25%, of our properties, representing approximately 30% of the aggregate square footage of our properties, contain asbestos-containing materials. No remedial action is necessary with respect to these properties in connection with the asbestos-containing materials.

Our site assessments also revealed that historical operations at or near some of our properties, including the operation of underground storage tanks, may have caused soil or groundwater contamination. The prior owners of the affected properties conducted clean-up of known contamination in the soils on the properties and we do



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not believe that further clean-up of the soils is required. None of our site assessments revealed any other environmental liability that we believe would have a material adverse effect on our business, assets or results of operations. We are not aware of any such condition, liability or concern by any other means that would give rise to material environmental liability. However:

the assessments may have failed to reveal all environmental conditions, liabilities or compliance concerns;

there may be material environmental conditions, liabilities or compliance concerns that arose at a property after the review was completed;

future laws, ordinances or regulations may impose material additional environmental liability; and

current environmental conditions at our properties may be affected in the future by tenants, third parties or the condition of land or operations near our properties, such as the presence of underground storage tanks.

We cannot give assurance that costs of future environmental compliance will not affect our ability to make distributions to you.

### **The use of hazardous materials by some of our tenants may expose us to liability.**

Some of our tenants routinely handle hazardous substances and wastes on our properties as part of their routine operations. Environmental laws and regulations subject these tenants, and potentially us, to liability resulting from such activities. We require our tenants, in their leases, to comply with these environmental laws and regulations and to indemnify us for any related liabilities. As of March 31, 2003, less than 5% of our tenants, representing less than 10% of the aggregate square footage of our properties, handled hazardous substances and/or wastes on our properties as part of their routine operations. These tenants are primarily involved in the life sciences and the light industrial and warehouse business. We are not aware of any material noncompliance, liability or claim relating to hazardous or toxic substances or petroleum products in connection with any of our properties, and we do not believe that on-going activities by our tenants will have a material adverse effect on our operations.

### **We could incur significant costs related to government regulation and private litigation over environmental matters.**

Under applicable environmental laws and regulations, we are liable for the costs of removal or remediation of certain hazardous or toxic substances present or released on our properties. These laws could impose liability without regard to whether we are responsible for, or even knew of, the presence or release of the hazardous materials. Government investigations and remediation actions may have substantial costs and the presence or release of hazardous substances on a property could result in personal injury or similar claims by private plaintiffs. For instance, if asbestos-containing materials, toxic mold, or other hazardous or toxic substances were found on our properties, third parties might seek recovery from us for personal injuries associated with those substances. Various laws also impose liability on persons who arrange for the disposal or treatment of hazardous or toxic substances for the cost of removal or remediation of hazardous substances at the disposal or treatment facility. These laws often impose liability whether or not the person arranging for the disposal ever owned or operated the disposal facility. As the owner and operator of our properties, we may be considered to have arranged for the disposal or treatment of hazardous or toxic substances.

### **Potential environmental liabilities may exceed our environmental insurance coverage limits.**

We carry what we believe to be sufficient environmental insurance to cover any potential liability for soil and groundwater contamination and the presence of asbestos-containing materials at the affected sites identified in the environmental site assessments. However, we cannot provide any assurance that our insurance coverage

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will be sufficient or that our liability, if any, will not have a material adverse effect on our financial condition, results of operations, and cash flows, quoted per share trading price of our common stock and our ability to satisfy debt service obligations and to pay distributions to you.

### **We may incur significant costs complying with other governmental regulations.**

Our properties are also subject to regulation under other laws, such as the Americans with Disabilities Act of 1990 under which all public accommodations must meet federal requirements related to access and use by disabled persons, and state and local laws addressing earthquake, fire and life safety requirements. Although we believe that our properties substantially comply with present requirements under applicable governmental regulations, none of our properties have been audited or investigated for compliance by any regulatory agency. If we were not in compliance with material provisions of the ADA or other regulations affecting our properties, we might be required to take remedial action which could include making modifications or renovations to our properties. Federal, state or local governments may also enact future laws and regulations that could require us to make significant modifications or renovations to our properties. If we were to incur substantial costs to comply with the ADA or any other regulations, our financial condition, results of operations, and cash flows, quoted per share trading price of our common stock and our ability to satisfy our debt service obligations and make distributions to you could be adversely affected.

### **Common limited partners of Kilroy Realty, L.P. have limited approval rights which may prevent us from completing a change of control transaction which may be in the best interests of stockholders.**

We may not withdraw from Kilroy Realty, L.P. or transfer our general partnership interest or admit another general partner without the approval of a majority of the common limited partnership unitholders, except in the case of a termination transaction described in the section entitled Description of Material Provisions of the Partnership Agreement of Kilroy Realty, L.P. Transferability of Partnership Interests, which requires the approval of 60% of the common unitholders, including the common units we hold in our capacity as general partner. The right of common limited partners to vote on these transactions could limit our ability to complete a change of control transaction that might otherwise be in the best interests of our stockholders.

### **Limited partners of Kilroy Realty, L.P. must approve the dissolution of Kilroy Realty, L.P. and the disposition of properties they contributed.**

For as long as limited partners own at least 5% of all of the common units of Kilroy Realty, L.P., we must obtain the approval of limited partners holding a majority of the common units before we may:

dissolve the partnership, or

sell the property located at 2260 East Imperial Highway at Kilroy Airport Center in El Segundo prior to January 31, 2004.

As of March 31, 2003, limited partners owned approximately 13.3% of the outstanding interests in Kilroy Realty, L.P. In addition, Kilroy Realty, L.P. has agreed to use commercially reasonable efforts to minimize the tax consequences to common limited partners resulting from the repayment, refinancing, replacement or restructuring of debt, or any sale, exchange or other disposition of any of its other assets. The exercise of one or more of these approval rights by the limited partners could delay or prevent us from completing a transaction which may be in the best

interest of our stockholders.

**The Chairman of our board of directors and our President and Chief Executive Officer each have substantial influence over our affairs.**

John B. Kilroy, Sr. is the Chairman of our board of directors and John B. Kilroy, Jr. is our President and Chief Executive Officer. Each is a member of our board of directors and together they beneficially own 612,652 shares of common stock, common limited partnership units exchangeable for an aggregate of 1,748,072 shares of common stock and currently vested options to purchase an aggregate of 405,001 shares of

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common stock, representing a total of approximately 9.7% of the total outstanding shares of common stock and outstanding common limited partnership units exchangeable for shares of common stock as of March 31, 2003, assuming the exercise of the currently vested options. Pursuant to our charter no other stockholder may own, actually or constructively, more than 7.0% of our common stock without obtaining a waiver from the board of directors. The board of directors has waived the ownership limits with respect to John B. Kilroy, Sr., John B. Kilroy, Jr., members of their families and some affiliated entities. These named individuals and entities may own either actually or constructively, in the aggregate, up to 21% of our outstanding common stock. Consequently, Messrs. Kilroy have substantial influence on us and could exercise their influence in a manner that is not in the best interests of our stockholders. Also, they may in the future have a substantial influence on the outcome of any matters submitted to our stockholders for approval.

