

APPLIED SIGNAL TECHNOLOGY INC
Form 8-K
June 05, 2009

United States
Securities and Exchange Commission
Washington, D.C. 20549

Form 8-K
Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: June 2, 2009
(Date of earliest event reported)

Applied Signal Technology, Inc.
(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of
incorporation or organization)

000-21236
(Commission file
number)

77-0015491
(I.R.S. Employer
Identification No.)

400 West California Ave., Sunnyvale, CA 94086
(Address of principal executive offices)

(408) 749-1888
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.02: Results of Operations and Financial Condition

On June 2, 2009, Applied Signal Technology, Inc. issued a press release announcing its financial results for the quarter ended May 1, 2009, and hosted a conference call to discuss the financial results for the quarter ended May 1, 2009. The full text of the Company's press release and a transcript of the related conference call are attached hereto as Exhibit 99.1 and Exhibit 99.2, respectively.

Item 9.01: Financial Statements and Exhibits

(c) Exhibits

Exhibit Number	Description
99.1	<u>Press Release dated June 2, 2009 announcing financial results for the quarter ended May 1, 2009</u>
99.2	<u>Transcript of conference call held on June 2, 2009</u>

Signatures

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

Date: June 5, 2009

Applied Signal Technology, Inc.
(Registrant)

By: /s/ James E. Doyle
James E. Doyle
Vice President and Chief Financial Officer

Exhibit Index

Exhibit Number	Description
99.1	<u>Press Release dated June 2, 2009 announcing financial results for the quarter ended May 1, 2009</u>
99.2	<u>Transcript of conference call held on June 2, 2009</u>

Exhibit 99.1 – Press Release Dated June 2, 2009 Announcing Financial Results for the Quarter Ended May 1, 2009

**Applied Signal Technology, Inc.
Announces Fiscal Second Quarter Operating Results**

—Second Quarter Revenues Increase 18% to \$53.5 million—
—Second Quarter Earnings per Share Increase 94% to \$0.31—

Sunnyvale, CA. June 2, 2009 - Applied Signal Technology, Inc. (NASDAQ - APSG) announced operating results for the second quarter and first six months of fiscal 2009, ended May 1, 2009. The Company reported revenues for the second quarter increased 18% to \$53,500,000 compared to the year-ago period's revenues of \$45,284,000. Earnings per share during the second quarter increased by 94% to \$0.31 versus the year-ago level of \$0.16 per share.

William Van Vleet, President and Chief Executive Officer of Applied Signal Technology, Inc., commented, "We are continuing to see benefits from improvements in operations initiated last year, resulting in sustained improvements in profitability. Revenues are also increasing as a result of strong product sales with the launch of our new Model 680 Raider product and strong demand for our core broadband communications equipment."

The Company's operating income for the second quarter of fiscal 2009 increased by 128% to \$6,455,000 as compared to \$2,835,000 in the second quarter of fiscal year 2008. Similar to the first fiscal quarter, this improvement was driven by several factors, including increased profit from product sales, a reduction in stock-based compensation expense,

and an increase in royalty revenue associated with the licensing of intellectual property into commercial satellite communications markets. The Company also noted that during the second quarter of fiscal 2008, earnings were reduced by approximately \$0.06 per share due to recording inventory write-downs and accounts receivable reserves.

Revenues for the first six months of fiscal year 2009 were \$98,884,000 representing a 12% increase when compared to revenues of \$88,009,000 for the first six months of fiscal year 2008. Operating income for the first six months of fiscal 2009 increased by 132% to \$12,103,000 as compared to \$5,215,000 for the first six months of fiscal year 2008. Net income for the first six months of fiscal year 2009 was \$7,589,000 or \$0.58 per diluted share compared to the year-ago level of \$3,503,000 or \$0.28 per diluted share.

New orders received during the second quarter of fiscal year 2009 were \$56,454,000 representing a 17% increase when compared to new orders of \$48,150,000 received during the second quarter of fiscal year 2008. New orders for the first six months of fiscal year 2009 were \$89,575,000 representing a 19% increase when compared to new orders of \$75,039,000 for the same period of fiscal year 2008.

Mr. Van Vleet concluded, "We will continue to focus our energy on capturing organic growth opportunities in the rapidly developing intelligence, surveillance and reconnaissance (ISR) and cyber-security markets. We will also utilize the strategic advantages provided to us by our strong capital position to find new, complementary growth opportunities."

Attached to this news release are condensed, consolidated statements of income, balance sheets and statements of cash flows for the second quarter and first six months of fiscal year 2009 ended May 1, 2009.

Conference Call

The Company will host a conference call on June 2, 2009 to discuss second quarter fiscal 2009 results. If you wish to participate in the conference call, please dial 1-877-407-8031 for domestic callers or 1-201-689-8031 for international callers on June 2, 2009 at 5:00 p.m. eastern time/2:00 p.m. pacific time. There is no pass code required. This call may be listened to simultaneously at the Web site www.InvestorCalendar.com. A rebroadcast of the call will be available upon its completion and will remain available for a limited time.

Applied Signal Technology, Inc. provides advanced intelligence, surveillance and reconnaissance (ISR) products, systems and services to enhance global security. For further information about Applied Signal Technology visit our website at www.appsig.com.

Except for historical information contained herein, matters discussed in this news release may contain forward-looking statements that involve risks and uncertainties that could cause actual results to differ materially. Statements as to future organic and new complimentary growth opportunities and the order opportunities available to us in the rapidly developing intelligence, surveillance and reconnaissance (ISR) and cyber-security markets are forward-looking statements. The risks and uncertainties associated with these statements include our ability to capture organic growth opportunities, our ability to utilize the strategic advantages of our strong capital position, whether orders will be issued by procurers, including the U. S. Government; the timing of any orders placed by procurers; whether we will be successful in obtaining contracts for these orders if they are forthcoming; whether any contracts obtained by us will be performed well and be profitable and whether any such contracts might be terminated prior to completion; whether we will be able to hire qualified staff as needed; and other risks detailed from time to time in our SEC reports including our latest Form 10-K filed for the fiscal year ended October 31, 2008. The Company assumes no obligation to update the information provided in this news release.

Applied Signal Technology, Inc.
Condensed Consolidated Statements of Income
(in thousands except per share data)

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	Three Months Ended		Six Months Ended	
	May 1, 2009	May 2, 2008	May 1, 2009	May 2, 2008
Revenues from contracts	\$51,618	\$43,888	\$95,305	\$85,498
Revenues from royalties	1,882 -----	1,396 -----	3,579 -----	2,511 -----
Total revenues	53,500	45,284	98,884	88,009
Operating expenses:				
Contract costs	37,489	31,492	69,020	60,863
Research and development	3,797	3,554	6,872	6,533
General and administrative	5,759 -----	7,403 -----	10,889 -----	15,398 -----
Total operating expenses	47,045 -----	42,449 -----	86,781 -----	82,794 -----
Operating income	6,455	2,835	12,103	5,215
Interest income/(expense), net	69 -----	147 -----	181 -----	380 -----
Income before provision for income taxes	6,524	2,982	12,284	5,595
Provision for income taxes	2,450 -----	967 -----	4,695 -----	2,092 -----
Net income	\$4,074 =====	\$2,015 =====	\$7,589 =====	\$3,503 =====
Net income per share – basic	\$0.32	\$0.16	\$0.59	\$0.28
Average shares – basic	12,852	12,400	12,803	12,371
Net income per share – diluted	\$0.31	\$0.16	\$0.58	\$0.28
Average shares – diluted	13,086	12,523	13,030	12,513

Applied Signal Technology, Inc.
Condensed Consolidated Balance Sheets
(in thousands)

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	May 1, 2009	October 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$5,144	\$4,668
Short term investments	49,543 -----	45,045 -----
Cash, cash equivalents, and short term investments	54,687	49,713
Accounts receivable	44,601	40,115
Inventory	9,616	8,141
Other current assets	10,835 -----	10,155 -----
Total current assets	119,739	108,124
Property and equipment, at cost	68,191	65,773
Accumulated depreciation and amortization	(53,139) -----	(50,660) -----
Net property and equipment	15,052	15,113
Goodwill	19,964	19,964
Intangible assets, net	127	162
Long-term deferred tax asset, net	4,424	4,410
Long term investment	2,130	9,381
Other assets	977 -----	865 -----
Total assets	\$162,413 =====	\$158,019 =====
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		

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Accounts payable, accrued payroll and benefits	\$17,832	\$20,070
Notes payable	1,429	1,429
Income taxes payable	247	498
Other accrued liabilities	3,497	3,513
	-----	-----
Total current liabilities	23,005	25,510
Long-term liabilities:		
Long-term notes payable	3,095	3,929
Other long-term liabilities	3,730	3,847
	-----	-----
Total long-term liabilities	\$6,825	\$7,776
Shareholders' equity		
	132,583	124,733
	-----	-----
Total liabilities and shareholders' equity	\$162,413	\$158,019
	=====	=====

Applied Signal Technology, Inc.
Consolidated Statements of Cash Flows
Increase (decrease) in Cash
(in thousands)

	Six Months Ended	
	2009	2008
Operating activities:		
Net income	\$7,589	3,503
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	3,056	3,065
Stock-based compensation	1,068	2,805
Excess tax benefits from stock-based payment arrangements	(251)	(21)

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Adjustments to reconcile net income to net cash provided		
Accounts receivable	(4,486)	1,329
Refundable income taxes	—	752
Inventory, prepaids, and other assets	(2,281)	(4,154)
Accrued lease incentives	—	877
Accounts payable, taxes payable and accrued liabilities	(2,413)	435
	-----	-----
Net cash provided by operating activities	2,282	8,591
Investing activities:		
Purchase of available-for-sale securities	(28,801)	(50,236)
Maturities of available-for-sale securities	31,285	48,217
Additions to property and equipment	(2,684)	(2,383)
	-----	-----
Net cash (used in) investing activities	(200)	(4,402)
Financing Activities:		
Issuance of Common Stock	2,331	1,721
Shares repurchased for tax withholding of vested restricted stock awards	(127)	(97)
Excess tax benefits from stock-based payment arrangements	251	21
Term loan	(834)	(833)
Dividends Paid	(3,227)	(3,122)
	-----	-----
Net cash (used in) financing activities	(1,606)	(2,310)

Net increase (decrease) in cash	476	1,879
Cash, beginning of period	4,668	5,250
	-----	-----
Cash, end of period	\$5,144	7,129
	=====	=====
Supplemental disclosure of cash flow information:		
Interest paid	149	204
Income taxes paid	4,733	3,280

Exhibit 99.2 – Transcript of Conference Call Held on June 2, 2009

**Transcript of Applied Signal Technology Inc (APSG)
Second quarter 2009
Conference Call
June 2, 2009**

Participants

Executives

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Analysts

Michael Lewis – BB&T Capital Markets

James McIlree – Collins Stewart LLC.

Steve Levenson – Stifel Nicolaus

Myles Walton – Oppenheimer and Company

Robert Kirkpatrick – Cardinal Capital

Chris Donahue – SunTrust Robinson Humphrey

Presentation

Operator

Greetings and welcome to the Applied Signal Technology second quarter 2009 earnings conference call. At this time all participants are in a listen-only mode. A brief question and answer session will follow the formal presentation. If anyone should require operator assistance during the conference please press *0 on your telephone keypad. As a reminder this conference is being recorded.

It is now my pleasure to introduce your host, Mr. Bill Van Vleet, Chief Executive Officer for Applied Signal Technology. Thank you, Mr. Van Vleet. You may begin.

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Thank you, Manny. Good afternoon and thank you for taking the time to join us to review our second quarter results. With me today is Jim Doyle, our Chief Financial Officer.

Now, before I begin I'd like to summarize our safe harbor statement. Our presentation today may contain forward-looking statements which reflect the company's current judgment on future events. Because these statements deal with future events, they are subject to risks and uncertainties that could cause the actual results to differ materially. In addition to the factors that may be discussed in this call, important factors which could actual results to differ materially are contained in the company's recent 10-Qs and 10-K.

I am pleased to report we've continued the operational momentum that we initiated this year and concluded another strong quarter. Our revenues for the second quarter increased by 18% to \$53.5 million compared to \$45.3 million a year ago. Strong product sales and increasing demand for our core broadband communications equipment drove a majority of the increase. We continue to be particularly pleased with an increase in demand for our Model 680 radar product or tactical SIGINT collection. We continue to also focus our operations to ensure program performance to maintain a competitive cost structure and penetrate our workplace.

In the last quarter in particular our program execution was quite strong. Our operating income increased by 128% to roughly \$6.5 million for a margin of 12.1% for the quarter. This compares to 2.8 million in the second quarter of last year, which was a margin 6.3%. The year-over-year improvement in our profitability comes from a number of factors including increased profits from our product sales due to strong customer demand, a reduction in stock based compensation and higher royalty income associated with our licensing of technology to the commercial broadband communications market.

Earnings per share increased at a very fast pace, rising 94% to \$.31 per share compared to \$.16 per share a year ago and while we are very pleased with this performance I should point out that there is an unusual positive factor in the year-over-year comparison. A year ago we reported approximately \$0.6 per share of inventory write-downs and accounts receivables reserves and we do not expect to benefit from this comparison in the third or fourth quarters of the current year.

I would like to update you on our current thoughts regarding the funding environment for intelligence, surveillance and reconnaissance or ISR products and services. As a reminder, about 80% of our revenues are derived from the intelligence communities budget, and about 20% from the Department of Defense. While we're clearly limited to what we can comment on with regards to the intelligence budgets, what I can say is that there is a clear understanding that the current administration has a sharp focus on the identification and prevention of threats to the critical national security. We are also comfortable with the funding environment currently established to support these objectives in our operational goals. As you know from past calls we are shifting our operational model to become more cost competitive, while simultaneously retaining our technological superiority and we believe that we have an opportunity to capture an increased market share. With respect to the Department of Defense we continue to see the funding environment for ISR and particularly for tactical applications as solid and growing. This obviously stands in contrast to the general defense funding environment that is expected to stagnate and potentially contract over time.

In both case with regards to revenues right and strategic SIGINT products and services, the current focus is on recapitalization and upgrade of existing platforms, not on new platform development. This is a trend that bodes well for us, as we have a solid base of installed products and therefore an enhanced competitive position. While technology certainly drives our business, and I will provide you with an update on some of the things we are working on in a moment, maintaining and enhancing our relationships in coordination with our customers is every bit as important. During the past quarter there were a couple of events we participated in that helped us in this regard and I think are worth mentioning.