### **There are limits on the ownership of our capital stock which limit the opportunities for a change of control at a premium to existing stockholders.**

Provisions of the Maryland General Corporation Law, our charter, our bylaws and Kilroy Realty, L.P.'s partnership agreement may delay, defer or prevent a change in control over us or the removal of existing management. Any of these actions might prevent our stockholders from receiving a premium for their shares of stock over the then prevailing market prices.

The Internal Revenue Code sets forth stringent ownership limits on us as a result of our decision to be taxed as a REIT, including:

no more than 50% in value of our capital stock may be owned, actually or constructively, by five or fewer individuals, including some entities, during the last half of a taxable year;

subject to exceptions, our common stock shares must be held by a minimum of 100 persons for at least 335 days of a 12-month taxable year, or a proportionate part of a short taxable year; and

if we, or any entity which owns 10% or more of our capital stock, actually or constructively owns 10% or more of one of our tenants, or a tenant of any partnership in which we are a partner, then any rents that we receive from the tenant in question will not be qualifying income for purposes of the Internal Revenue Code's REIT gross income tests, regardless of whether we receive the rents directly or through a partnership.

Our charter establishes clear ownership limits to protect our REIT status. No single stockholder may own, either actually or constructively, more than 7.0% of our common stock outstanding. Similarly, no single holder of our Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock may actually or constructively own any class or series of our preferred stock, so that their total capital stock ownership would exceed 7.0% by value of our total capital stock, and no single holder of Series B Preferred Stock, if issued, may actually or constructively own more than 7.0% of our Series B Preferred Stock.

The board of directors may waive the ownership limits if it is satisfied that the excess ownership would not jeopardize our REIT status and if it believes that the waiver would be in our best interests. The board of directors has waived the ownership limits with respect to John B. Kilroy, Sr., John B. Kilroy, Jr., members of their families and some affiliated entities. These named individuals and entities may own either actually or constructively, in the aggregate, up to 21% of the outstanding common stock.

If anyone acquires shares in excess of any ownership limits:

the transfer to the transferee will be void with respect to these excess shares;

the excess shares will be automatically transferred from the transferee or owner to a trust for the benefit of a qualified charitable organization;

the purported transferee or owner will have no right to vote those excess shares; and

the purported transferee or owner will have no right to receive dividends or other distributions from these excess shares.

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### **Our charter contains provisions that may delay, defer or prevent a change of control transaction.**

***Our board of directors is divided into classes that serve staggered terms.*** Our board of directors is divided into three classes with staggered terms. The staggered terms for directors may reduce the possibility of a tender offer or an attempt to complete a change of control transaction even if a tender offer or a change in control were in our stockholders' interests.

***We could issue preferred stock without stockholder approval.*** Our charter authorizes our board of directors to issue up to 30,000,000 shares of preferred stock, including convertible preferred stock, without stockholder approval. The board of directors may establish the preferences, rights and other terms, including the right to vote and the right to convert into common stock any shares issued. The issuance of preferred stock could delay or prevent a tender offer or a change of control even if a tender offer or a change of control were in our stockholders' interests. Kilroy Realty, L.P. has issued 1,500,000 Series A Cumulative Redeemable Preferred units which in the future may be exchanged one-for-one into shares of 8.075% Series A Cumulative Redeemable Preferred Stock, 700,000 Series C Cumulative Redeemable Preferred units which in the future may be exchanged one-for-one into shares of 9.375% Series C Cumulative Redeemable Preferred Stock and 900,000 Series D Cumulative Redeemable Preferred units which in the future may be exchanged one-for-one into shares of 9.25% Series D Cumulative Redeemable Preferred Stock. In addition, we have designated and authorized the issuance of up to 400,000 shares of Series B Junior Participating Preferred Stock in connection with our stockholders' rights plan. However, no shares of preferred stock of any series are currently issued or outstanding.

***We have a stockholders' rights plan.*** Each share of our common stock includes the right to purchase one one-hundredth (1/100th) of a share of our Series B Junior Participating Preferred Stock. The rights have anti-takeover effects and would cause substantial dilution to a person or group that attempts to acquire us on terms that our board of directors does not approve. We may redeem the shares for \$.01 per right prior to the time that a person or group has acquired beneficial ownership of 15% or more of our common stock. Therefore, the rights should not interfere with any merger or business combination approved by our board of directors.

The staggered terms for directors, the future issuance of additional common or preferred stock and our stockholders' rights plan may:

delay or prevent a change of control over us, even if a change of control might be beneficial to our stockholders;

deter tender offers that may be beneficial to our stockholders; or

limit stockholders' opportunity to receive a potential premium for their shares if an investor attempted to gain shares beyond our ownership limits or otherwise to effect a change of control.

### **Loss of our REIT status would have significant adverse consequences to us and the value of our stock.**

We currently operate and have operated since 1997 in a manner that is intended to allow us to qualify as a REIT for federal income tax purposes under the Internal Revenue Code.

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If we were to lose our REIT status, we would face serious tax consequences that would substantially reduce the funds available for distribution to you for each of the years involved because:

we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to federal income tax at regular corporate rates;

we also could be subject to the federal alternative minimum tax and possibly increased state and local taxes; and

unless entitled to relief under applicable statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified.

In addition, if we fail to qualify as a REIT, we will not be required to make distributions to stockholders, and all distributions to stockholders will be subject to tax as ordinary income to the extent of our current and accumulated earnings and profits.



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As a result of all these factors, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital and would adversely affect the value of our common stock.

Qualification as a REIT involves the application of highly technical and complex Internal Revenue Code provisions for which there are only limited judicial and administrative interpretations. The complexity of these provisions and of the applicable treasury regulations that have been promulgated under the Internal Revenue Code is greater in the case of a REIT that, like us, holds its assets through a partnership. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying sources. Also, we must make distributions to stockholders aggregating annually at least 90% of our net taxable income, excluding capital gains. In addition, legislation, new regulations, administrative interpretations or court decisions may adversely affect our investors or our ability to qualify as a REIT for federal income tax purposes or the desirability of an investment in a REIT relative to other investments. Although our management believes that we are organized and operate in a manner to qualify as a REIT, no assurance can be given that we have been or will continue to be organized or able to operate in a manner to qualify or remain qualified as a REIT for federal income tax purposes.

**To maintain our REIT status, we may be forced to borrow funds on a short-term basis during unfavorable market conditions.**

To qualify as a REIT, we generally must distribute to our stockholders at least 90% of our net taxable income each year, excluding capital gains, and we will be subject to regular corporate income taxes to the extent that we distribute less than 100% of our net taxable income each year. In addition, we will be subject to a 4% non-deductible excise tax on the amount, if any, by which distributions paid by us in any calendar year are less than the sum of 85% of our ordinary income, 95% of our capital gain net income and 100% of our undistributed income from prior years. In order to maintain our REIT status and avoid the payment of federal income and excise taxes, we may need to borrow funds on a short-term basis to meet the REIT distribution requirements even if the then prevailing market conditions are not favorable for these borrowings. These short-term borrowing needs could result from differences in timing between the actual receipt of income and inclusion of income for federal income tax purposes, or the effect of non-deductible capital expenditures, the creation of reserves or required debt or amortization payments.