First in May we held our Annual Spring Technology Symposium at our offices in Annapolis Junction in Maryland. The purpose of this event, which was attended by over 250 customer representatives is to educate them about new and emerging communication technologies and to provide demonstrations of our capabilities. We held seminars on a wide range of topics including high speed converged data processing, wide band communication survey and processing, software defined radio systems and cyber security tools and we demonstrated over a dozen new products. This is our 13th Annual Spring Symposium and the response was uniformly positive from all the attendees.

I also want to highlight our participation at the special operations forces industry conference, which actually began this morning in Tampa, Florida. It's clear that special forces are of paramount importance to the prosecution of the type of asymmetric warfare that is characterizing the 21st century conflicts. ISR capabilities can serve as a very significant force multiplier on a battlefield that is increasingly complex. Disaggregating the signals traffic and locating specific signal emitters on that battlefield is our area of expertise. We have created and are developing a new generation of low size, weight and power products for manned and unmanned applications that we think will serve this important customer base extremely well. Developing low size, weight, and power products is a significant focal point of our research and development effort at the moment, particularly as it relates to the fast developing unmanned aerial vehicle market. We've had a number of successful tests of both miniaturized ELINT and COMINT products over the course of the last several months and we are excited to continue that work. Another area of focus for us is cyber security or the protection of our nation's digital infrastructure from the growing threat of cyber crime and state sponsored intrusions and operations. These and other risks have the potential to undermine the nation's confidence in the information systems that underlie our economic and national security interest.

In 2007 the critical national cyber security initiative was established to begin to develop solutions for computer and network operations and information assurance. President Obama commissioned a 60 day comprehensive review of our country's policies and programs, and a report was issued last week that calls for an expansion of cyber space programs going forward. Applied Signal is investing heavily in Next Generations solutions to address this opportunity. And while we are excited about the future potential this is still an emerging opportunity. We have captured some programs but the current total represents only about 2%–3% of revenues.

Finally I would like to talk a little about our synthetic aperture sonar product. Our sensor systems division is very proud of the capabilities in this product, which extend from antisubmarine warfare applications to a wide range of undersea survey missions, both for littoral and deep water missions. Now while we weren't happy with the circumstances during the past quarter, we were grateful to have the opportunity to assist in the location of a plane that crashed off the Santa Barbara coast. We were able to survey a very wide swath of ocean and locate the wreckage within a matter of hours. We have capitalized the total survey system to allow us to respond to such request to rapidly feel the system to conduct sub sea surveys, and as a result we are seeing a number of new potential opportunities and we are looking forward to demonstrating our capabilities for the commercial market applications, because we provide a greater level of resolution and lower search times over the technology that is currently available.

Now before I turn the call over to Jim I would just like to say that we are very pleased with the recent performance of the business and our opportunities. We're certainly cognizant that we've been outperforming the financial community's expectations for this business. And while we have not elected to provide specific forward-looking guidance, I'd like to say a few words about our future. Our bookings total at the end of the second quarter was good at \$89.6 million versus \$75 million at the same time last year. That said the current bookings stretch over a longer time period than last year's

number, primarily as a result of our successful capture of the five year Argos 3 program. I will reiterate that we're very comfortable with what we are hearing from our customers about the funding environment for both the near and long term. But we are also experiencing some delays in new contract awards. As the government shifts from a focus on platform development to fleet modernization efforts, we are seeing programs like the aerial common sensor and EPX programs slip a few months. Even so we believe that the recent increase in demand in our core business provides the diversification necessary to offset any delays that we see on the horizon.

Longer term we remain very excited about our opportunities. The ISR market is a fast paced and important business and as we look forward we continue to believe that we have a strong organic growth opportunity that stems from our long history of excellence in this market. Beyond that we continue to evaluate the opportunities to expand the value we provide to our shareholders through utilizing our significant financial strength. So we continue to maintain a strong balance sheet and an excellent cost of equity capital that we believe can be deployed to expand our business and to create incremental value for our shareholders and our customers at the same time.

I would now like to turn the call over to Jim to run through the financial results for the quarter in greater detail.

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Great. Thanks Bill. Good afternoon, everyone. Bill has done a very nice job of covering the income statement in some detail, so I will keep my comments brief regarding that. Our revenues for the second quarter of fiscal 2009 increased by approximately 18% to \$53.5 million compared to revenues of approximately \$45.3 million for the second quarter of fiscal 2008. You should bear in mind that our growth in the second quarter of fiscal 2009 was bolstered by our recognition of \$1.1 million of pre-contract costs, compared to a net increase of approximately 2000 in pre-contract costs during the year ago quarter. We do not expect to see quite this level of effect on revenues in future periods. I would like to address our earnings growth particularly as it relates to our operating margin which at 12.1% for the quarter was quite strong. There are two significant factors to consider as you look to analyze the quarter and consider our future. First a very significant factor in our profitability increase was the growth in royalty revenue which exceeded our expectations. While we expected business to remain fairly strong we have seen some competitive products start to penetrate the market, so I believe that some of these competitive products may infringe upon our intellectual property. We believe that it is in our best interest over the long term, particularly as we believe we have the potential to diversify this business to defend our technology. So while today this business has essentially produced 100% operating margin that is not likely to be the case once you factor in the potential for legal costs.

Second Bill noted that a year ago quarter contained significant costs for the adjustment in inventory and accounts receivable reserves. This had the net effect of reducing our reported of reducing our reported earnings in the second quarter of fiscal 2008 by approximately \$0.6 per share. These costs in the year ago period essentially created some margin comparisons for us in the second quarter of fiscal 2009, which we do not expect to benefit from in future periods. I would like to briefly comment on the balance sheet. The combined cash and investment balances at May 1, 2009 were approximately 56.8 million, representing a slight decrease of about 2.3 million from approximately \$59 million balance at October 31, 2008. Accounts receivable balances were approximately 44.6 million an increase approximately 4.5 million compared to the balance at October 31, 2008. Billed accounts receivable balances of approximately 22.5 million were essentially unchanged compared to the approximately 22.2 million balance at October 31, 2008. Unbilled accounts receivable balances were approximately 22.1 million, an increase approximately 4 million during the first six months of fiscal 2009, primarily due to contract limitations on certain firm fixed price contracts. Inventory balance at May 1, 2009 was approximately 9.6 million compared to approximately 8.1 million at October 31, 2008. Inventory increased primarily due to an increase in work in process inventories. Prepaid and other current assets included pre-contract for at risk cost of about 1.3 million at May 1, 2009. This compares to a balance of about 2.4 million at January 30, 2009. The reduction in at risk cost is due to receipt of funding primarily on three contracts, High Beam, Spector and one of our significant services contracts. Current liabilities were about 23 million compared to the balance of about 25.5 million at October 31, 2008. The decline was due in part to payments of employee related fringe benefits during the first quarter of 2009. Our bank debt continues to decline such that our total

short and long-term balance at May 1, 2009 is approximately 4.5 million. We paid dividends of approximately 1.6 million during second quarter of fiscal 2009. Those are some of the highlights of the balance sheet and it concludes my review of the financials.

I will turn it back to Bill for his closing comments.

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Thanks Jim. As he said, we both said, it was a good quarter and we were very pleased with the performance and it is a testament to the work of the employees of Applied Signal. Our business is now on a firm footing and we have a great range of opportunities on the horizon. Now last quarter we reviewed, or we highlighted four opportunities, the Singapore synthetic aperture sonar, Argos 3, profit enhance and Next Generation ASA, and I would like to give you an update on those four programs.

Our prime contractor that we had teamed with for the Republic of Singapore was not selected and so as a result we did not win that procurement. However, the investments we made in the product substantially enhanced our overall product's viability and performance, which will be leveraged in future process surveyor product sales and services. We were successful in capturing the Argos 3 program and we are part of the winning team for profit enhance. Our products will be delivered as part of Spiral 2 of that program. The next generation ASA program is still in evaluation with an award anticipated late in the third quarter. This program has recently been revised back to a five year IDIQ program from the previous three year program that we reported at the last investor call. And we've just recently re-submitted our proposal for that. The US Army's aerial common sensor program which is a large program guide at \$5 billion over 10 years. The release of RFP was anticipated in February but was delayed following the appointment of the new DOD acquisition executive Dr. Ashton Carter, and a review of all major acquisition programs. Based on that review and a decision made by Secretary of Defense Gates in August 2008 to accelerate the fielding of airborne ISR assets, the ACS program has been revised into a 24-month quick reaction capability, or QRC program based on a turbo prop aircraft, instead of a jet based ISR platform. The current acquisition schedule calls for an industry day sometime in June–July timeframe where a new and shorter TDD phase will be defined. We anticipate the release of the RFP will follow in the August to September timeframe and we understand that the government still intends to award two contracts in the December–January timeframe, but the period of performance will be shorter and the requirements have been reduced and simplified. AST will continue to track this program and we will attend the next ACS industry day.

The US Navy's electronic patrol next generation program called EPX is a recapitalization of the Navy's existing electronic patrol 3-E fleet or EPE-3 Fleet and it will be a transformational platform to fulfill Navy and DOD requirements for manned multi intelligence ISR and targeting capability. The EPX program, if you recall is valued at roughly \$3 billion over 14 years. The Navy outlined a phased RDT&E acquisition program including a competitive technology development demonstration or TDD phase to reduce technical risk, establish achievable performance requirements and identify material cost and schedule parameters. A phase I study was completed in May of last year by Boeing, Northrup and Lockheed. And a release of an RFP for the second phase to refine the system requirements was also delayed due to the appointment of Dr. Carter and the Navy's decision to conduct a complete recapitalization mitigation program review for the current fleet of 22 EP3 platforms. We believe that the release of RFP for phase II has been delayed until sometime in fiscal year 2010 and we are again continuing to track this program for opportunities to compete.

Now with respect to talent acquisition, Applied Signal Technology has long prided itself on having a world class team of managers and employees. During the second quarter we successfully hired three key new leaders to enhance our skills and discipline in the management of intellectual property, program and personal security, and people management. Dr. Marcia Bush came to AST with 15 years of technology marketing and licensing experience, most recently as the Vice President of the International Computer Science Institute in Berkeley, California and Vice President of Business Development in Xerox's Innovation Group. Marcia holds doctoral and masters degrees in

Electrical Engineering and Computer Science from MIT. She's very bright. She'll work across the Company to build our intellectual property portfolio and help us realize additional licensing based revenue. Deborah Campbell comes to our Company after 30 years with the Central Intelligence Agency in a variety of roles, most recently as the Chief of Personnel Security in the Office of Security and Counter Intelligence. She will be responsible for ensuring the highest possible level of security for our facilities, operational program security and helping us expedite personnel security clearances. Mike Forcht joined us as the Vice President of Human Resources. He was most recently employed in that capacity by Loral Space Systems, but has also been instrumental in human resources efforts for companies such as Intuit, Apple and 3Com Corporation over the course of his career. He has specific expertise in a wide range of areas including organizational integration, performance management process development and in the identification and retention of technical and executive talent. Mike is a key addition to help us improve our ability to hire and retain the best employees.

Now with these three key hires we significantly enhance our management team and our organizational potential. I am excited to work with Mike to further build our team, with Deborah to enhance our physical and program security processes, and with Marcia to continue to create value from our considerable base of intellectual property. In summary we have continued to build our capabilities and have reinforced our management team with great talent and experience; at the same time we have reduced our overall cost structure to increase our level of competitiveness so that we can continue to capture market share across our range of customers. Thank you, and we are now ready to take questions from the participants.

Operator

Thank you. Ladies and gentlemen, we will be conducting a question and answer session. If you would like to ask a question, please press *1 on your telephone keypad. A confirmation tone will indicate that your line is in the question queue. You may press *2 if you'd like to remove your question from the queue. For participants using speaker equipment, it may be necessary to pick up your handset before pressing the * keys. Our first question from the line of Michael Lewis with BB&T Capital Markets. Please go ahead.

Michael Lewis – BB&T Capital Markets

Thank you for taking my questions and very, very fine quarter. Bill just real quickly, you were talking about the ACS reconfiguration, the ACS opportunity. Are they going to try to spiral this thing like to be similar to project liberty. Could you give your opinion on that?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Michael, it is frankly it is in state of flux until they come out with their procurement strategy. We believe that there may be some spiral approaches. There has certainly been some discussion to that effect, where they may phase in different types of capabilities in different spirals. There also is a possibility that there might be some emerging or a combination between the ACS and the project Liberty programs because they now will be similar types of aircraft, and so it is a little early to tell, but both of those remain within the realm of possibility.

Michael Lewis – BB&T Capital Markets

That is helpful. I appreciate your comments there. Shifting gears here, if we look at the Argos 3 award, this time it was awarded as the IDIQ and I think that that should be perceived as a big positive, because it was an incremental funding in the past from what I understand. With that said, with the \$24 million ceiling level do you think that there is a good probability that we will see that ceiling closed more quickly than 2014 when the contract ends?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

I do not believe that we will see it close more quickly. We did on other programs like the ASA program, but on the Argos 3 that is a continuation of program we have actually been participating in for 15–20 years, quite a few years and so it has been a much more stable level of participation. So I believe we are going to continue. That will be a five year program and we should go up to the ceiling. Now the one benefit I do see is in prior years we have had a fairly high ceiling and we had not reached the ceiling level. The way the funding and the program office is operating that program it does appear that I think we stand a pretty good chance of operating to the ceiling value on that program.

Michael Lewis – BB&T Capital Markets

Okay, that is great. One more question, and I'll get out of the way here. On the ASA recompetes, if we look at the prior contract, there was a \$75 million level, the contract that was awarded in 2006. Based on the requirements that have been set to you, what is your expectation. Do you think that opportunity costs will be doubled?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

I guess, I am not sure about the question, but let me take a stab and tell me if I answer it right, Mike. We are currently with a \$75 million program that got increased to \$80 million or so. We do believe in the new program the next generation ASA if awarded, that the annual amount will be up to 50 million per year instead of 25 per year and so I do think the opportunity to see at those is possible. I do not know the 200 million will be, I doubt that the \$200 million will be increased above that.

Michael Lewis – BB&T Capital Markets

That was exactly what I was looking for. I was just assuming 50 as well. Okay thank you, very much.

Operator

Thank you. Our next question is from the line of James McIlree of Collins Stewart LLC. Please go ahead.

James McIlree – Collins Stewart LLC.

Thanks. This is Jim McIlree.

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Hi Jim.

James McIlree – Collins Stewart LLC.

On the royalties, I think, in the last published document I think in the Q1 in the conference call you indicated \$5 million of royalty income expected for fiscal 2009. Is that still a good estimate for the year given the first half strength, you will be looking for more than that?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Well given the first half strength Jim, we would be looking for a little more than that. You can see from our results we are about 3.5 million in royalty revenues for the first half of the year. We do not anticipate that that will double. We do anticipate it to come in more in the -- maybe in the \$6 to \$6.5 million range. As we had said earlier in the year we were thinking of it as more in the \$5 million range, but we did see a good second quarter. The other thing to remember is that we are getting competition on this and there may be some issues surrounding our infringement of our patents, and we'll make sure that we properly -- we take the proper action to defend our position on that.

James McIlree – Collins Stewart LLC.

Is that really causing a significant diminishment of revenues to your royalty payer?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

At this point, it is difficult to tell, we have just begun the process. So what we are doing **some where I** look forward, we were bearing that in mind as to what things might happen as well as there are other economic conditions that might indicate that things might slow a little during certain periods of time. The economy as you know is struggling a bit, and so that there is a bit of an effect on our royalties as a result of that.

James McIlree – Collins Stewart LLC.

I have a four part question but it really deals with the entire, with one main subject which is, I think in times past you have talked about what kind of long-term operating margins you thought you could get so I was wondering if you could revisit that and potentially you know if you are going to go there, what type of timeframe you will be able to get there, how you would get there, and if you have ever done it before, if these are goals that the company has ever achieved in the past? And then as you answer that I am concerned about what happens with these royalty payments over time if that is part of how you are thinking about modeling the business and I will just mute myself and defer to the next question?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Thanks Jim. I will go ahead and take that question. If you want to talk about long-term operating model. That is a very good question because if you look at our operating income as a percentage of revenue for the first half of the year it is approximately 12%, which is outstanding for us and to refresh people's memories, we've said before in prior calls that our operating income potential was in the 6% to 9% of revenue range. We have made some changes as you folks know, that have improved our operating income potential. We have taken steps to significantly reduce our stock compensation expense. We have seen increased royalties and I will comment on that, Jim in a minute. We have also created a product-oriented rate structure, which will likely increase our product sales and products tend to be awarded on a firm fix price basis and also tend to return greater margins that are cost reimbursable contracts. So looking ahead and looking at, given the result of those types of changes, we anticipate that our long-term operating model will show an operating income potential in the 8–11% of revenue range. That is going to be modulated based on some significant factors. One, the contract mix. If we have a greater portion of our revenue coming from fixed price product type contracts, we are going to tend to return higher margins, so contract mix can have a significant impact on the operating results. Program performance of course, licensing and royalties, stock compensation, those are the kind of things that will have a significant result on the operations. And so we think that that 8–11% operating income margin is probably an appropriate one and we think that as in royalties, it would come down a little bit off that more and perhaps 8–10% range, but then that's a function of the type of contracts that we are going through. So that gives some idea of a long-term model. And Jim, what was the question about royalties?

James McIlree – Collins Stewart LLC.

But I think you answered it with the margin goals with and without royalties, I think you just answered that.

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Okay.

Operator

Thank you. Our next question is from the line of Steve Levenson with Stifel Nicolaus. Please go ahead.

Steve Levenson – Stifel Nicolaus

Thanks. Good afternoon Bill and Jim, and thanks for all the complete data in the call. Jim, I am sorry I am going to bring this up, I can't do without it, but what's the story with the rate variance this quarter? How are things looking?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Sure. The indirect rate variance at the end of the second quarter is an unfavorable approximately 115,000 that compares to about \$2.3 million unfavorable at the end of second quarter of last year. It is just a caution. You really cannot compare year-over-year because remember the rate variance affects the particular fiscal year that we are in, but at least it gives you some idea of where we were last year versus where we are this year. So we are comfortable that we will be able to absorb that unfavorable rate variance by the end of the fiscal year.

Steve Levenson – Stifel Nicolaus

It sounds about as low as it has been since we have been talking and does that all relate to the backlog for the order levels?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Well there is a combination of things. Yes, it is a combination of backlog and then orders coming through in the first half of the year as well as some of the controlled spending that we have had here the first half of the year. So it is a combination of those things.

Steve Levenson – Stifel Nicolaus

Okay thank you. Bill you just talked about new products. Is there any way you can describe them and what the potential is?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

About the new products, I guess there are three primary new products. One is the Raider, the model 680 Raider is a Next Generation wide band common system for tactical applications and we are seeing a strong acceptance of that product. We've delivered our first 11 and we have got another 18 working away through development and those will be fielded and deployed later this summer. So, seeing a nice increase in our product sales as a result of that. We also in our broadband communications area we have got a model 129, we call it a Gecko system, that is focused on providing broadband network monitoring and for cyber detection and intrusion. And we are just -- the product was debuted at our spring technology symposium conference that I talked about earlier and we have high hopes for that, although these initial orders are just beginning to emerge. And then the third area is the process surveyor, again, kind of on the heels of the, while we were going to the Singapore Navy solicitation, we put quite a bit of effort into maturing and making the current SAS product, we had much more robust and easily fielded, and we captured a lot of those improvements in our investment and capitalized the system such that we can now go out and either sell a turnkey system to underwater salvage or survey houses, or we can also do a contract labor services to go out and deploy that and so one of them was that search for the aircraft off the coast of Santa Barbara, we are also this week deploying it down to the Gulf of Mexico to help do some oil and pipeline surveys. So that's kind of what we have got coming out of the pipeline in terms of new products.

Steve Levenson – Stifel Nicolaus

Thank you. I am just asking your opinion on who is really going to benefit from the cyber security initiative. Do you think it is more to the SIGINT companies like Applied Signal or do you think this is going to fall more to the companies that serve the consumers, commercial product?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

We know it is going through the report that came out on Friday on the President's cyber security report, and I think it will be a fairly broad based initiative. I think they are talking about education programs, they are talking about some of the technologies to do with the commercial sector and financial sector, but I believe the preponderance will probably be in the defense and intelligence marketplace, or maybe just because that is the piece of the world we look at and view and so we focus ourselves to go address that, but that is we see large program opportunities emerging there and obviously we are giving our strategies to address and capture the largest share we can.

Steve Levenson – Stifel Nicolaus

Okay, last question sort of relates that too. Boeing has indicated that they are going to be focusing on the cyber world, particularly on cyber security. I guess they already feel comfortable on cyber attack. Do you think this is something they are going to do internally, build it, partner or buy it?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

We believe they are a large prime contractor and probably the answer will be some combination of all three. Boeing has shown an interest in doing acquisition to make sure that they have some indigenous capability as exemplified in DRT acquisition right here. I think they will probably continue to do similar activity like that, but I also think you know the strength of Boeing and other companies like Northrup Grumman and Lockheed Martin is not necessarily done at the technology level, but really the integration, bringing together a coalition of partners and I think they will bring more value to the market if they were to bring that corporate strength of integrating a coalition of companies to address this opportunity.

Steve Levenson – Stifel Nicolaus

And what are you seeing in the acquisition marketplace? Is there anything impacting prices or availability, tax laws, financing, things like that? Where are you guys right now?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Very good question, Steve and it is a subject of a lot of interest to us. We are actively looking and reviewing the marketplace. We are looking for companies that can help us accelerate our fundamental business strategies in cyber security, in tactical SIGNIT and in services. Those are kind of the three areas where I think we could, if we could find a well run company at the right price, we would be interested in considering an acquisition and leveraging obviously the strength of our equity cost capital here. We have to balance that with what are the great companies out there, are they are at the right price, are they ready to do be acquired and so forth, and in the cyber security area, I think there is a premium is what we are seeing, in other parts of the community I guess tactical SIGNIT based on the DRT deal, there is still some inflated expectations based on the fairly high valuation, but in other parts of the business in the services side and other parts of technology we have seen valuations come down, so you know we are looking at all of them simultaneously just to see where we can get the best value for our shareholders.

Steve Levenson – Stifel Nicolaus

Great. Thanks very much.

Operator

Thank you. Your next question is from the line of Myles Walton with Oppenheimer and Company. Please go ahead.

Myles Walton – Oppenheimer and Company

Thanks, good afternoon. You answered Steve's question for Jim on indirect rate variances or unfavorable rate variances, curious if you could comment what it was relative to plan though?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

It was ahead of our internal plans but it was not that far ahead of it, so we are comfortable that there are no rate reserves as you have seen in prior quarters, no rate reserves that we have to take that are unfavorable, nor are there any positive pick up and profit as a result of this. We forecast that to the end of the year. We feel comfortable that our rates are going to come in as we had anticipated and this variance as I said it is not too far off of what we did plan internally.

Myles Walton – Oppenheimer and Company

Okay. And could you comment on what the contract mix was in the quarter, even if you take out your run rate for royalties above **median** the last year you came to the point where these margins looked pretty sustainable and you've obviously increased your long-term targets, but was mix really a help in this quarter similar to the first quarter?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Yes. Let me go over that a bit. If you look at, you have comparison between this quarter and a year ago quarter. Our cost reimbursable contracts returns were approximately 61% of our revenues versus approximately 72% a year ago. Time and material this quarter were approximately 21% versus approximately 18% a year ago. The big change here though on fixed price contracts, they represented about 15% of our revenues for the second quarter of this year compared to about 7% last year. And then royalties are running in about 3% of the total revenues for each of the two quarters. So we did see that a significant increase there in our fixed price contracts and Bill had commented on our model 680 Raider product and the nice growth that we have had there plus our core suite of SIGNIT equipment, we have had some increases there on those products also, so we have done well this first half of the year with products becoming a greater portion of our revenues than it had been in the past.

Myles Walton – Oppenheimer and Company

But I guess the question is there is no anticipation that that necessarily drops off in the back half of the year, is Raider now to a point and your other products your second products now to a point where they are kind of ...?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Myles, we do not anticipate a drop off for the balance of the year as far as percentage of revenue. There may be a different mix in which products are going through there and that is really kind of a matter of timing but we do anticipate that we will see that higher fixed price contracts for the full year.

Myles Walton – Oppenheimer and Company

Okay good. And you mentioned legal cost and I have just want to tie it back to the comment on licensing or royalties rather, so then are you saying that the royalty revenue may not be impacted, but you are essentially going to flow some legal cost to offset the pure profit that those are currently, and what kind of legal costs should we think about?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Yeah. There probably will be some legal cost impact and we do not have a real good handle on that right at the moment, Myles we are just initiating the process. But as I mentioned earlier we are looking at total royalties in a range of 6–6.5 million for the year.

Myles Walton – Oppenheimer and Company

But still on the similar margin profile that we have seen in the past?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Essentially all the various profits, yes, although we do have some, as I said, we have put in some amount of legal cost, but at this point that is just an estimate that we have come up with what we need to work through the process.

Myles Walton – Oppenheimer and Company

Okay, and Bill on your comments about ASA, I was trying to understand and maybe I missed it, as it has moved in the RFT from being a three-year back to a five-year so is the ceiling also moving towards the five year at that \$50 million run rate?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

We believe that is, Myles. We believe it is going to be a \$200 million ceiling and I think the only downside there is it has moved a little bit longer in time, so maybe it moved another month or two in time, so we are looking at late third quarter or early fourth quarter type of a work. In the meantime the customer has been raising our current ASA ceiling, so that there would be no loss of continuity should we be selected.

Myles Walton – Oppenheimer and Company

And giving you the incumbent I mean, and I am not to put you on the spot, but what I mean is there a potent competitor who is going up against you in this competition or is this – how would qualify this type of transition of contracts?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Unfortunately we learned to never underestimate any competition. And so I say if there is any competition there is formidable competition, but we are an incumbent and the customer relationship has been strong and we hope that we will be able to continue to leverage that going forward.

Myles Walton – Oppenheimer and Company

With this strike as a single contract award or would this flow in incremental annual?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

We believe it will be IDIQ with a ceiling, and we think it will be booked as the task, as the worker task workers are sent. So it will not be a single \$200 million order, but we look over in annual increments if you will.

Myles Walton – Oppenheimer and Company

Okay. And at this point in time do you have visibility to get book to bill over one for the full year?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

That's still our objective. This is in order to provide sustainable results. Our objective is to finish the full year with a book-to-bill greater than one absolutely.

Myles Walton – Oppenheimer and Company

And then last from me, Bill is you have an 80% Intel business, 20% DOD, the last couple of years has been your Intel business that has been very predictable in terms of the low teens organic growth, but your DOD business have been an annualized head win I think declining by single digits. Is Intel's... can you maybe give us some color or just talk about those two businesses as this year and over the next couple of years. Is DOD turning the corner that is now immaterial source of growth, has it stabilized and is Intel still that symbol of growth?

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Good question, very good question. Intel I would call a steady business and the main reason I see a large high-double-digit growth on that is because you know we had a fairly large, in our niche anyway, we've got a fairly large market share and so growing that is probably going to be difficult. I see that as sustaining at its current levels 5–10% is kind of what we see in that, in the core intelligence business. We actually see bigger opportunities in terms of upside in two areas, one is in cyber security as that materializes and cyber space programs come out, I think there is breakout upside there. The other one that was in the DOD, and the DOD we have been getting a number of market forecasts for the manned airborne SIGNIT marketplace, you know there is a number of programs with the ACS, the EPX, the EP3 project leader, there is quite a bit of recapitalization going on in that marketplace that I think creates a larger potential growth market. Unmanned aerial system UAS, or UAV sensors looks like a growth market and ground based SIGNIT is another area of growth, so at least in the markets where we participate the ISR markets, I think DOD represents a large growth opportunity for us.

Myles Walton – Oppenheimer and Company

Okay. Great thanks again.

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

Thanks, Myles.

Operator

Thank you. Our next question is from the line of Robert Kirkpatrick with Cardinal Capital. Please go ahead.

Robert Kirkpatrick – Cardinal Capital

Thank you very much. You had mentioned in your first quarter 10Q there was a possibility of an award being debooked during the balance of the year, was that done in the quarter here and if so is the orders number in that orders number?

James E. Doyle – Chief Financial Officer and Vice President Finance – Applied Signal Technologies

Yeah, Rob. That order has not been debooked. It is approximately 4–5 million that we anticipate to be debooked. We have submitted proposals for those particular set of delivery orders and we have submitted those proposals. We still

anticipate it to debook in that range of 4–5 million but the timing is uncertain as to whether it will be this fiscal year 2009 or sometime in FY' 10.

Robert Kirkpatrick – Cardinal Capital

Great and then how is the – I mean you talked about three kind of executives hires but how is your general hiring coming along towards your plan for the year. Where did you end the quarter in terms of the number of employees and are you seeing any difficulty or ease in being able to hire the skilled employees you need? Thank you.