**Our growth depends on external sources of capital which are outside of our control.**

We are required under the Internal Revenue Code to distribute at least 90% of our net taxable income, determined without regard to the dividends-paid deduction and excluding any net capital gain. Because of this distribution requirement, we may not be able to fund future capital needs, including any necessary acquisition financing, from operating cash flow. Consequently, we rely on third-party sources of capital to fund our capital needs. We may not be able to obtain the financing on favorable terms or at all. Any additional debt we incur will increase our leverage. Access to third-party sources of capital depends, in part, on:

general market conditions;

the market's perception of our growth potential;

our current and expected future earnings;

our cash flow and cash distributions; and

the market price per share of our common stock.

If we cannot obtain capital from third-party sources, we may not be able to acquire properties when strategic opportunities exist, satisfy our debt service obligations or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.

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**Our board of directors may change our investment and financing policies without stockholder approval and become more highly leveraged, which may increase our risk of default under our debt obligations.**

***We are not limited in our ability to incur debt.*** Our financing policies and objectives are determined by our board of directors. Our goal is to limit our dependence on leverage and maintain a conservative ratio of debt to total market capitalization. Total market capitalization is the market value of our capital stock, including common limited partnership units exchangeable for shares of capital stock, and the liquidation value of Series A, Series C and Series D Preferred units plus total debt. However, our organizational documents do not limit the amount or percentage of indebtedness, funded or otherwise, that we may incur. At March 31, 2003, total debt constituted approximately 47.6% of our total market capitalization. This ratio may be increased or decreased without the consent of our stockholders. Therefore, we could become more highly leveraged without stockholder approval, which would result in an increase in our debt service and which could adversely affect cash flow and the ability to make distributions to you. Higher leverage also increases the risk of default on our obligations and limits our ability to incur additional financing in the future.

***We may issue additional shares of capital stock without stockholder approval which may dilute your investment.*** We may issue shares of our common stock, preferred stock or other equity or debt securities without stockholder approval. Similarly, we may cause Kilroy Realty, L.P. to offer its common or preferred units for contributions of cash or property without approval by the limited partners of Kilroy Realty, L.P. or our stockholders. Existing stockholders have no preemptive rights to acquire any of these securities, and any issuance of equity securities may dilute your investment.

***We may invest in securities related to real estate which could adversely affect our ability to make distributions to you.*** We may purchase securities issued by entities which own real estate and may in the future also invest in mortgages. In general, investments in mortgages are subject to several risks, including:

borrowers may fail to make debt service payments or pay the principal when due;

the value of the mortgaged property may be less than the principal amount of the mortgage note securing the property; and

interest rates payable on the mortgages may be lower than our cost for the funds used to acquire these mortgages.

Owning these securities may not entitle us to control the ownership, operation and management of the underlying real estate. In addition, we may have no control over the distributions with respect to these securities, which could adversely affect our ability to make distributions to you.

***Sales of a substantial number of shares of common stock, or the perception that this could occur, could result in decreasing the market price per share for our common stock.*** We cannot predict whether future issuances of shares of our common stock or the availability of shares for resale in the open market will result in decreasing the market price per share of our common stock.

As of March 31, 2003, 27,474,983 shares of our common stock were issued and outstanding and we had reserved for future issuance the following shares of common stock:

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4,221,752 shares issuable upon the exchange, at our option, of common units issued in connection with the formation of Kilroy Realty, L.P. and in connection with property acquisitions;

1,743,858 shares issuable under our 1997 Stock Option and Incentive Plan; and

1,000,000 shares issuable under our Dividend Reinvestment and Direct Stock Purchase Plan.

Of the 27,474,983 shares of common stock outstanding at March 31, 2003, all but 149,326 restricted shares were freely tradable in the public market. In addition, we have filed or have agreed to file registration statements covering all of the shares of common stock reserved for future issuance. Consequently, if and when the shares are issued, they may be freely traded in the public markets.

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**FORWARD LOOKING STATEMENTS**

This prospectus, including the documents that we incorporate by reference, contains forward-looking statements. Also, documents we subsequently file with the SEC and incorporate by reference will contain forward-looking statements. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Likewise, our pro forma financial statements and other pro forma information incorporated by reference and all our statements regarding anticipated growth in our funds from operations and anticipated market conditions, demographics and results of operations are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, approximately, intends, plans, pro f or anticipates or the negative of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

Our success also depends upon economic trends generally, as well as income tax laws, governmental regulation, legislation, population changes and other matters discussed above in the section entitled Risk Factors. We caution you that this list of risk factors may not be exhaustive.

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### **THE COMPANY**

We are a REIT which owns, operates, develops and acquires Class A suburban office and industrial real estate in key suburban submarkets, primarily in Southern California that we believe have strategic advantages and strong barriers to entry. We were incorporated in September 1996 in Maryland and commenced operations upon the completion of our initial public offering on January 31, 1997. We are the successor to the real estate business of Kilroy Industries, a California corporation, and certain of its affiliated corporations, partnerships and trusts.

As of March 31, 2003, our stabilized portfolio of operating properties was comprised of 84 office buildings and 50 industrial buildings, which encompassed an aggregate of approximately 7.0 million and 4.9 million rentable square feet, respectively. Our properties include ten properties that we developed and then stabilized during 2002 and 2001 encompassing an aggregate of approximately 436,200 and 312,400 rentable square feet, respectively. As of March 31, 2003, our office properties were approximately 88.5% leased to 278 tenants, and our industrial properties were approximately 97.6% leased to 73 tenants. All but five of our properties are located in Southern California.

Our stabilized portfolio excludes development and redevelopment projects currently under construction, or in pre-development, and lease-up properties. We define lease-up properties as properties recently developed or redeveloped by us that have not yet reached 95% occupancy and are within one year following substantial completion. We had three development office properties and one redevelopment office property in the lease-up phase at March 31, 2003, encompassing an aggregate of approximately 477,500 rentable square feet. As of March 31, 2003, we had one development office property and three redevelopment office properties under construction which when completed are expected to encompass an aggregate of approximately 209,000 and 394,900 rentable square feet, respectively. In addition, as of March 31, 2003, we owned approximately 58.2 acres of undeveloped land upon which we currently expect to develop an aggregate of approximately 1.1 million rentable square feet of office space during the next three to five years, depending upon market conditions. All of our lease-up properties and in-process development projects are located in Southern California in the Los Angeles and San Diego regions. All of our undeveloped land parcels are located in Southern California in the San Diego region.