William B. Van Vleet, III – Chief Executive Officer – Applied Signal Technologies

A good question, Ron. We finished the quarter at about 700 net employees, that is about 700 total employees. And so that is close to what our plans were, but we are a little bit behind. Since the end of the quarter we have actually seen it pick up a bit more favorably particularly as we enter the college graduation timeframe and we have had a nice series of hires of very good college graduates, the market is quite good for that. And still we are close to plan, our plan was still to close the year cumulative distributions, including for the then current period, on any cumulative applicable series, we may not declare, or pay or set aside for payment, any distributions upon common shares or any other equity securities ranking junior to or on a parity with the applicable series as to distributions or upon liquidation. The foregoing restriction does not apply to distributions paid in common shares or other equity securities ranking junior to the applicable series as to distributions and upon liquidation, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials. Unless otherwise provided in the applicable prospectus supplement or other applicable offering materials, if the applicable series is noncumulative, we need only declare, and pay or set aside for payment, the distribution for the then current period, before declaring distributions on common shares or junior or parity securities. In addition, under the circumstances that we could not declare a distribution, we may not redeem, purchase or otherwise acquire for any consideration any common shares or other parity or junior equity securities, except upon conversion into or exchange for common shares or other junior equity securities, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials. We may, however, make purchases and redemptions otherwise prohibited pursuant to certain redemptions or pro rata offers to purchase the outstanding shares of the applicable series and any other parity series of preferred shares, unless otherwise provided in the applicable prospectus supplement or other applicable offering materials.

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

Redemption

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

If a series of preferred shares is subject to mandatory redemption, we will specify in the applicable prospectus supplement or other applicable offering materials the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid distributions, except in the case of noncumulative preferred shares. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement or other applicable offering materials. If the redemption price for preferred shares of any series is payable only from the net proceeds of our issuance of shares of beneficial interest, the terms of the

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preferred shares may provide that, if no shares of beneficial interest shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, the preferred shares will automatically and mandatorily be converted into shares of beneficial interest pursuant to conversion provisions specified in the applicable prospectus supplement or other applicable offering materials.

Liquidation Preference

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

If, upon any voluntary or involuntary liquidation, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of that series and the corresponding amounts payable on all shares of beneficial interest ranking on a parity in the distribution of assets with that series, then the holders of that series and all other equally ranking shares of beneficial interest shall share ratably in the distribution in proportion to the full liquidating distributions to which they would otherwise be entitled.

For these purposes, our consolidation or merger with or into any other trust or corporation or other entity, or the sale, lease or conveyance of all or substantially all of our property or business, or a statutory share exchange, will not be a liquidation unless otherwise provided in the applicable prospectus supplement or other applicable offering materials.

Voting Rights

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

Unless otherwise specified in the applicable prospectus supplement or other applicable offering materials, holders of our preferred shares (voting separately as a class with all other series of preferred shares with similar voting rights) will be entitled to elect two additional trustees to our Board of Trustees at our next annual meeting of shareholders or at a special meeting called for such purpose, if at any time distributions on the applicable series are in arrears for six or more quarterly periods. If the applicable series has a cumulative distribution, the right to elect additional trustees described in the preceding sentence shall remain in effect until we declare and pay or set aside for payment all distributions accrued and unpaid on the applicable series. In the event the preferred shareholders are so entitled to elect trustees, the entire Board of Trustees will be increased by two trustees.

Unless otherwise specified in the applicable prospectus supplement or other applicable offering materials, so long as any preferred shares are outstanding, we may not, without the affirmative vote or consent of at least two-thirds of the shares of each series of preferred shares (and other shares having like voting rights) outstanding at that time:

effect a share exchange, consolidation or merger into another entity unless the series remains outstanding and its terms are not materially and adversely changed or the series is converted into or exchanged for preferred shares having identical terms (except for changes that do not materially and adversely affect the holders of such series);

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amend, alter or repeal the provisions of our Declaration of Trust or Bylaws that materially and adversely affects the series of preferred shares;

increase the authorized amount of such series of preferred shares or decrease the authorized amount of such series of preferred shares below the number then issued and outstanding;

authorize, create or increase the authorized or issued amount of any class or series of shares ranking senior to that series of preferred shares;

reclassify any class or series of shares ranking senior to that series of preferred shares or any security or obligation convertible into any class of shares ranking senior to that series of preferred shares; and

create, authorize or increase the authorized or issued amount of any security or obligation convertible into or evidencing the right to purchase any shares ranking senior to that series of preferred shares.

The authorization, creation, increase or decrease of the authorized amount of any class or series of shares ranking on parity or junior to a series of preferred shares with respect to distribution and liquidation rights, or the issuance of such shares, will not be deemed to materially and adversely affect that series.

The foregoing voting provisions will not apply if, at or prior to the time of such amendment, provisions are made for the redemption of all of the outstanding shares of the series of preferred shares with the right to vote.

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

Conversion Rights

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

Our Exchange Rights

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

Series B Cumulative Redeemable Preferred Shares

Our Series B Preferred Shares provide for quarterly payments of cumulative distributions at the rate of 7.75% of the \$25 per share liquidation preference of the Series B Preferred Shares, or a fixed rate of \$1.9375 per share each year. Distributions not declared or paid in any quarter continue to accumulate. On liquidation of the Company, holders of the Series B Preferred Shares are entitled to a liquidation preference of \$25 per share plus all accumulated, accrued and unpaid distributions before any amount is payable to the holders of our common shares. The Series B Preferred Shares are not redeemable prior to January 19, 2010, except in limited circumstances relating to the preservation of our status as a REIT. On or after that date, we may at our own

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option redeem the Series B Preferred Shares in whole or in part by paying the \$25 per share liquidation preference plus all accumulated, accrued and unpaid distributions. The Series B Preferred Shares rank senior to our common shares and on a parity with our Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, and other parity securities we may issue in the future with respect to the payment of distributions and amounts on liquidation, dissolution and winding up. Holders of Series B Preferred Shares generally have no voting rights, except that if distributions on the Series B Preferred Shares have not been paid for six or more quarterly periods (whether or not consecutive), holders of the Series B Preferred Shares (together with other shares having like voting rights) are entitled to elect two additional trustees to the Board of Trustees to serve until all unpaid distributions have been paid or declared and set aside for payment. In addition, certain material and adverse changes to the terms of the Series B Preferred Shares cannot be made without the affirmative vote of at least two-thirds of the outstanding Series B Preferred Shares and the holders of all other shares on a parity with the Series B Preferred Shares and having like voting rights.

Series C Cumulative Convertible Preferred Shares

Our Series C Preferred Shares provide for quarterly payments of cumulative distributions at the rate of 5.75% of the \$25 per share liquidation preference of the Series C Preferred Shares, or a fixed rate of \$1.4375 per share each year. Distributions not declared or paid in any quarter continue to accumulate. On liquidation of the Company, holders of the Series C Preferred Shares are entitled to a liquidation preference of \$25 per share plus all accumulated, accrued and unpaid distributions before any amount is payable to the holders of our common shares. The Series C Preferred Shares are not redeemable. Holders of Series C Preferred Shares may, at their option, convert the Series C Preferred Shares into our common shares subject to certain conditions at the then applicable conversion rate. The conversion rate is subject to adjustment upon the occurrence of specified events. On or after January 15, 2012, we may, at our option, convert some or all of the Series C Preferred Shares into common shares at the then applicable conversion rate in certain circumstances based on the market price of our common shares. Upon any conversion of Series C Preferred Shares, we will have the option to deliver either (1) a number of common shares based upon the applicable conversion rate, or (2) an amount of cash and common shares as specified in the articles supplementary for such shares. If the holders of Series C Preferred Shares elect to convert their Series C Preferred Shares in connection with a fundamental change that occurs on or prior to January 15, 2017, we will increase the conversion rate for the Series C Preferred Shares surrendered for conversion to the extent described in the articles supplementary for the Series C Preferred Shares. In addition, upon a fundamental change, when the actual applicable price of our common shares, as determined in accordance with the articles supplementary, is less than \$59.45 per share, the holders of Series C Preferred Shares may require us to convert some or all of their Series C Preferred Shares at a conversion rate equal to the liquidation preference of the Series C Preferred Shares being converted plus accrued and unpaid distributions divided by 98% of the market price of our common shares. We will have the right to repurchase for cash some or all of the Series C Preferred Shares that would otherwise be required to be converted. The Series C Preferred Shares rank senior to our common shares and on a parity with our Series B Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, and other parity securities we may issue in the future with respect to the payment of distributions and amounts on liquidation, dissolution and winding up. Holders of Series C Preferred Shares generally have no voting rights, except that if distributions on the Series C Preferred Shares have not been paid for six or more quarterly periods (whether or not consecutive), holders of the Series C Preferred Shares (together with shares having like voting rights) are entitled to elect two additional trustees to the Board of Trustees to serve until all unpaid distributions have been paid or declared and set aside for payment. In addition, certain material and adverse changes to the terms of the Series C Preferred Shares cannot be made without the affirmative vote of at least two-thirds of the outstanding Series C Preferred Shares and the holders of all other shares on a parity with the Series C Preferred Shares and having like voting rights.

Series D Cumulative Redeemable Preferred Shares

Our Series D Preferred Shares provide for quarterly payments of cumulative distributions at the rate of 7.375% of the \$25 per share liquidation preference of the Series D Preferred Shares, or a fixed rate of \$1.84375

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per share each year. Distributions not declared or paid in any quarter continue to accumulate. On liquidation of the Company, holders of the Series D Preferred Shares are entitled to a liquidation preference of \$25 per share plus all accumulated, accrued and unpaid distributions before any amount is payable to the holders of our common shares. The Series D Preferred Shares are not redeemable prior to May 25, 2012, except in limited circumstances relating to the preservation of our status as a REIT. On or after that date, we may at our own option redeem the Series D Preferred Shares in whole or in part by paying the \$25 per share liquidation preference plus all accumulated, accrued and unpaid distributions. The Series D Preferred Shares rank senior to our common shares and on a parity with our Series B Preferred Shares, Series C Preferred Shares, Series E Preferred Shares, and other parity securities we may issue in the future with respect to the payment of distributions and amounts on liquidation, dissolution and winding up. Holders of Series D Preferred Shares generally have no voting rights, except that if distributions on the Series D Preferred Shares have not been paid for six or more quarterly periods (whether or not consecutive), holders of the Series D Preferred Shares (together with other shares having like voting rights) are entitled to elect two additional trustees to the Board of Trustees to serve until all unpaid distributions have been paid or declared and set aside for payment. In addition, certain material and adverse changes to the terms of the Series D Preferred Shares cannot be made without the affirmative vote of at least two-thirds of the outstanding Series D Preferred Shares and the holders of all other shares on a parity with the Series D Preferred Shares and having like voting rights.

Series E Cumulative Convertible Preferred Shares

Our Series E Preferred Shares provide for quarterly payments of cumulative distributions at the rate of 9.00% of the \$25 per share liquidation preference of the Series E Preferred Shares, or a fixed rate of \$2.25 per share each year. Distributions not declared or paid in any quarter continue to accumulate. On liquidation of the Company, holders of the Series E Preferred Shares are entitled to a liquidation preference of \$25 per share plus all accumulated, accrued and unpaid distributions before any amount is payable to the holders of our common shares. The Series E Preferred Shares are not redeemable. Holders of Series E Preferred Shares may, at their option, convert the Series E Preferred Shares into our common shares subject to certain conditions at the then applicable conversion rate. The conversion rate is subject to adjustment upon the occurrence of specified events. On or after April 20, 2013, we may, at our option, convert some or all of the Series E Preferred Shares into common shares at the then applicable conversion rate in certain circumstances based on the market price of our common shares. Upon any conversion of Series E Preferred Shares, we will have the option to deliver either (1) a number of common shares based upon the applicable conversion rate, or (2) an amount of cash and common shares as specified in the articles supplementary for such shares. If the holders of Series E Preferred Shares elect to convert their Series E Preferred Shares in connection with a fundamental change that occurs on or prior to April 20, 2018, we will increase the conversion rate for the Series E Preferred Shares surrendered for conversion to the extent described in the articles supplementary for the Series E Preferred Shares. In addition, upon a fundamental change, when the actual applicable price of our common shares, as determined in accordance with the articles supplementary, is less than \$48.18 per share, the holders of Series E Preferred Shares may require us to convert some or all of their Series E Preferred Shares at a conversion rate equal to the liquidation preference of the Series E Preferred Shares being converted plus accrued and unpaid distributions divided by 98% of the market price of our common shares. We will have the right to repurchase for cash some or all of the Series E Preferred Shares that would otherwise be required to be converted. The Series E Preferred Shares rank senior to our common shares and on a parity with our Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, and other parity securities we may issue in the future with respect to the payment of distributions and amounts on liquidation, dissolution and winding up. Holders of Series E Preferred Shares generally have no voting rights, except that if distributions on the Series E Preferred Shares have not been paid for six or more quarterly periods (whether or not consecutive), holders of the Series E Preferred Shares (together with shares having like voting rights) are entitled to elect two additional trustees to the Board of Trustees to serve until all unpaid distributions have been paid or declared and set aside for payment. In addition, certain material and adverse changes to the terms of the Series E Preferred Shares cannot be made without the affirmative vote of at least two-thirds of the outstanding Series E Preferred Shares and the holders of all other shares on a parity with the Series E Preferred Shares and having like voting rights.

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DESCRIPTION OF DEPOSITARY SHARES

The following description, together with the additional information we include in any applicable prospectus supplement or other applicable offering materials, summarizes the general provisions of any deposit agreement and of the depositary shares and depositary receipts representing depositary shares that we may offer under this prospectus. Because it is a summary, it does not contain all of the information that may be important to you. For more information, you should read the form of deposit agreement and depositary receipts which we will file as exhibits to the registration statement of which this prospectus is part prior to an offering of depositary shares. While the terms we have summarized below will apply generally to any depositary shares we may offer, you should also read the applicable prospectus supplement or other applicable offering materials which will describe the particular terms of any depositary shares that we may offer in more detail. See

Where You Can Find More Information. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and by the terms of the applicable final deposit agreement and depositary receipts.