We own our interests in all of our properties through Kilroy Realty, L.P., a Delaware limited partnership and Kilroy Realty Finance Partnership, L.P., a Delaware limited partnership. We conduct substantially all of our activities through Kilroy Realty, L.P. in which, as of March 31, 2003, we owned an approximate 86.7% general partnership interest. The remaining 13.3% limited partnership interest in Kilroy Realty, L.P. was owned by certain of our executive officers and directors, certain of their affiliates and other outside investors, which includes all of the selling stockholders. In the event of redemption of all the common units of limited partnership interest that are held by the selling stockholders for common stock, we would own 91.1% general partnership interest and the limited partners would own 8.9%. We are the sole general partner of Kilroy Realty, L.P. and have control over its management. Kilroy Realty, L.P. owns 119 properties of our 137 properties. The remaining properties are owned by Kilroy Realty Finance Partnership, L.P. Kilroy Realty Finance Inc., our wholly-owned subsidiary, is the sole general partner of Kilroy Realty Finance Partnership, L.P. and owns a 1% general partnership interest. Kilroy Realty, L.P. owns the remaining 99% limited partnership interest of Kilroy Realty Finance Partnership, L.P. We conduct substantially all of our development services through our wholly-owned subsidiary, Kilroy Services, LLC.

Our common stock is listed on the New York Stock Exchange under the symbol KRC. Our principal executive offices are located at 12200 West Olympic Boulevard, Suite 200, Los Angeles, California 90064. Our telephone number is (310) 481-8400.

### **Recent Developments**

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We make regular quarterly distributions to the 8.075% Series A Cumulative Redeemable Preferred unitholders, the 9.375% Series C Cumulative Redeemable Preferred unitholders and the 9.250% Series D

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Cumulative Redeemable Preferred unitholders on the 15<sup>th</sup> day of each February, May, August and November. On May 15, 2003, we will distribute approximately \$1.5 million to the Series A Preferred unitholders, approximately \$0.8 million to the Series C Preferred unitholders and approximately \$1.0 million to the Series D Preferred unitholders.

On February 10, 2003, our board of directors declared a regular quarterly cash dividend of \$0.495 per common share and common unit payable on April 17, 2003. The dividend is payable to common stockholders and common unitholders of record on March 31, 2003. The dividend is equivalent to an annual rate of \$1.98 per share and unit.

## **USE OF PROCEEDS**

We are filing the registration statement of which this prospectus is a part pursuant to our contractual obligation to the holders named in the section entitled Selling Stockholders. We will not receive any of the proceeds from the issuance of shares of common stock to the holder or the resale of the shares by the holder. However, we will pay registration expenses which we estimate to be approximately \$121,000.

## **DESCRIPTION OF CAPITAL STOCK**

*We have summarized the material terms and provisions of our capital stock in this section. For more detail you should refer to our charter, which we have previously filed with the SEC and which we incorporate by reference as an exhibit to the registration statement of which this prospectus is a part.*

### **Common stock.**

**General.** Our charter authorizes us to issue 150,000,000 shares of common stock, par value \$0.01 per share. As of March 31, 2003, we had 27,474,983 shares of common stock issued and outstanding. The 27,474,983 outstanding shares excludes the 4,221,752 shares of common stock, as of March 31, 2003, which we may issue in exchange for presently outstanding common units which may be tendered for redemption to Kilroy Realty, L.P., including the 1,398,068 offered pursuant to this prospectus.

Shares of our common stock:

are entitled to one vote per share on all matters presented to stockholders generally for a vote, including the election of directors, with no right to cumulative voting;

do not have any conversion rights;

do not have any exchange rights;



do not have any sinking fund rights;

do not have any redemption rights;

do not have any appraisal rights;

do not have any preemptive rights to subscribe for any of our securities; and

are subject to restrictions on ownership and transfer.

We may pay distributions on shares of common stock, subject to the preferential rights of, when issued, our Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and any other series or class of capital stock which we may issue in the future. However, we may only pay distributions when our board of directors authorizes a distribution out of legally available funds. We make, and intend to continue to make, quarterly distributions on outstanding shares of common stock.

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Our board of directors may:

reclassify any unissued shares of common stock into other classes or series of capital stock;

establish the number of shares in each of these classes or series of capital stock;

establish any preference rights, conversion rights and other rights, including voting powers, of each of these classes or series of capital stock;

establish restrictions, such as limitations and restrictions on ownership, dividends or other distributions of each of these classes or series of capital stock; and

establish qualifications and terms or conditions of redemption for each of these classes or series of capital stock.

***Material provisions of Maryland General Corporation Law.*** Under the Maryland General Corporation Law, our stockholders are generally not liable for our debts or obligations. If we liquidate, we will first pay all debts and other liabilities, including debts and liabilities arising out of our status as general partner of Kilroy Realty, L.P., and any preferential distributions on any outstanding shares of preferred stock. Each holder of common stock then will share ratably in our remaining assets. All shares of common stock have equal distribution, liquidation and voting rights, and have no preference or exchange rights, subject to the ownership limits in our charter or as permitted by our board of directors.

Under the Maryland General Corporation Law, we generally require approval by our stockholders by the affirmative vote of at least two-thirds of the votes entitled to vote before we can:

dissolve;

amend our charter;

merge;

sell all or substantially all of our assets;

engage in a share exchange; or

engage in similar transactions outside the ordinary course of business.

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Because the term substantially all of a Company's assets is not defined in the Maryland General Corporation Law it is subject to Maryland common law and to judicial interpretation and review in the context of the unique facts and circumstances of any particular transaction. Although the Maryland General Corporation Law allows our charter to establish a lesser percentage of affirmative votes by our stockholders for approval of those actions, our charter does not include this provision.

***Rights to purchase Series B Preferred Stock.*** Each share of our common stock includes a right to purchase from us, once the rights become exercisable, one one-hundredth (1/100th) of a share of our Series B Preferred Stock, at a purchase price of \$71.00 per share, subject to anti-dilution adjustments. Once exercisable, the rights may be exercised until we redeem them, until they are exchanged or terminated, or until they expire on October 2, 2008.

The rights will be transferred only with shares of our common stock until the earlier to occur of:

- (1) ten days following a public announcement that a person or group of affiliated or associated persons, which we refer to as an acquiring person, has acquired, or obtained the right to acquire, beneficial ownership of:

15% or more of the shares of our common stock or,

in the case of John B. Kilroy, Sr., the Chairman of our board of directors, John B. Kilroy, Jr., our President and Chief Executive Officer, and Kilroy Industries, and their respective affiliates, of more than 21% of the shares of our common stock, and

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- (2) ten business days, or on a later date as may be determined by our board of directors, prior to the time that any person or group of affiliated persons becomes an acquiring person, following the commencement or announcement of an intention to make a tender offer or exchange offer for shares of our common stock, the consummation of which would result in the beneficial ownership by:

a person or group of 15% or more of the shares of our common stock or,

in the case of John B. Kilroy, Sr., the Chairman of our board of directors, John B. Kilroy, Jr., our President and Chief Executive Officer, and Kilroy Industries, and their respective affiliates, of more than 21% of the shares of our common stock.

We refer to the earlier of these dates as the distribution date. The rights will be transferred only with shares of our common stock until the distribution date, earlier redemption or expiration of the rights. Our board of directors may not postpone the exercisability and transferability of the rights. As soon as practicable after the distribution date, separate right certificates will be issued to holders of record of shares of common stock as of the close of business on the distribution date. Subject to the termination of the right of redemption, the rights will become exercisable and transferable. Right certificates initially will represent the right to purchase one share of common stock for each share of our common stock currently outstanding.