General

We may, at our option, elect to offer depositary shares rather than full shares of preferred shares. In the event such option is exercised, each of the depositary shares will represent ownership of and entitlement to all rights and preferences of a fraction of a share or multiple shares of preferred shares of a specified series (including distributions, voting, redemption and other liquidation rights). The applicable fraction will be specified in a prospectus supplement. If we exercise this option, we will appoint a depositary to issue depositary receipts representing those fractional interests. Preferred shares of each series represented by depositary shares will be deposited under a separate deposit agreement between us and the depositary. The prospectus supplement or other offering materials relating to a series of depositary shares will show the name and address of the depositary. Subject to the terms of the applicable deposit agreement, each owner of depositary shares will be entitled to all of the distribution, voting, conversion, redemption, liquidation and other rights and preferences of the preferred shares represented by those depositary shares.

Depositary receipts issued pursuant to the applicable deposit agreement will evidence ownership of depositary shares. Upon surrender of depositary receipts at the office of the depositary, and upon payment of the charges provided in and subject to the terms of the applicable deposit agreement, a holder of depositary shares will be entitled to receive the preferred shares underlying the surrendered depositary receipts. The applicable prospectus supplement will specify whether or not the depositary shares will be listed on any securities exchange.

Distributions

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

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

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

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Withdrawal of Preferred Shares

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

Redemption of Depositary Shares

If we redeem a series of the preferred shares underlying the depositary shares, the depositary will redeem those shares from the proceeds received by it. The depositary will mail notice of redemption not less than 30 days, and not more than 60 days, before the date fixed for redemption to the record holders of the depositary receipts evidencing the depositary shares we are redeeming at their addresses appearing in the depositary's books. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to the series of the preferred shares. The redemption date for depositary shares will be the same as that of the preferred shares. If we are redeeming less than all of the depositary shares, we and the depositary will select the depositary shares we are redeeming on as nearly a pro rata basis as is practicable without creating fractional shares or by any other equitable method determined by us that preserves our REIT status.

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

Voting of the Preferred Shares

Upon receipt of notice of any meeting at which the holders of the applicable preferred shares are entitled to vote, a depositary will be required to mail the information contained in the notice of meeting to the record holders of the applicable depositary receipts. Each record holder of depositary receipts on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of preferred shares represented by the holder's depositary shares. The depositary will try, as practical, to vote the shares as you instruct. We will agree to take all reasonable action that the depositary deems necessary in order to enable it to do so.

If you do not instruct the depositary how to vote your shares, the depositary will abstain from voting those shares. The depositary will not be responsible for any failure to carry out an instruction to vote or for the effect of any such vote made so long as the action or inaction of the depositary is in good faith and is not the result of the depositary's gross negligence or willful misconduct.

Liquidation Preference

Upon our liquidation, dissolution or winding-up, whether voluntary or involuntary, each holder of depositary shares will be entitled to the fraction of the liquidation preference accorded each preferred share represented by the depositary shares, as shown in the applicable prospectus supplement or other applicable offering materials.

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Conversion or Exchange of Preferred Shares

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

U.S. Federal Income Tax Consequences Relating to Depositary Shares

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

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

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

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

Amendment and Termination of a Deposit Agreement

We and the applicable depositary will be permitted to amend the provisions of the depositary receipts and the deposit agreement. However, the holders of at least a majority of the applicable depositary shares then outstanding must approve any amendment that materially and adversely affects the rights of holders. Every holder of an outstanding depositary receipt at the time any amendment becomes effective, by continuing to hold the receipt, will be bound by the applicable deposit agreement, as amended.

Any deposit agreement may be terminated by us upon not less than 30 days' prior written notice to the applicable depositary if (1) the termination is necessary to preserve our status as a Maryland real estate investment trust or (2) a majority of each series of preferred shares affected by the termination consents to the termination. When either event occurs, the depositary will be required to deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by the holder, the number of whole or fractional shares of preferred shares as are represented by the depositary shares evidenced by the depositary receipts, together with any other property held by the depositary with respect to the depositary receipts. In addition, a deposit agreement will automatically terminate if:

all depositary shares or related preferred shares have been redeemed;

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

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

Charges of a Depositary

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

Resignation and Removal of Depositary

A depositary may resign at any time by delivering to us notice of its election to do so. In addition, we may at any time remove a depositary. Any resignation or removal will take effect when we appoint a successor depositary and it accepts the appointment. We must appoint a successor depositary within 60 days after delivery of the notice of resignation or removal.

Miscellaneous

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

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

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

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DESCRIPTION OF WARRANTS

*The following description, together with the additional information we include in any applicable prospectus supplement or other applicable offering materials, summarizes the general terms and provisions of the warrants that we may offer under this prospectus. Because it is a summary, it does not contain all of the information that may be important to you. For more information, you should read the forms of warrants and the warrant agreement which we will file as exhibits to the registration statement of which this prospectus is part. While the terms we have summarized below will apply generally to any warrants we may offer, you should also read in the applicable prospectus supplement or other applicable offering materials which will describe the particular terms of any warrants that we may offer in more detail. See *Where You Can Find More Information*. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and the terms of the applicable final warrants and warrant agreement.*

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

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

the title of the warrants;

the offering price for the warrants;

the aggregate number of the warrants;

the designation and terms of the securities purchasable upon exercise of the warrants;

if applicable, the designation and terms of the securities that the warrants are issued with and the number of warrants issued with each security;

if applicable, the date after which the warrants and any securities issued with them will be separately transferable;

the number or amount of securities that may be purchased upon exercise of a warrant and the price at which the securities may be purchased upon exercise;

the dates on which the right to exercise the warrants will commence and expire;

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

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whether the warrants represented by the warrant certificates or securities that may be issued upon exercise of the warrants will be issued in registered or bearer form;

information relating to book-entry procedures;

anti-dilution provisions of the warrants, if any;

a discussion of material U.S. federal income tax considerations;

redemption, repurchase or analogous provisions, if any, applicable to the warrants; and

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

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

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

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DESCRIPTION OF DEBT SECURITIES

*The following description, together with the additional information we include in any applicable prospectus supplements or other applicable offering materials, summarizes the general terms and provisions of the debt securities that we may offer under this prospectus. Because it is a summary, it does not contain all information that may be important to you. For more information, you should read the forms of indentures we have filed as exhibits to the registration statement of which this prospectus is a part. While the terms we have summarized below will apply generally to any future debt securities we may offer, you should also read the applicable prospectus supplement or other offering materials which will describe the particular terms of any debt securities that we may offer in more detail. This summary is also subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and by the terms of the applicable final indenture, applicable indenture supplement and debt security. See *Where You Can Find More Information*.*

General

The debt securities that we may issue will constitute debentures, notes, bonds or other evidences of indebtedness of the Company, to be issued in one or more series, which may include senior debt securities, subordinated debt securities and senior subordinated debt securities. The particular terms of any series of debt securities we offer, including the extent to which the general terms set forth below may be applicable to a particular series, will be described in a prospectus supplement relating to such series.

Debt securities that we may issue will be issued under one or more separate indentures between us and a trustee to be named in the related prospectus supplement. Senior debt securities will be issued under a senior indenture and subordinated debt securities will be issued under a subordinated indenture. Together the senior indenture and the subordinated indenture are called indentures and each an indenture. We have filed the forms of the indentures as exhibits to the registration statement of which this prospectus is a part. If we enter into any indenture supplement, we will file a copy of that supplement with the SEC.

Unless otherwise indicated in the applicable prospectus supplement, the debt securities will be our direct obligations. The senior debt securities will rank equally with all of our other senior and unsubordinated debt. The subordinated debt securities will have a junior position to certain of our debt, as described in the subordinated securities themselves or under the supplemental indenture under which they are issued. Unless we otherwise provide, we may reopen a series, without the consent of the holders of the series, for issuances of additional securities of that series.

We conduct a significant portion of our operations through our subsidiaries. Therefore, holders of debt securities will have a position junior to the prior claims of creditors of our subsidiaries, including trade creditors, debtholders, secured creditors, taxing authorities and guarantee holders, and any preferred stockholders, except to the extent that we may ourselves be a creditor with recognized and unsubordinated claims against any subsidiary. Our ability to pay principal of and premium, if any, and interest on any debt securities is, to a large extent, dependent upon the payment to us of dividends, distributions, interest or other charges by our subsidiaries.

The following description is a summary of the material provisions of the forms of indentures. It does not restate the indentures in their entireties. The indentures are governed by the Trust Indenture Act of 1939. The terms of the debt securities include those stated in the indentures and those made part of the indentures by reference to the Trust Indenture Act. We urge you to read the indentures because they, and not this description, define your rights as a holder of the debt securities. The following description is subject to and qualified by reference to the terms of the final indentures and any supplement thereto.

Information You Will Find in the Prospectus Supplement or Other Offering Materials

The indentures provide that we may issue debt securities from time to time in one or more series and that we may denominate the debt securities and make them payable in foreign currencies. The indentures do not limit the

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aggregate principal amount of debt securities that can be issued thereunder. The prospectus supplement or other offering materials for a series of debt securities will provide information relating to the terms of the series of debt securities being offered, which may include:

the issue price of the debt securities of the series;

the title and denominations of the debt securities of the series;

the aggregate principal amount and any limit on the aggregate principal amount of the debt securities of the series;

the date or dates on which the principal and premium, if any, with respect to the debt securities of the series are payable, the amount or amounts of such payments or principal and premium, if any, or the method of determination thereof;

the amount payable upon maturity or upon acceleration;

the rate or rates, which may be fixed or variable, at which the debt securities of the series shall bear interest, if any, or the method of calculating and/or resetting such rate or rates of interest;

any limits on ownership or transferability;

the person to whom such interest will be payable, if other than the person in whose name the debt securities are registered;

the dates from which such interest shall accrue or the method by which such dates shall be determined and the basis upon which interest shall be calculated;

the interest payment dates for the series of debt securities or the method by which such dates will be determined, the terms of any deferral of interest and any right of ours to extend the interest payment periods;

the place or places where the principal of and any premium and interest on the series of debt securities will be payable, or where the debt securities may be surrendered for conversion, transfer or exchange;

the place or places where notices or demands to or upon the Company in respect of the debt securities and the indentures may be served;

the terms and conditions, if any, upon which debt securities of the series may be redeemed, in whole or in part, at our option or otherwise;

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our obligation, if any, to redeem, purchase, or repay debt securities of the series pursuant to any sinking fund or other specified event or at the option of the holders and the terms of any such redemption, purchase, or repayment;

the terms, if any, upon which the debt securities of the series may be convertible into or exchanged for other securities, including, among other things, the initial conversion or exchange price or rate and the conversion or exchange period;

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

if any payments on the debt securities of the series are to be made in a currency or currencies (or by reference to an index or formula) other than that in which such securities are denominated or designated to be payable, the currency or currencies (or index or formula) in which such payments are to be made and the terms and conditions of such payments;

any additional amounts payable in respect of taxes or government charges or assessments;

the extent to which the debt securities of the series, in whole or any specified part, shall be defeasible pursuant to the indenture and the terms and conditions of such defeasance;

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the currency or currencies in which payment of the principal and premium, if any, and interest with respect to debt securities of the series will be payable, or in which the debt securities of the series shall be denominated, and the particular provisions applicable thereto;

whether the debt securities of the series will be secured or guaranteed and, if so, on what terms;

the covenants and events of default if different from or in addition to those described in this prospectus;

any addition to or change in the events of default with respect to the debt securities of the series;

the identity of any trustees, authenticating or paying agents, transfer agents or registrars;

the applicability of, and any addition to or change in, the covenants currently set forth in the indenture;

the subordination, if any, of the debt securities of the series and terms of the subordination;

whether our subsidiaries will provide guarantees of the debt securities, and the terms of any subordination of such guarantee;

provisions, if any, granting special rights to holders of the debt securities upon the occurrence of such events as may be specified;

whether we will issue the debt securities in certificate or book entry form;

whether such debt securities shall be issuable in registered form or bearer form, and if in registered form, the denomination if other than in even multiples of \$1,000, and any restrictions applicable to the offering, sale or delivery of bearer debt securities;

the forms of the debt securities of the series;

the terms, if any, which may be related to warrants, options, or other rights to purchase securities issued by the Company in connection with debt securities of the series;

whether the debt securities will be governed by, and the extent to which the debt securities will be governed by, any law other than the laws of the State of New York; and

any other terms of the debt securities of the series which are not prohibited by the indenture.

Subordination

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

the indebtedness ranking senior to the debt securities being offered;

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

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

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

Interest Rate

Debt securities that bear interest will do so at a fixed rate or a floating rate.

Original Issue Discount

One or more series of debt securities offered by this prospectus may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate that at the time of issuance is below market

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rates. The material U.S. federal income tax consequences and special considerations applicable to any series of debt securities generally will be described in the applicable prospectus supplement or other applicable offering materials.

Registered Global Securities

We may issue registered debt securities of a series in the form of one or more fully registered global securities. We will deposit the registered global security with a depository or with a nominee for a depository identified in the prospectus supplement or other offering materials relating to such series. The global security or global securities will represent and will be in a denomination or aggregate denominations equal to the portion of the aggregate principal amount of outstanding registered debt securities of the series to be represented by the registered global security or securities. Unless otherwise specified in the applicable prospectus supplement or other applicable offering materials, unless it is exchanged in whole or in part for debt securities in definitive registered form, a registered global security may not be transferred, except as a whole in three cases:

by the depository for the registered global security to a nominee of the depository;

by a nominee of the depository to the depository or another nominee of the depository; and

by the depository or any nominee to a successor of the depository or a nominee of the successor.

The prospectus supplement or other offering materials relating to a series of debt securities will describe the specific terms of the depository arrangement concerning any portion of that series of debt securities to be represented by a registered global security. We anticipate that the following provisions will generally apply to all depository arrangements.

Upon the issuance of a registered global security, the depository will credit, on its book-entry registration and transfer system, the principal amounts of the debt securities represented by the registered global security to the accounts of persons that have accounts with the depository. These persons are referred to as participants. Any underwriters, agents or debtors participating in the distribution of debt securities represented by the registered global security will designate the accounts to be credited. Only participants or persons that hold interests through participants will be able to beneficially own interests in a registered global security. The depository for a global security will maintain records of beneficial ownership interests in a registered global security for participants. Participants or persons that hold through participants will maintain records of beneficial ownership interests in a global security for persons other than participants. These records will be the only means to transfer beneficial ownership in a registered global security.

The laws of some states may require that specified purchasers of securities take physical delivery of the securities in definitive form. These laws may limit the ability of those persons to own, transfer or pledge beneficial interests in global securities.