If a person or group becomes an acquiring person, or if we are the surviving corporation in a merger with an acquiring person or any affiliate or associate of an acquiring person and shares of common stock are not changed or exchanged, each holder of a right, other than rights that are or were acquired or beneficially owned by the acquiring person, may receive upon exercise that number of shares of common stock having a market value of two times the then current purchase price of one right. The rights that are or were acquired or beneficially owned by the acquiring person will then be void.

We will adjust the number of rights associated with each share of our common stock as necessary if we distribute shares of common stock as dividends, or declare a stock split or reverse stock split in our common stock. If after a person has become an acquiring person we are acquired in a merger or other business combination transaction or more than 50% of our assets or earning power are sold, each holder of a right will receive, upon the exercise of a right at the then current purchase price, the number of shares of common stock of the acquiring company which at the time of that transaction would have a market value of two times the then current purchase price of one right.

At any time after a person becomes an acquiring person and prior to the earlier of one of the events described in the last sentence in the previous paragraph or the acquisition by the acquiring person of 50% or more of our then outstanding common stock, we may exchange the rights, other than rights owned by an acquiring person which have become void, in whole or in part, for shares of common stock having an aggregate value equal to the difference between the value of the common stock issuable upon exercise of the rights and the purchase price payable upon the exercise.

Our board of directors may:

redeem the rights in whole, but not in part, at a redemption price of \$.01 per right at any time prior to the time a person becomes an acquiring person;

in its sole discretion establish when the redemption of the rights may be made effective, on what basis and under what conditions; and

amend any of the provisions of the rights agreement for so long as the rights are redeemable.

Immediately upon any redemption of the rights, a stockholder's right to exercise the rights will terminate and the holders of rights may then only receive the redemption price. After the rights are no longer redeemable, we may amend or supplement the rights agreement only in a manner that does not adversely affect the interests of the holders of the rights.

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We may adjust from time to time the purchase price payable, and the number of one one-hundredths of a share of Series B Preferred Stock or other securities or property issuable, upon exercise of the rights to prevent dilution:

in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Series B Preferred Stock,

upon the grant to holders of the shares of Series B Preferred Stock of some rights or warrants to subscribe to or purchase shares of Series B Preferred Stock or convertible securities at less than the current market price of the Series B Preferred Stock, or

upon the distribution to holders of shares of Series B Preferred Stock of evidences of indebtedness, cash, securities or assets or of subscription rights or warrants, other than those referred to above.

The distributions referred to above exclude:

regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend paid or,

in case regular periodic cash dividends have not been paid, at a rate not in excess of 50% of our average net income per share for the four quarters ended immediately prior to the payment of the dividend, or dividends payable in shares of Series B Preferred Stock which will be subject to the adjustment described above.

Until a right is exercised, the holder of the right will have no rights as a stockholder beyond those as an existing stockholder, including, without limitation, the right to vote or to receive dividends.

**Preferred stock.**

Our charter authorizes us to issue 30,000,000 shares of preferred stock, par value \$.01 per share. Of the 30,000,000 authorized shares of preferred stock, we have classified and designated 1,700,000 shares as Series A Preferred Stock, 400,000 as Series B Preferred Stock, 700,000 shares as Series C Preferred Stock and 900,000 shares as Series D Preferred Stock. No shares of preferred stock are currently issued and outstanding.

We may classify, designate and issue additional shares of preferred stock, in one or more classes, as authorized by our board of directors without the prior consent of our stockholders. The board of directors may afford the holders of preferred stock preferences, powers and rights voting or otherwise senior to the rights of holders of shares of common stock. Our board of directors can authorize the issuance of preferred stock with terms and conditions that could have the effect of delaying or preventing a change of control transaction that might involve a premium price for holders of shares of common stock or otherwise be in their best interest. All shares of preferred stock which are issued and become outstanding will be fully paid and nonassessable. Before we may issue any shares of preferred stock of any class, the Maryland General Corporation Law and our charter require our board of directors to determine the following:

the designation;

the terms;

preferences;

conversion and other rights;

voting powers;

restrictions;

limitations as to distributions;

qualifications; and

terms or conditions of redemption.

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**8.075% Series A Cumulative Redeemable Preferred Stock, 9.375% Series C Cumulative Redeemable Preferred Stock and 9.25% Series D Cumulative Redeemable Preferred Stock.**

**General.** Of our 30,000,000 authorized preferred shares, we designated 1,700,000 shares as Series A Preferred Stock, 700,000 shares as Series C Preferred Stock and 900,000 shares as Series D Preferred Stock. Shares of Series A Preferred Stock are issuable on a one-for-one basis upon redemption or exchange of Kilroy Realty, L.P.'s Series A Preferred Units. Shares of Series C Preferred Stock are issuable on a one-for-one basis upon redemption or exchange of Kilroy Realty, L.P.'s Series C Preferred Units. Shares of Series D Preferred Stock are issuable on a one-for-one basis upon redemption or exchange of Kilroy Realty, L.P.'s Series D Preferred Units.

**Dividends.** Each share of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will be entitled to receive dividends that are:

cumulative preferential dividends, in cash, from the date of issue payable on or before the 15th of February, May, August and November of each year, including any accrued but unpaid distributions in respect of Series A Preferred Units, Series C Preferred Units and Series D Preferred Units at the time they are exchanged for shares of Series A Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as applicable;

in preference to any payment made on any other classes or series of capital stock or our other equity securities ranking junior to the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock; and

at a rate of 8.075% per annum for shares of Series A Preferred Stock, at a rate of 9.375% per annum for shares of Series C Preferred Stock and at a rate of 9.25% per annum for shares of Series D Preferred Stock.

**Ranking.** The Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will rank:

on parity with each other and with all other preferred stock designated as ranking on a parity with the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock with respect to distributions and rights upon liquidation, dissolution, or winding-up;

senior to the Series B Preferred Stock and all other preferred stock designated as ranking junior to the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock; and

junior to all other preferred stock designated as ranking senior to Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

**Redemption.** At our option, we may redeem, in whole or in part from time to time:

shares of Series A Preferred Stock on and after February 6, 2003, shares of Series C Preferred Stock on and after November 24, 2003 and shares of Series D Preferred Stock on and after December 9, 2004, or prior to these dates to the extent necessary to maintain our



qualification as a REIT;

shares of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock at a redemption price payable in cash equal to \$50.00 per share, plus any accrued but unpaid dividends to the date of redemption; and

by paying the redemption price of the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, excluding the portion consisting of accumulated but unpaid dividends, solely out of proceeds from issuance of our capital stock.

In the event of our capital reorganization or reclassification of capital stock, any consolidation or merger, or any sale or transfer of all or substantially all of our assets to another person which is

initiated or implemented by any person other than us or any of our affiliates or officers or employee benefits plans; and

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implemented in a way that holders of our common stock will receive, per share, consideration, other than capital stock, valued in excess of 50% of the then market price of each share of our common stock with respect to, or in exchange for, the common stock,

then, immediately upon the occurrence of that event, we will redeem a number of shares of Series D Preferred Stock of each holder thereof, at a price of \$50.00 per share plus all accrued dividends with respect to that share, equal to a fraction, the numerator of which is the per share value of such consideration paid to the holders of the common stock and the denominator of which is the then market price of each share of common stock.

**Limited voting rights.** If we do not pay dividends on any shares of Series A Preferred Stock, Series C Preferred Stock or Series D Preferred Stock for six or more quarterly periods, including any periods during which we do not make distributions in respect of Series A Preferred Units, Series C Preferred Units and Series D Preferred Units prior to their exchange into shares of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, as applicable, whether or not consecutive, the holders of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will have the right to vote as a single class with all other shares of capital stock ranking on parity with the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock which have similar vested voting rights for the election of two additional directors to our board of directors. The directors will be elected by a plurality of the votes cast in the election for a one-year term and until their successors are duly elected and qualify or until the director's right to hold the office terminates, whichever occurs earlier, subject to the director's earlier death, disqualification, resignation or removal. The election will take place at:

special meetings called by the holders of at least 10% of the outstanding shares of Series A Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or the holders of shares of any other class or series of stock on parity with the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock with respect to which dividends are also accrued and unpaid if this request is received more than 90 days before the date fixed for our next annual or special meeting of stockholders or, if we receive the request for a special meeting less than 90 days before the date fixed for our next annual or special meeting of stockholders, at our annual or special meeting of stockholders, and

at each subsequent annual meeting until all dividends accumulated on the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock for all past dividend periods and the dividend for the then current dividend period, including accrued but unpaid distributions in respect of Series A Preferred Units, Series C Preferred Units and Series D Preferred Units at the time they are exchanged for shares of Series A Preferred Stock or Series C Preferred Stock, as applicable, have been fully paid or declared and a sum sufficient for the payment of the dividends is irrevocably set aside in trust for payment in full.

When all of the dividends have been paid in full, the holders of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will be divested of their voting rights and the term of any member of our board of directors elected by the holders of Series A Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and holders of any other shares of stock on parity with the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock will terminate.

In addition, if any shares of Series A Preferred Stock, Series C Preferred Stock or Series D Preferred Stock are outstanding, without the consent of two-thirds of the holders of the series of preferred stock then outstanding, as applicable, we may not:

authorize or create or increase the authorized or issued amount of any shares of capital stock ranking senior to the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock,

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reclassify any of our authorized shares of capital stock into any shares ranking senior to the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock,

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designate or create, or increase the authorized or issued amount of, or reclassify any of our authorized shares of capital stock into any stock on parity with the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, or create, authorize or issue any obligations or security convertible into or evidencing the right to purchase any such shares, but only to the extent the shares on parity with the Series A Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock are issued to one of our affiliates, or

either

consolidate, merge into or with, or convey, transfer or lease our assets substantially as an entirety, to any corporation or other entity, or

amend, alter or repeal the provisions of our charter, whether by merger, consolidation or otherwise, in each case that would materially and adversely affect the powers, special rights, preferences, privileges or voting power of the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock or the holders of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

The Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock will have no voting rights other than as discussed above.

***Liquidation preference.*** Each share of Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock is entitled to a liquidation preference of \$50.00 per share, plus any accrued but unpaid dividends, in preference to any other class or series of our capital stock, other than those equity securities expressly designated as ranking on a parity with or senior to the Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

**Series B Junior Participating Preferred Stock.**

***General.*** Of our 30,000,000 authorized preferred shares, we designated 400,000 shares as Series B Junior Participating Preferred Stock. The Series B Preferred Stock is issuable upon exercise of the rights to purchase shares of Series B Preferred Stock, as described above in the section entitled Common stock Rights to purchase Series B Preferred Stock.

***Ranking.*** The Series B Preferred Stock, if and when issued, will rank:

junior to our Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, if and when issued, and all other classes or series of preferred stock designated as ranking senior to the Series B Preferred Stock with respect to distributions and rights upon liquidation, dissolution, or winding-up;

senior to all classes or series of preferred stock designated as ranking junior to the Series B Preferred Stock; and

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on a parity with all other classes or series of stock designated as ranking on a parity with the Series B Preferred Stock.

**Dividends.** Each share of Series B Preferred Stock will be entitled, when, and if declared, to the greater of:

a minimum preferential cumulative quarterly dividend payment of \$1.00 per share paid on the first day of March, June, September and December, and

an aggregate dividend of 100 times the dividend, if any, declared per share of common stock, other than a dividend payable in shares of common stock, since the last quarterly dividend payment date.

We will adjust the right to dividends per share of the Series B Preferred Stock if we increase or decrease the number of shares of common stock by declaring or paying a dividend on the common stock payable in shares of common stock, or subdividing, combining or consolidating the outstanding shares of common stock. Accrued

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and unpaid dividends shall not bear interest. Dividends paid on shares of Series B Preferred Stock which are less than the total amount of the dividends accrued and payable on these shares shall be allocated pro rata on a share-by-share basis among all of the outstanding shares of Series B Preferred Stock.

Until dividends or distributions payable on the Series B Preferred Stock, whether or not declared, have been paid in full, we may not:

declare or pay dividends, or make any other distributions, including upon liquidation, dissolution or winding up, on any shares of capital stock ranking:

junior to the Series B Preferred Stock;

on parity with the Series B Preferred Stock, except dividends paid ratably on the Series B Preferred Stock and any parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all shares are then entitled;

redeem or purchase or otherwise acquire for consideration:

shares of any capital stock ranking junior, either as to dividends or upon liquidation, dissolution or winding up, to the Series B Preferred Stock, except as provided in our charter to protect our REIT status or if we acquire shares of junior stock in exchange for shares of any of our capital stock ranking junior both as to dividends and upon dissolution, liquidation or winding up, to the Series B Preferred Stock; or

any shares of Series B Preferred Stock, or any shares of capital stock ranking on parity with the Series B Preferred Stock, except as provided for in our charter to protect our REIT status or in accordance with a written or published purchase offer to all holders of the shares on terms that our board of directors shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

We will not permit any of our subsidiaries to purchase or otherwise acquire for consideration any shares of our capital stock unless we could purchase or otherwise acquire the shares at that time and in the manner set forth above.

***Liquidation preference.*** If we liquidate, dissolve or wind-up our business, the holders of shares of Series B Preferred Stock will be entitled, *pro rata* with any shares of preferred stock ranking on parity with the Series B Preferred Stock, to an aggregate preferential liquidation payment of 100 times the payment made per share of common stock. In no event may the liquidation payment be less than \$100 per share plus any accrued and unpaid dividends. We will adjust the liquidation preference per share of the Class B Preferred Stock if we increase or decrease the number of shares of common stock by declaring or paying a dividend on the common stock payable in shares of common stock, or subdividing, combining or consolidating the outstanding shares of common stock.