So long as the depository, or its nominee, is the registered owner of a registered global security, the depository or its nominee will be considered the sole owner or holder of the debt securities represented by the registered global security for all purposes under the indenture. Except as set forth below, or in the applicable supplemental indenture, owners of beneficial interests in a registered global security:

may not have the debt securities represented by a registered global security registered in their names;

will not receive or be entitled to receive physical delivery of debt securities represented by a registered global security in definitive form; and

will not be considered the owners or holders of debt securities represented by a registered global security under the indenture. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depository for the registered global security and, if the person is not a participant, on the

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procedures of the participant through which the person owns its interests, to exercise any rights of a holder under the indenture applicable to the registered global security.

Payment of Interest on and Principal of Registered Global Securities

Unless otherwise specified in the applicable prospectus supplement or other applicable offering materials, we will make payments of principal, premium, if any, interest on and additional amounts with respect to debt securities represented by a registered global security registered in the name of a depository or its nominee to the depository or its nominee as the registered owner of the registered global security. None of the Company, the trustee, or any paying agent for debt securities represented by a registered global security will have any responsibility or liability for:

any aspect of the records relating to, or payments made on account of, beneficial ownership interests in such registered global security;

maintaining, supervising, or reviewing any records relating to beneficial ownership interests;

the payments to beneficial owners of the global security of amounts paid to the depository or its nominee; or

any other matter relating to the actions and practices of the depository, its nominee or any of its participants.

Generally, a depository, upon receipt of any payment of principal, premium, interest on or additional amounts with respect to the global security, will immediately credit participants' accounts with payments in amounts proportionate to their beneficial interests in the principal amount of a registered global security as shown on the depository's records. Generally, payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing instructions and customary practices. This is currently the case with the securities held for the accounts of customers registered in street name. Such payments will be the responsibility of participants.

Exchange of Registered Global Securities

We may issue debt securities in definitive form in exchange for the registered global security if both of the following occur:

the depository for any debt securities represented by a registered global security is at any time unwilling or unable to continue as depository or ceases to be a clearing agency registered under the Exchange Act; and

we do not appoint a successor depository within 90 days.

In addition, we may, at any time, determine not to have any of the debt securities of a series represented by one or more registered global securities. In this event, we will issue debt securities of that series in definitive form in exchange for all of the registered global security or securities representing those debt securities.

Covenants by the Company

The indentures include covenants by us, including among other things that (i) we will make all payments of principal and interest at the times and places required and (ii) we will do or cause to be done all things necessary to preserve and keep in full force our existence, subject to certain terms as generally described under "Mergers, Consolidations and Certain Sales of Assets". The board resolution or supplemental indenture establishing each series of debt securities may contain additional covenants, including covenants which could restrict our right to incur additional indebtedness or liens and to take certain actions with respect to our businesses and assets.

The indentures contain no covenant or provision which affords debt holders protection in the event of a highly leveraged transaction.

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Events of Default

Unless otherwise indicated in the applicable prospectus supplement or other applicable offering materials, the following will be events of default under the indentures with respect to each series of debt securities issued under the indentures:

failure to pay when due any interest on or additional amounts with respect to any debt security of that series, continued for 30 days;

failure to pay when due the principal of, or premium, if any, on, any debt security of that series at its maturity;

default in the payment of any sinking fund installment with respect to any debt security of that series when due and payable, continued for 30 days;

failure to perform any other covenant or agreement of ours under the indenture or the supplemental indenture with respect to that series or the debt securities of that series, continued for 60 days after written notice to us by the trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of a series to which the covenant or agreement relates;

certain events of bankruptcy, insolvency or similar proceedings affecting us; and

any other event of default specified in any supplemental indenture under which such series of debt securities is issued.

Except as to certain events of bankruptcy, insolvency or similar proceedings affecting us and except as provided in the applicable prospectus supplement, if any event of default shall occur and be continuing with respect to any series of debt securities under the indenture, either the trustee or the holders of at least 25% in aggregate principal amount of outstanding debt securities of such series may accelerate the maturity of all debt securities of such series. Upon certain events of bankruptcy, insolvency or similar proceedings affecting us, the principal, premium, if any, and interest on all debt securities of each series shall be immediately due and payable. After any such acceleration, but before a judgment or decree based on acceleration has been obtained by the trustee, the holders of at least a majority in aggregate principal amount of each affected series of debt securities may waive all defaults with respect to such series and rescind and annul such acceleration if all events of default, other than the nonpayment of accelerated principal, have been cured, waived or otherwise remedied.

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

No holder of any debt securities of any series will have any right to institute any proceeding with respect to the applicable indenture or for any remedy under such indenture, unless:

an event of default with respect to such series shall have occurred and be continuing and such holder shall have previously given to the trustee written notice of such continuing event of default;

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the relevant series shall have made written request and offered reasonable indemnity to the trustee to institute such proceeding as trustee;

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the trustee shall not have received from the holders of at least a majority in aggregate principal amount of the outstanding debt securities of such series a direction inconsistent with such request; and

the trustee shall have failed to institute such proceeding within 60 days of the receipt of the request and offer of indemnity.

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However, such limitations do not apply to a suit instituted by a holder of a debt security for enforcement of payment of the principal of and premium, if any, interest on or any additional amounts with respect to such debt security on or after the respective due dates expressed in such debt security.

Modification of the Indentures

We and the applicable trustee may, at any time and from time to time, without prior notice to or consent of any holders of debt securities, enter into one or more indentures supplemental to the indentures, among other things to:

add additional obligors on, guarantees to or secure any series of debt securities;

evidence the succession of another person pursuant to the provisions of the indentures relating to consolidations, mergers and sales of assets and the assumption by such successor of our covenants and obligations or those of any guarantor;

surrender any right or power conferred upon us under the indentures or to add to our covenants for the protection of the holders of all or any series of debt securities;

add any additional events of default for the benefit of the holders of any one or more series of debt securities;

add to or change any of the provisions of the indentures to such extent as shall be necessary to permit or facilitate the issuance of debt securities in bearer form, or to permit or facilitate the issuance of debt securities in global form or uncertificated form;

add to, change or eliminate any of the provisions of the indentures in respect of one or more series of debt securities, provided that any such addition, change or elimination (a) shall neither (1) apply to any outstanding debt security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision, or (2) modify the rights of any holder of any outstanding debt security with respect to such provision, or (b) shall become effective when there is no debt security then outstanding;

correct or supplement any provision which may be defective or inconsistent with any other provision or to cure any ambiguity or omission or to correct any mistake;

make any other provisions with respect to matters or questions arising under the indentures, provided such action shall not materially adversely affect the rights of any holder of debt securities of any series;

evidence and provide for the acceptance of appointment by a successor or separate trustee; or

establish the form or terms of debt securities of any series and to make any change that does not materially adversely affect the rights of any holder of debt securities.

With the consent of the holders of at least a majority in principal amount of debt securities of each series affected by such supplemental indenture (voting as one class), we and the trustee may enter into one or more supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the indentures or modifying in any manner the rights of the holders of debt securities of each such series.

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Notwithstanding our rights and the rights of the trustee to enter into one or more supplemental indentures with the consent of the holders of debt securities of the affected series as described above, no such supplemental indenture shall, without the consent of the holder of each outstanding debt security of the affected series, among other things:

change the maturity of the principal of or any installment of principal of, or the date fixed for payment of interest on, any additional amounts or any sinking fund payment with respect to, any debt securities;

reduce the principal amount of any debt securities or the rate of interest on or any additional amounts with respect to any debt securities;

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change the place of payment or the currency in which any debt securities are payable;

impair the right of the holders to institute a proceeding for the enforcement of any right to payment on or after maturity; or

reduce the percentage in principal amount of any series of debt securities whose holders must consent to an amendment or supplemental indenture or any waiver provided in the indenture.

Unless otherwise provided in a supplemental indenture with respect to any series of debt securities, under the indenture, the holders of at least a majority of the principal amount of debt securities of each series may, on behalf of that series:

waive compliance by the Company of certain restrictive covenants of the indenture; and

waive any past default under the indenture, except

a default in the payment of principal of or any premium or interest, or any additional amounts with respect to such series; or

a default under any provision of the indenture which itself cannot be modified or amended without the consent of the holder of each outstanding debt security affected.

The indentures provide that in determining whether the holders of the requisite principal amount of outstanding debt securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other actions thereunder or whether a quorum is present at a meeting of holders of debt securities:

the principal amount of an original issue discount security which shall be deemed to be outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the maturity thereof or as otherwise contemplated by the indenture;

the principal amount of a security denominated in one or more non-U.S. dollar currencies or currency units which shall be deemed to be outstanding shall be the U.S. dollar equivalent, determined as of such date, of the principal amount of such security (or, in the case of an original issue discount security, of the U.S. dollar equivalent, determined as of such date of the amount determined as provided in the subparagraph immediately above), or as otherwise contemplated by the indenture; and

securities owned by the Company or any other obligor upon the securities or any of the Company's subsidiaries or of such other obligor shall be disregarded.

Satisfaction and Discharge of the Indenture; Defeasance

Except to the extent set forth in a supplemental indenture with respect to any series of debt securities, we, at our election, may discharge the applicable indenture and such indenture shall generally cease to be of any further effect with respect to that series of debt securities if (i) we have delivered to the trustee for cancellation all debt securities of that series or (ii) all debt securities of that series not previously delivered to the trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year, and we have deposited with the trustee the entire amount sufficient to pay at maturity or upon redemption the principal, interest and any premium on all such debt securities to the stated maturity or redemption date.

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In addition, to the extent set forth in a supplemental indenture with respect to a series of debt securities, we may have a legal defeasance option (pursuant to which we may terminate, with respect to the debt securities of a particular series, all of our obligations under such debt securities and the indenture with respect to such debt securities) and a covenant defeasance option (pursuant to which we may terminate, with respect to the debt securities of a particular series, our obligations with respect to such debt securities under certain specified covenants contained in the indenture). If we have and exercise a legal defeasance option with respect to a series

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of debt securities, payment of such debt securities may not be accelerated because of an event of default. If we have and exercise a covenant defeasance option with respect to a series of debt securities, payment of such debt securities may not be accelerated because of an event of default related to the specified covenants.

To the extent set forth in a supplemental indenture with respect to a series of debt securities, we may exercise a legal defeasance option or a covenant defeasance option with respect to the debt securities of a series only if we irrevocably deposit in trust with the trustee cash or U.S. government obligations (for debt securities denominated in U.S. dollars) or certain foreign government obligations (for debt securities denominated in a currency other than U.S. dollars) for the payment of principal, premium, if any, and interest and any additional amounts with respect to such debt securities to maturity or redemption, as the case may be. In addition, to exercise either of the defeasance options, we must comply with certain other conditions, including for debt securities denominated in U.S. dollars the delivery to the trustee of an opinion of counsel to the effect that the holders of debt securities of such series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred (and, in the case of legal defeasance only, such opinion of counsel must be based on a ruling from the Internal Revenue Service or other change in applicable U.S. federal income tax law).

The trustee will hold in trust the cash or government obligations deposited with it as described above and will apply the deposited cash and the proceeds from deposited government obligations to the payment of principal, premium, if any, and interest and any additional amounts with respect to the debt securities of the defeased series.

In the event the we effect covenant defeasance with respect to any debt securities and the debt securities are declared due and payable, amounts deposited with the trustee will be sufficient to pay amounts due on the debt securities at the time of their stated maturity, but may not be sufficient to pay amounts due on the debt securities at the time of the acceleration resulting from such event of default. However, we would remain liable to make payment of those amounts due at the time of acceleration.

Mergers, Consolidations and Certain Sales of Assets

Except to the extent set forth in a supplemental indenture with respect to any series of debt securities, we may not:

consolidate with or merge into any other person or entity or permit any other person or entity to consolidate with or merge into us in a transaction in which we are not the surviving entity, or

transfer, lease or dispose of all or substantially all of our assets to any other person or entity; unless in the case of both preceding clauses:

the resulting, surviving or transferee entity shall be a corporation organized and existing under the laws of the United States or any state thereof or the District of Columbia and such resulting, surviving or transferee entity shall expressly assume, by supplemental indenture, all of our obligations under the debt securities and the applicable indenture;

immediately after giving effect to such transaction, no default or event of default would occur or be continuing; and

we shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the applicable indenture.

Except for the above restrictions, the indenture does not limit the ability of the Company to enter into any of the following types of transactions:

a highly leveraged or similar transaction involving us, our management or any affiliate thereof;

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a change of control; or

a reorganization, restructuring, merger or similar transaction involving us that may adversely affect the holders of the debt securities. In addition, subject to the limitations on mergers, consolidations and sales described above, we may enter into transactions in the future, such as the sale of all or substantially all of our assets or the merger or consolidation of us, that would increase the amount of our debt or substantially reduce or eliminate our assets, which may have an adverse effect on our ability to service its debt, including the debt securities.

Governing Law

The indentures and the debt securities will be governed by the laws of the State of New York, except as may be provided as to any series in a supplemental indenture.

Conversion or Exchange Rights

Any debt securities that we may issue pursuant to this prospectus may be convertible into or exchangeable for shares of our equity or other securities. The terms and conditions of such conversion or exchange will be set forth in the applicable prospectus supplement or other offering materials. Such terms may include, among others, the following:

the conversion or exchange price;

the conversion or exchange period;

restrictions on conversion, including to maintain REIT status;

provisions regarding our ability or that of the holder to convert or exchange the debt securities;

events requiring adjustment to the conversion or exchange price; and

provisions affecting conversion or exchange in the event of our redemption of such debt securities.

Concerning the Trustee

The indentures provide that there may be more than one trustee with respect to one or more series of debt securities but we need not designate more than one trustee. If there are different trustees for different series of debt securities, each trustee will be a trustee of a trust under a supplemental indenture separate and apart from the trust administered by any other trustee under such indenture. Except as otherwise indicated in this prospectus or any prospectus supplement, any action permitted to be taken by a trustee may be taken by the trustee only with respect to the one or more series of debt securities for which it is the trustee under an indenture. Any trustee under an indenture or a supplemental indenture may resign or be removed with respect to one or more series of debt securities. All payments of principal or, premium, if any, interest on and any additional amounts with respect to, and all registration, transfer, exchange authentication and delivery of, the debt securities of a series will be effected with respect to such series at an office designated by us.

The indentures contain limitations on the rights of any trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases or to realize on certain property received in respect of any such claim as security or otherwise. If any trustee acquires an interest that conflicts with any duties with respect to the debt securities, such trustee is required to either resign or eliminate such conflicting interest to the extent and in the manner provided by the applicable indenture.

Notices

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Notices to holders of debt securities will be given by mail to the addresses of such holders as they appear in the security register.