***Voting rights.*** Each holder of a share of Series B Preferred Stock is entitled to 100 votes on all matters submitted to our stockholders having general voting rights. We will adjust as necessary the votes per share of the Series B Preferred Stock if we increase or decrease the number of shares of common stock by declaring or paying a dividend on the common stock payable in shares of common stock, or subdividing, combining or consolidating the outstanding shares of common stock.

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Except as required by law, we do not require the consent of holders of Series B Preferred Stock for taking any corporate action, unless they are entitled to vote with holders of common stock. Generally, any holder of Series B Preferred Stock, common stock or any other shares of stock that have general voting powers will vote together as one class on all matters submitted to those stockholders having general voting rights.

***Business combinations.*** If we enter into any consolidation, merger, combination or other transaction, shares of our common stock may be exchanged for or changed into other stock or securities, cash and/or any

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other property. In that case, each share of Series B Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share equal to 100 times the aggregate amount of stock, securities, cash and/or any other property, payable in kind, as the case may be, into or for which each share of common stock is changed or exchanged. We will adjust the amount of per share consideration to be received by holders of Series B Preferred Stock upon any of these transactions if we increase or decrease the number of shares of common stock by declaring or paying a dividend on the common stock payable in shares of common stock, or subdividing, combining or consolidating the outstanding shares of common stock.

***Redemption.*** We may not redeem the Series B Preferred Stock at any time.

### **Restrictions on ownership and transfer of capital stock.**

#### ***Internal Revenue Code requirements.***

To maintain our tax status as a REIT, five or fewer individuals, as that term is defined in the Internal Revenue Code, which includes certain entities, may not own, actually or constructively, more than 50% in value of our issued and outstanding capital stock at any time during the last half of a taxable year. Constructive ownership provisions in the Internal Revenue Code determine if any individual or entity constructively owns our capital stock for purposes of this requirement. In addition, 100 or more persons must beneficially own our capital stock during at least 335 days of a taxable year or during a proportionate part of a short taxable year. Also, rent from tenants in which we actually or constructively own a 10% or greater interest is not qualifying income for purposes of the gross income tests of the Internal Revenue Code. To help ensure we meet these tests, our charter restricts the acquisition and ownership of shares of our capital stock.

#### ***Transfer restrictions in our charter.***

Subject to exceptions specified in our charter, no holder may own, either actually or constructively under the applicable constructive ownership provisions of the Internal Revenue Code:

more than 7%, by number of shares or value, whichever is more restrictive, of the outstanding shares of our common stock;

if and when issued, more than 7%, by number of shares or value, whichever is more restrictive, of our Series B Preferred Stock; or

if and when issued, shares of our Series A Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, which, taking into account all other shares of our capital stock actually or constructively held, would cause a holder to own more than 7% by value of our outstanding shares of capital stock.

In addition, because rent from tenants in which we actually or constructively own a 10% or greater interest is not qualifying rent for purposes of the gross income tests under the Internal Revenue Code, our charter provides that no holder may own, either actually or constructively by virtue of the constructive ownership provisions of the Internal Revenue Code, which differ from the constructive ownership provisions used for purposes of the preceding sentence:



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more than 9.8%, by number of shares or value, whichever is more restrictive, of the outstanding shares of our common stock;

if and when issued, more than 9.8% by number of shares or value, whichever is more restrictive, of our Series B Preferred Stock; or

if and when issued, shares of our Series A Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock, which, taking into account all other shares of our capital stock actually or constructively held, would cause a holder to own more than 9.8% by value of our outstanding shares of capital stock.

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We refer to the limits described in this paragraph, together, as the ownership limits.

The constructive ownership provisions set forth in the Internal Revenue Code are complex, and may cause shares of our capital stock owned actually or constructively by a group of related individuals and/or entities to be constructively owned by one individual or entity. As a result, the acquisition of shares of our capital stock in an amount that does not exceed the ownership limits, or the acquisition of an interest in an entity that actually or constructively owns our capital stock, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively shares in excess of the ownership limits and thus violate the ownership limits described above or otherwise permitted by our board of directors. In addition, if and when such shares are issued, a violation of the ownership limits relating to the Series A Preferred Stock, Series C Preferred Stock or Series D Preferred Stock could occur as a result of a fluctuation in the relative value of this stock and our common stock, even absent a transfer or other change in actual or constructive ownership.

Our board of directors may waive the ownership limits with respect to a particular stockholder if it:

determines that the ownership will not jeopardize our status as a REIT; and

otherwise decides that this action would be in our best interest.

As a condition of this waiver, our board of directors may require opinions of counsel satisfactory to it and/or undertakings or representations from the applicant with respect to preserving our REIT status. Our board of directors has waived the ownership limit applicable to our common stock for John B. Kilroy, Sr. and John B. Kilroy, Jr., as well as members of their families and entities which are deemed to own Messrs. Kilroy's common stock, allowing them to own up to 21% of our common stock. However, the board of directors conditioned this waiver upon the receipt of undertakings and representations from Messrs. Kilroy which it believed were reasonably necessary in order to conclude that the waiver would not cause us to fail to qualify and maintain our status as a REIT.

In addition to the foregoing ownership limits, no holder may own, either actually or constructively under the applicable attribution rules of the Internal Revenue Code, any shares of any class of our capital stock if, as a result of this ownership:

more than 50% in value of our outstanding capital stock would be owned, either actually or constructively under the applicable constructive ownership provisions of the Internal Revenue Code, by five or fewer individuals, as defined in the Internal Revenue Code,

our capital stock would be beneficially owned by less than 100 persons, determined without reference to any constructive ownership provisions, or

we would fail to qualify as a REIT.

Any person who acquires or attempts or intends to acquire actual or constructive ownership of our shares of capital stock that will or may violate any of the foregoing restrictions on transferability and ownership must give us notice immediately and provide us with any other information

that we may request in order to determine the effect of the transfer on our status as a REIT. The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interest to attempt to qualify, or to continue to qualify, as a REIT.

*Effect of violation of ownership limits and transfer restrictions.*

If any attempted transfer of our capital stock or any other event would result in any person violating the ownership limits described above, unless otherwise permitted by our board of directors, then the purported transfer will be void and of no force or effect with respect to the attempted transferee as to that number of shares in excess of the applicable ownership limit, and the transferee shall acquire no right or interest in the excess shares. In the case of any event other than a purported transfer, the person or entity holding record title to any of the excess shares shall cease to own any right or interest in the excess shares.

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Any excess shares described above will be transferred automatically, by operation of law, to a trust, the beneficiary of which will be a qualified charitable organization selected by us. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer.

The trustee must:

within 20 days of receiving notice from us of the transfer of shares to the trust,

sell the excess shares to a person or entity who could own the shares without violating the ownership limits or as otherwise permitted by our board of directors, and

distribute to the prohibited transferee or owner, as applicable, an amount equal to the lesser of the price paid by the prohibited transferee or owner for the excess shares or the sales proceeds received by the trust for the excess shares;

in the case of any excess shares resulting from any event other than a transfer, or from a transfer for no consideration, such as a gift,

sell the excess shares to a qualified person or entity, and

distribute to the prohibited transferee or owner, as applicable, an amount equal to the lesser of the market price of the excess shares as of the date of the event or the sales proceeds received by the trust for the excess shares;

in either case above, distribute any proceeds in excess of the amount distributable to the prohibited transferee or owner, as applicable, to the charitable organization selected by us as beneficiary of the trust.

The trustee shall be designated by us and be unaffiliated with us and any prohibited transferee or owner. Prior to a sale of any excess shares by the trust, the trustee will receive, in trust for the beneficiary, all dividends and other distributions paid by us with respect to the excess shares, and may also exercise all voting rights with respect to the excess shares.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee shall have the authority, at the trustee's sole discretion,

to rescind as void any vote cast by a prohibited transferee or owner, as applicable, prior to our discovery that our shares have been transferred to the trust, and

to recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

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However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote. Any dividend or other distribution paid to the prohibited transferee or owner, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand for distribution to the beneficiary of the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limit or as otherwise permitted by the board of directors, then our charter provides that the transfer of the excess shares will be void.

If shares of capital stock are transferred to any person in a manner which would cause us to be beneficially owned by fewer than 100 persons, the transfer shall be null and void in its entirety, and the intended transferee will acquire no rights to the stock.

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If our board of directors shall at any time determine in good faith that a person intends to acquire or own, has attempted to acquire or own, or may acquire or own our capital stock in violation of the limits described above, it shall take actions to refuse to give effect to or to prevent the ownership or acquisition, including, but not limited to:

authorizing us to repurchase stock,

refusing to give effect to the ownership or acquisition on our books, or

instituting proceedings to enjoin the ownership or acquisition.

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

All persons who own at least a specified percentage of the outstanding shares of our stock must file with us a completed questionnaire annually containing information about their ownership of the shares, as set forth in the applicable treasury regulations. Under current treasury regulations, the percentage is between 0.5% and 5.0%, depending on the number of record holders of our shares. In addition, each stockholder may be required to disclose to us in writing information about the actual and constructive ownership of our shares as our board of directors deems necessary to comply with the provisions of the Internal Revenue Code applicable to a REIT or to comply with the requirements of any taxing authority or governmental agency.

These ownership limitations could discourage a takeover or other transaction in which holders of some, or a majority, of our shares of capital stock might receive a premium for their shares over the then prevailing market price or which stockholders might believe to be otherwise in their best interest.

**Transfer agent and registrar for shares of capital stock.**

Mellon Investor Services LLC is the transfer agent and registrar for our shares of preferred stock and common stock.

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**DESCRIPTION OF MATERIAL PROVISIONS OF THE  
PARTNERSHIP AGREEMENT OF KILROY REALTY, L.P.**

*We have summarized the material terms and provisions of the Fourth Amended and Restated Agreement of Limited Partnership of Kilroy Realty L.P. which we refer to as the partnership agreement. This summary is not complete. For more detail, you should refer to the partnership agreement itself, which we have previously filed with the SEC and which we incorporate by reference as an exhibit to the registration statement of which this prospectus is a part.*

**Management of the partnership.**

Kilroy Realty, L.P. is a Delaware limited partnership. We are the sole general partner of Kilroy Realty, L.P. and conduct substantially all of our business through it, except for development and certain other services which are conducted through Kilroy Services, LLC.

As the sole general partner of Kilroy Realty, L.P., we exercise exclusive and complete discretion in its day-to-day management and control. We can cause Kilroy Realty, L.P. to enter into certain major transactions including acquisitions, dispositions and refinancings and cause changes in its line of business, capital structure and distribution policies. Kilroy Realty, L.P. has both preferred limited partnership interests and common limited partnership interests. As of March 31, 2003, Kilroy Realty, L.P. has issued and outstanding 1,500,000 Series A Preferred Units, no Series B Preferred Units, 700,000 Series C Preferred Units, 900,000 Series D Preferred Units and 4,221,752 common units. We refer collectively to the Series A Preferred Units, Series B Preferred Units, Series C Preferred Units, Series D Preferred Units and the common units as the units. Limited partners may not transact business for, or participate in the management activities or decisions of, Kilroy Realty, L.P., except as provided in the partnership agreement and as required by applicable law.

**Indemnification of our officers and directors.**

To the extent permitted by applicable law, the partnership agreement indemnifies us, as general partner, and our officers and directors and any other persons we may designate, to the same extent that our charter provides for indemnification of our officers and directors. Similarly, the partnership agreement limits our liability, as well as that of our officers and directors, to Kilroy Realty, L.P. to the same extent that our charter limits the liability of our officers and directors.

**Transferability of partnership interests.**

Generally, we may not voluntarily withdraw from or transfer or assign our interest in Kilroy Realty, L.P. without the consent of the holders of at least 60% of the common partnership interests including our interests. The limited partners may not transfer, assign, sell, encumber or otherwise dispose of their interest in Kilroy Realty, L.P., other than to family members or accredited investors. These family members and accredited investors must agree to assume the transferor's obligations under the partnership agreements. This transfer is subject to our right of first refusal to purchase the limited partner's units for our benefit.

In addition, without our consent, limited partners may not transfer their units:

to any person who lacks the legal capacity to own the units;

in violation of applicable law;

where the transfer is for only a portion of the rights represented by the units, such as the partner's capital account or right to distributions;

if we believe the transfer would cause the termination of Kilroy Realty, L.P. or would cause it to no longer be classified as a partnership for federal or state income tax purposes;



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if the transfer would cause Kilroy Realty, L.P. to become a party-in-interest within the meaning of ERISA or would cause its assets to constitute assets of an employee benefit plan under applicable regulations;

if the transfer would require registration under applicable federal securities laws;

if the transfer could cause Kilroy Realty, L.P. to become a publicly traded partnership under applicable treasury regulations;

if the transfer could cause Kilroy Realty, L.P. to be regulated under the Investment Company Act of 1940 or the Employee Retirement Income Security Act of 1974; or

if the transfer would adversely affect our ability to maintain our qualification as a REIT.

We may not engage in any termination transaction without the approval of at least 60% of the common units in Kilroy Realty, L.P., including our general partner interest in Kilroy Realty, L.P. Examples of termination transactions include:

a merger;

a consolidation or other combination with or into another entity;

a sale of all or substantially all of our assets; or

a reclassification, recapitalization or change of our outstanding equity interests.

In connection with a termination transaction, all common limited partners must either receive, or have the right to elect to receive, for each common unit an amount of cash, securities or other property equal to the product of:

the number of shares of common stock into which each common unit is then exchangeable; and

the greatest amount of cash, securities or other property paid to the holder of one share of common stock in consideration for one share of common stock pursuant to the termination transaction.

If, in connection with a termination transaction, a purchase, tender or exchange offer is made to holders of our common stock, and the common stockholders accept this purchase, tender or exchange offer, each holder of common units must either receive, or must have the right to elect to receive, the greatest amount of cash, securities or other property which that holder would have received if immediately prior to the purchase, tender or exchange offer it had exercised its right to redemption, received shares of common stock in exchange for its common units, and accepted the purchase, tender or exchange offer.

We also may merge or otherwise combine our