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DESCRIPTION OF UNITS

*The following description, together with the additional information we include in any applicable prospectus supplement or other applicable offering materials, summarizes the general terms and provisions of the units that we may offer under this prospectus. Because it is a summary, it does not contain all of the information that may be important to you. For more information, you should read the form of unit agreement with respect to the units of any particular series which we will file as exhibits to the registration statement of which this prospectus is part prior to an offering of units. While the terms we have summarized below will apply generally to any units we may offer, you should read the applicable prospectus supplement or other applicable offering materials which will describe the particular terms of any units that we may offer in more detail. See *Where You Can Find More Information*. This summary also is subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement or other applicable offering materials and by the terms of the applicable final units and unit agreement.*

We may issue units comprised of two or more common shares, preferred shares, depositary shares, warrants, debt securities and other securities in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

The prospectus supplement or other offering materials for a series of units will provide information relating to the terms of the series of units being offered, which may include:

the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;

any provisions of the governing unit agreement that differ from those described below;

the price or prices at which such units will be issued;

information with respect to book-entry procedures, if any;

a discussion of material U.S. federal income tax considerations;

any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and

any other terms of the units and of the securities comprising the units.

The provisions described in this section, as well as those described under *Description of Shares of Beneficial Interest*, *Description of Depositary Shares*, *Description of Warrants* and *Description of Debt Securities* will apply to the securities included in each unit, to the extent relevant.

Issuance in Series

We may issue units in such amounts and in as many distinct series as we wish, subject to any applicable limitations on the issuance of the securities included in the unit. This section summarizes terms of the units that apply generally to all series. Most of the financial and other specific terms of your series will be described in the applicable prospectus supplement or other offering materials.

Unit Agreements

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We will issue the units under one or more unit agreements to be entered into between us and a bank or other financial institution, as unit agent. We may add, replace or terminate unit agents from time to time. We will identify the unit agreement under which each series of units will be issued and the unit agent under that agreement in the applicable prospectus supplement or other offering materials.

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The following provisions will generally apply to all unit agreements unless otherwise stated in the applicable prospectus supplement or other offering materials.

Enforcement of Rights

The unit agent under a unit agreement will act solely as our agent in connection with the units issued under that agreement. The unit agent will not assume any obligation or relationship of agency or trust for or with any holders of those units or of the securities comprising those units. The unit agent will not be obligated to take any action on behalf of those holders to enforce or protect their rights under the units or the included securities.

Except as indicated in the next paragraph, a holder of a unit may, without the consent of the unit agent or any other holder, enforce its rights as holder under any security included in the unit, in accordance with the terms of that security and the articles supplementary, depositary agreement, warrant agreement, indenture or other instrument under which that security is issued. Those terms are described elsewhere in this prospectus under the sections relating to common shares, preferred shares, depositary shares, warrants and debt securities, as relevant.

Notwithstanding the foregoing, a unit agreement may limit or otherwise affect the ability of a holder of units issued under that agreement to enforce its rights, including any right to bring a legal action, with respect to those units or any securities, other than debt securities, that are included in those units. Limitations of this kind will be described in the applicable prospectus supplement or other offering materials.

Unit Agreements Will Not Be Qualified Under Trust Indenture Act

No unit agreement will be qualified as an indenture, and no unit agent will be required to qualify as a trustee, under the Trust Indenture Act. Therefore, holders of units issued under unit agreements will not have the protections of the Trust Indenture Act with respect to their units.

Mergers and Similar Transactions Permitted; No Restrictive Covenants or Events of Default

The unit agreements will not restrict our ability to merge or consolidate with, or sell our assets to, another entity or to engage in any other transactions. If at any time we merge or consolidate with, or sell our assets substantially as an entirety to, another entity, the successor entity will succeed to and assume our obligations under the unit agreements. We will then be relieved of any further obligation under these agreements.

The unit agreements will not include any restrictions on our ability to put liens on our assets, including our interests in our subsidiaries, nor will they restrict our ability to sell our assets. The unit agreements also will not provide for any events of default or remedies upon the occurrence of any events of default.

Governing Law

The unit agreements and the units will be governed by New York law.

Form, Exchange and Transfer

We will issue each unit in global i.e., book-entry form only. Units in book-entry form will be represented by a global security registered in the name of a depositary, which will be the holder of all the units represented by the global security. Those who own beneficial interests in a unit will do so through participants in the depositary's system, and the rights of these indirect owners will be governed solely by the applicable procedures of the depositary and its participants. Information with respect to book-entry procedures, if any, will be described in the applicable prospectus supplement or other offering materials.

Each unit and all securities comprising the unit will be issued in the same form.

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If we issue any units in registered, non-global form, the following will apply to them.

The units will be issued in the denominations stated in the applicable prospectus supplement. Holders may exchange their units for units of smaller denominations or combined into fewer units of larger denominations, as long as the total amount is not changed.

Holders may exchange or transfer their units at the office of the unit agent. Holders may also replace lost, stolen, destroyed or mutilated units at that office. We may appoint another entity to perform these functions or perform them ourselves.

Holders will not be required to pay a service charge to transfer or exchange their units, but they may be required to pay for any tax or other governmental charge associated with the transfer or exchange. The transfer or exchange, and any replacement, will be made only if our transfer agent is satisfied with the holder's proof of legal ownership. The transfer agent may also require an indemnity before replacing any units.

If we have the right to redeem, accelerate or settle any units before their maturity, and we exercise our right as to less than all those units or other securities, we may block the exchange or transfer of those units during the period beginning 15 days before the day we mail the notice of exercise and ending on the day of that mailing, in order to freeze the list of holders to prepare the mailing. We may also refuse to register transfers of or exchange any unit selected for early settlement, except that we will continue to permit transfers and exchanges of the unsettled portion of any unit being partially settled. We may also block the transfer or exchange of any unit in this manner if the unit includes securities that are or may be selected for early settlement.

Only the depository will be entitled to transfer or exchange a unit in global form, since it will be the sole holder of the unit.

Payments and Notices

In making payments and giving notices with respect to our units, we will follow the procedures we plan to use with respect to our debt securities, where applicable. We describe those procedures above under [Description of Debt Securities](#).

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DESCRIPTION OF CERTAIN PROVISIONS OF MARYLAND LAW AND EPR S

DECLARATION OF TRUST AND BYLAWS

We are organized as a Maryland real estate investment trust. The following is a summary of our Declaration of Trust and Bylaws and several provisions of Maryland law. Because it is a summary, it does not contain all the information that may be important to you. If you want more information, you should read our entire Declaration of Trust and Bylaws, copies of which we have previously filed with the SEC, or refer to the provisions of Maryland law. See [Where You Can Find More Information](#) for information about how to obtain copies of our Declaration of Trust and Bylaws.

Trustees

Our Declaration of Trust and Bylaws provide that only our Board of Trustees will establish the number of Trustees, provided however that the term of office of a Trustee will not be affected by any decrease in the number of Trustees. Any vacancy on the Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining trustees do not constitute a quorum, or by the sole Trustee. Any Trustee elected to fill a vacancy will hold office until the next annual meeting of shareholders and until a successor is elected and qualified.

Our Declaration of Trust divides our Board of Trustees into three classes. Shareholders elect the Trustees of each class for three-year terms upon the expiration of their current terms. Shareholders elect only one class of Trustees each year.

We believe that classification of our Board of Trustees helps to assure the continuity of our business strategies and policies. There is no cumulative voting in the election of Trustees. Consequently, at each annual meeting of shareholders, the holders of a majority of our common shares are able to elect all of the successors of the class of Trustees whose term expires at that meeting. The classified Board of Trustees provision could have the effect of making the replacement of our incumbent Trustees more time consuming and difficult. At least two annual meetings of shareholders are generally required to effect a change in a majority of our Board of Trustees.

Our Declaration of Trust provides that, subject to the rights of holders of one or more classes of preferred shares to elect or remove one or more Trustees, a Trustee may be removed for cause by the affirmative vote of the holders of at least two-thirds of our common shares entitled to be cast in the election of trustees. This provision precludes shareholders from removing our incumbent Trustees unless cause, as defined in the Declaration of Trust, exists, and they can obtain a substantial affirmative vote of shares.

Advance Notice of Trustee Nominations and New Business

Our Bylaws provide that nominations of persons for election to our Board of Trustees and business to be transacted at shareholder meetings may be properly brought pursuant to our notice of the meeting, by our Board of Trustees, or by a shareholder who (i) is a shareholder of record at the time of giving the advance notice and at the time of the meeting, (ii) is entitled to vote at the meeting and (iii) has complied with the advance notice provisions set forth in our Bylaws.

Under our Bylaws, a shareholder's notice of nominations for Trustee or business to be transacted at an annual meeting of shareholders must be delivered to our secretary at our principal office not later than the close of business on the 60th day and not earlier than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting. In the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting, a shareholder's notice must be delivered to us not earlier than the close of business on the 90th day prior to such annual meeting and not later than the later of: (i) the 60th day prior to such annual meeting, or (ii) the 10th day following the day on which we first make a public announcement of the date of such meeting. The public announcement of a postponement or of an adjournment of such annual meeting to a later date or time will not commence a new time period for the giving of a shareholder's notice. If the number of Trustees to be elected to our Board of Trustees is increased and we make no public announcement of such action at least 70 days prior to

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the first anniversary of the preceding year's annual meeting, a shareholder's notice also will be considered timely, but only with respect to nominees for any new positions created by such increase, if the notice is delivered to our secretary at our principal office not later than the close of business on the 10th day immediately following the day on which such public announcement is made.

For special meetings of shareholders, our Bylaws require a shareholder who is nominating a person for election to our Board of Trustees at a special meeting at which Trustees are to be elected to give notice of such nomination to our secretary at our principal office not earlier than the close of business on the 90th day prior to such special meeting and not later than the close of business on the later of: (1) the 60th day prior to such special meeting or (2) the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Trustees to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting to a later date or time will not commence a new time period for the giving of a shareholder's notice as described above.

Meetings of Shareholders

Under our Bylaws, our annual meeting of shareholders will take place during the second quarter of each year following delivery of the annual report. Our Chairman, President, or one-third of our Trustees may call a special meeting of the shareholders. Our secretary also may call a special meeting of shareholders upon the written request of holders of at least a majority of the shares entitled to vote at the meeting.

Liability and Indemnification of Trustees and Officers

The laws relating to Maryland real estate investment trusts (the Maryland REIT Law) permit a real estate investment trust to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent permitted by the Maryland General Corporation Law (the MGCL) for directors and officers of Maryland corporations. The MGCL permits a corporation to indemnify its present and former directors and officers against judgments, penalties, fines, settlements and reasonable expenses incurred in connection with any proceeding to which they may be made, or are threatened to be made, a party by reason of their service in those capacities. However, a Maryland corporation is not permitted to provide this type of indemnification if the following is established:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Additionally, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of that corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. The MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of the following:

a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that this standard of conduct was not met.

Our officers and trustees are and will be indemnified under our Declaration of Trust against certain liabilities. Our Declaration of Trust provides that we will, to the maximum extent permitted by Maryland law in effect from time to time, indemnify: (a) any individual who is a present or former trustee or officer of APR; or (b) any individual who, while a trustee or officer of APR and at the request of APR, serves or has served as a director, officer, shareholder, partner, trustee, employee or agent of any real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or any other enterprises against any claim or liability,

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together with reasonable expenses actually incurred in advance of a final disposition of a legal proceeding, to which such person may become subject or which such person may incur by reason of his or her status as such. We have the power, with the approval of our Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of EPR in any of the capacities described in (a) or (b) above and to any employee or agent of EPR or its predecessors.

We have also entered into indemnification agreements with our trustees and certain of our officers providing for procedures for indemnification by us to the fullest extent permitted by law and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us.

We have obtained trustee s and officers liability insurance for the purpose of funding the provision of any such indemnification.

The SEC has expressed the opinion that indemnification of trustees, officers or persons otherwise controlling a company for liabilities arising under the Securities Act is against public policy and is therefore unenforceable.

Shareholder Liability

Under Maryland law, a shareholder is not personally liable for the obligations of a real estate investment trust solely as a result of his or her status as a shareholder. Despite this, our legal counsel has advised us that in some jurisdictions the possibility exists that shareholders of a trust entity such as ours may be held liable for acts or obligations of the trust. While we intend to conduct our business in a manner designed to minimize potential shareholder liability, we can give no assurance that you can avoid liability in all instances in all jurisdictions. Our Trustees have not provided in the past and do not intend to provide insurance covering these risks to our shareholders.

Actions by Shareholders by Written Consent

Our Bylaws provide procedures governing actions by shareholders by written consent. The Bylaws specify that any written consents must be signed by shareholders entitled to cast a sufficient number of votes to approve the matter, as required by statute, our Declaration of Trust or our Bylaws, and such consent must be filed with minutes of the proceedings of the shareholders.

Restrictions on Ownership and Transfer of Shares

Our Declaration of Trust restricts the number of shares which may be owned by shareholders. Generally, for us to qualify as a REIT under the Code, not more than 50% in value of our outstanding shares may be owned, directly or indirectly, by five or fewer individuals (defined in the Code to include certain entities and constructive ownership among specified family members) at any time during the last half of a taxable year. The shares also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year. In order to maintain our qualification as a REIT, our Declaration of Trust contains restrictions on the acquisition of shares intended to ensure compliance with these requirements.

Our Declaration of Trust generally provides that any person (not just individuals) holding more than 9.8% in number of shares or value, of the outstanding shares of any class or series of our common stock or preferred stock (the Ownership Limit) may be subject to forfeiture of the shares (including common shares and preferred shares) owned in excess of the Ownership Limit. We refer to the shares in excess of the Ownership Limit as Excess Shares. The Excess Shares may be transferred to a trust for the benefit of one or more charitable beneficiaries. The trustee of that trust would have the right to vote the voting Excess Shares, and distributions on the Excess Shares would be payable to the trustee for the benefit of the charitable beneficiaries. Holders of Excess Shares would be entitled to compensation for their Excess Shares, but that compensation may be less than the price they paid for the Excess Shares. Persons who hold Excess Shares or who intend to acquire Excess Shares must provide written notice to us.

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Our Ownership Limit may also act to deter an unfriendly takeover of the Company.

Business Combinations

The MGCL contains a provision which regulates business combinations with interested shareholders. This provision applies to Maryland real estate investment trusts like us. Under the MGCL, business combinations such as mergers, consolidations, share exchanges and the like between a Maryland real estate investment trust and an interested shareholder or an affiliate of an interested shareholder are prohibited for five years after the most recent date on which the shareholder becomes an interested shareholder. Under the MGCL the following persons are deemed to be interested shareholders:

any person who beneficially owns 10% or more of the voting power of the trust's shares; or

an affiliate or associate of the trust who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting shares of the trust.

After the five-year prohibition period has ended, a business combination between a trust and an interested shareholder must be recommended by the board of trustees of the trust and must receive the following shareholder approvals:

the affirmative vote of at least 80% of the votes entitled to be cast; and

the affirmative vote of at least two-thirds of the votes entitled to be cast by holders of shares other than shares held by the interested shareholder with whom or with whose affiliate or associate the business combination is to be effected or held by an affiliate or associate of the interested shareholder.

The shareholder approvals discussed above are not required if the trust's shareholders receive the minimum price set forth in the MGCL for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for its shares.

The foregoing provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by the board of trustees of the trust prior to the time that the interested shareholder becomes an interested shareholder. A person is not an interested shareholder under the MGCL if the board of trustees approved in advance the transaction by which the person otherwise would have become an interested shareholder. The board of trustees may provide that its approval is subject to compliance with any terms and conditions determined by the board of trustees.

Control Share Acquisitions

The MGCL contains a provision which regulates control share acquisitions. This provision also applies to Maryland real estate investment trusts. The MGCL provides that control shares of a Maryland real estate investment trust acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror, by officers or by trustees who are employees of the trust are excluded from shares entitled to vote on the matter. Control shares are voting shares which, if aggregated with all other shares owned by the acquiror, or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing trustees within one of the following ranges of voting power:

One-tenth or more but less than one-third;

One-third or more but less than a majority; or

a majority or more of all voting power.

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Control shares do not include shares which the acquiring person is entitled to vote as a result of having previously obtained shareholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of trustees to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the trust may itself present the question at any shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the MGCL, then the trust may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the trust to redeem control shares is subject to conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of shareholders at which the voting rights of the shares are considered and not approved. If voting rights for control shares are approved at a shareholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

The control share acquisition statute of the MGCL does not apply to the following:

shares acquired in a merger, consolidation or share exchange if the trust is a party to the transaction; or

acquisitions approved or exempted by a provision in the declaration of trust or bylaws of the trust adopted before the acquisition of shares.

Anti-Takeover Effect of Maryland Law and of Our Declaration of Trust and Bylaws

The following provisions in our Declaration of Trust and Bylaws and in Maryland law could delay or prevent a change in control of EPR:

the limitation on ownership and acquisition of more than 9.8% of our shares;

the classification of our Board of Trustees into classes and the election of each class for three-year staggered terms;

the requirement of cause and a two-thirds majority vote of shareholders for removal of our Trustees;

the fact that the number of our Trustees may be fixed only by vote of our Board of Trustees and that a vacancy on our Board of Trustees may be filled only by the affirmative vote of a majority of our remaining Trustees;

the limitations on our shareholders' abilities to act without a meeting;

the advance notice requirements for shareholder nominations for Trustees and other proposals;

the business combination provisions of the MGCL;

the control share acquisition provisions of the MGCL; and

the power of our Board of Trustees to authorize and issue additional shares, including additional classes of shares with rights defined at the time of issuance, without shareholder approval.

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U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion summarizes the material United States (U.S.) federal income tax considerations regarding EPR and the acquisition, ownership and disposition of our securities. If we offer depositary shares, warrants, debt securities or units, information about any additional income tax consequences to holders of those securities will be included in the prospectus supplement or other applicable offering materials under which those securities are offered.

This summary is based on current law, is for general information only and is not tax advice. The tax treatment to holders of our securities will vary depending on a holder's particular situation. This summary does not address all aspects of U.S. federal income taxation that may be relevant to a holder of securities in light of his or her personal investments or tax circumstances. Moreover, this summary does not address tax considerations applicable to certain types of holders subject to special treatment under the U.S. federal income tax laws including, without limitation:

a bank, life insurance company, regulated investment company or other financial institution;

broker-dealers or traders;

partnerships and trusts;

a person who acquires our securities in connection with employment or other performances of services;

a person who holds our securities as part of a straddle, hedging transaction, constructive sale transaction, constructive ownership transaction, conversion transaction or other integrated investment;

a person subject to the alternative minimum tax; or

except as specifically described in the following summary, a tax exempt entity or a foreign person.

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

The information in this section is based on the U.S. Internal Revenue Code (the Code), current, temporary and proposed Treasury Regulations promulgated under the Code, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the IRS), and court decisions, all as of the date of this prospectus. Future legislation, Treasury Regulations, administrative interpretations and practices and court decisions may change or adversely affect, perhaps retroactively, the tax considerations described herein. We have not requested, and do not plan to request, any rulings from the IRS concerning our tax treatment and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this summary will not be challenged by the IRS or sustained by a court if challenged by the IRS.

You are advised to consult your tax advisor regarding the specific tax consequences to you of the acquisition, ownership and sale of our securities, and of our election to be taxed as a REIT, including the U.S. federal, state, local, foreign and other tax consequences of such acquisition, ownership, sale and election and of potential changes in applicable tax laws.

Taxation of the Company

General

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We elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1997. Our REIT election, assuming continuing compliance with the then applicable qualification tests, continues in effect for subsequent taxable years. Although no absolute assurance can be given, we believe we have been organized and have operated in a manner which allows us to qualify for

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taxation as a REIT under the Code commencing with our taxable year ended December 31, 1997. We intend to continue to operate in a manner that will enable us to meet the requirements for qualification and taxation as a REIT under the Code.

In the opinion of our counsel, Stinson Morrison Hecker LLP, we have qualified as a REIT under the Code for our 1997 through 2009 taxable years, we are organized in conformity with the requirements for qualification as a REIT, and our current and proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT under the Code for future taxable years. This opinion is based upon certain assumptions and representations as to factual matters made by us, including representations made by us in a representation letter and certificate provided by our officers and our factual representations set forth herein and in registration statements previously filed with the SEC. Any variation from the factual statements set forth herein, in registration statements previously filed with the SEC, or in the representation letter and certificate we have provided to our counsel may affect the conclusions upon which its opinion is based.

The opinions of Stinson Morrison Hecker LLP are based on existing law as contained in the Code and Treasury Regulations promulgated thereunder, in effect on the date of this prospectus, and the interpretations of such provisions and Treasury Regulations by the IRS and court decisions, all of which are subject to change either prospectively or retroactively, and to possibly different interpretations. Our counsel will have no obligation to advise us or the holders of our securities of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that the opinions expressed are not binding upon the IRS or any court. Accordingly, there can be no assurance that contrary positions may not successfully be asserted by the IRS. Moreover, our qualification and taxation as a REIT depends upon our ability, through actual annual operating results and methods of operation, to satisfy various qualification tests imposed under the Code, such as distributions to shareholders, asset composition levels, and diversity of stock ownership, the actual results of which have not been and will not be reviewed by our counsel. In addition, our ability to qualify as a REIT also depends in part upon the operating results, organizational structure and entity classification for U.S. federal income tax purposes of certain affiliated entities, including affiliates that have made elections to be taxed as REITs, and for whom the actual results of the various REIT qualification tests have not been and will not be reviewed by our counsel.

Accordingly, no assurance can be given that the actual results of our operations for any particular taxable year will satisfy such requirements for qualification and taxation as a REIT.

If we qualify for taxation as a REIT, we generally will not be subject to U.S. federal corporate income taxes on our taxable income that is distributed currently to our shareholders.

This treatment substantially eliminates the double taxation (once at the corporate level when earned and once again at the shareholders level when distributed) that generally results from investment in an ordinary Subchapter C corporation. We will, however, be subject to U.S. federal income tax as follows:

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

We may be subject to the alternative minimum tax on our items of tax preference under certain circumstances.

If we have (a) net income from the sale or other disposition of foreclosure property (defined generally as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property) which is held primarily for sale to customers in the ordinary course of business or (b) other nonqualifying income from foreclosure property, we will be subject to tax at the highest U.S. federal corporate income tax rate, currently 35%, on this income.

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

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If we fail to satisfy the 75% or 95% gross income tests (as discussed below), but have maintained our qualification as a REIT because we satisfied certain other requirements, we will be subject to a 100% tax on an amount equal to (a) the gross income attributable to the greater of the amounts by which we fail the 75% or 95% gross income tests multiplied by (b) a fraction intended to reflect our profitability.

If we fail to distribute for any calendar year at least the sum of (a) 85% of our REIT ordinary income for the year, (b) 95% of our REIT capital gain net income for the year (other than certain long-term capital gains for which we make a capital gains designation (described below) and on which we pay the tax), and (c) any undistributed taxable income from prior periods, we would be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed.

If we acquire any asset from a corporation which is or has been a Subchapter C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the Subchapter C corporation, and we subsequently recognize gain on the disposition of the asset during the ten year period beginning on the date on which we acquired the asset, then we will be subject to tax at the highest regular corporate tax rate on the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that we will not make an election pursuant to existing Treasury Regulations to recognize such gain at the time we acquire the asset.

We will be required to pay a 100% tax on any redetermined rents, redetermined deductions or excess interest. In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. Any taxable REIT subsidiary is separately taxed on its net income as a C corporation.

If we fail to satisfy any of the REIT asset tests, as described below, by more than a de minimis amount, due to reasonable cause and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

If we invest in properties in foreign countries or other jurisdictions, our income from those properties will generally be subject to tax there. Then we will distribute the required percentages of our taxable income to our shareholders for any such year and we will generally not pay U.S. federal income tax. As a result, we cannot recover the cost of foreign income taxes imposed on our foreign investments by claiming foreign tax credits against our U.S. federal income tax liability. Also, we cannot pass any foreign tax credits through to our shareholders.

If we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the REIT gross income tests or certain violations of the asset tests described below) and the violation is due to reasonable cause, we may retain our REIT qualification but we will be required to pay a penalty of \$50,000 for each such failure.

Any distributions to our shareholders will be included in their income as dividends to the extent of our current or accumulated earnings and profits. Generally, our distributions are not treated as qualified dividend income subject to a favorable 15% rate. No portion of any of our distributions is eligible for the dividends received deduction for corporate shareholders. Distributions in excess of current or accumulated earnings and profits generally are treated for U.S. federal income tax purposes as return of capital to the extent of, and in reduction of, a shareholder's basis in our shares. Our current or accumulated earnings and profits are generally allocated first to distributions made on our preferred shares, if any, and thereafter to distributions made on our common shares. For all of these purposes, our distributions include cash distributions and any in kind distributions of property that we might make.

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If we fail to qualify or elect not to qualify as a REIT, we will be subject to U.S. federal income tax in the same manner as a C corporation. Distributions to our shareholders if we do not qualify as a REIT will not be deductible by us nor will distributions be required under the Code. In that event, distributions to our shareholders will generally be taxable as ordinary dividends potentially eligible for the 15% income tax rate (scheduled to increase to ordinary income rates for taxable years beginning after December 31, 2010) discussed below in Taxation of Taxable U.S. Shareholders and, subject to limitations in the Code, will be eligible for the dividends received deduction for corporate shareholders. Also, we will generally be disqualified from qualification as a REIT for the four taxable years following disqualification. If we do not qualify as a REIT for even one year, this could result in reduction or elimination of distributions to our shareholders, or in our incurring substantial indebtedness or liquidating substantial investments in order to pay the resulting corporate-level taxes. The Code provides certain relief provisions under which we might avoid automatically ceasing to be a REIT for failure to meet certain REIT requirements, all as discussed in more detail below.

Requirements for Qualification as a REIT

The Code defines a REIT as a corporation, trust or association:

that is managed by one or more trustees or directors;

the beneficial ownership of which is evidenced by transferable shares or transferable certificates;

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

that is neither a financial institution or an insurance company within the meaning of certain provisions of the Code;

the beneficial ownership of which is held by 100 or more persons;

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

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

that elects to be a REIT, or has made such election for a previous year, and satisfies the applicable filing and administrative requirements to maintain qualification as a REIT.

The Code provides that conditions (1) through (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), pension funds and certain other tax- exempt entities are treated as individuals, subject to a look-through exception with respect to pension funds. A REIT also must report its income for U.S. federal income tax purposes based on a calendar year accounting period.

We believe that we have satisfied each of the above conditions. In addition, our Declaration of Trust provides for restrictions regarding ownership and transfer of shares to prevent further concentration of share ownership (as summarized below Description of Certain Provisions of Maryland Law and EPR's Declaration of Trust and Bylaws). These restrictions are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. In general, if we fail to satisfy these share ownership requirements, our status as a REIT will terminate. However, if we comply with the rules in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares, and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the

requirement described in condition (6) above, we will be treated as having met this requirement.

Table of Contents***Ownership of Interests in Partnerships and Limited Liability Companies.***

We own and operate one or more properties through partnerships and limited liability companies. In the case of a REIT which is a partner in a partnership, or a member in a limited liability company treated as a partnership for U.S. federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company, based on its interest in partnership capital, subject to special rules relating to the 10% REIT asset test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and items of gross income of the partnership or limited liability company retain the same character in our hands for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our proportionate share of the assets and items of income of partnerships and limited liability companies taxed as partnerships, in which we are, directly or indirectly through other partnerships or limited liability companies taxed as partnerships, a partner or member, are treated as our assets and items of income for purposes of applying the REIT qualification requirements described in this prospectus (including the income and asset tests described below).

Ownership of Interests in Qualified REIT Subsidiaries.

We own 100% of the stock of a number of corporate subsidiaries that are qualified REIT subsidiaries (each, a QRS) and may acquire stock of one or more new subsidiaries. A corporation qualifies as a QRS if 100% of its outstanding stock is held by us, and we do not elect to treat the corporation as a taxable REIT subsidiary, as described below. A QRS is not treated as a separate corporation, and all assets, liabilities and items of income, deduction and credit of a QRS are treated as our assets, liabilities and items of income, deduction and credit for all purposes of the Code, including the REIT qualification tests. For this reason, in applying the U.S. federal income tax requirements described in this summary, references to our income and assets include the income and assets of any QRS. A QRS is not subject to U.S. federal income tax, and our ownership of the voting stock of a QRS is ignored for purposes of determining our compliance with the ownership limits described below in Asset Tests.

Ownership of Interests in Taxable REIT Subsidiaries.

A taxable REIT subsidiary (TRS) is a corporation other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with the REIT to be treated as a TRS. A TRS also includes any corporation other than a REIT with respect to which a TRS owns securities possessing more than 35% of the total voting power or value of the outstanding securities of such corporation. Other than some activities relating to lodging and health care facilities, a TRS generally may engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. We own several corporate subsidiaries that have elected TRS status and may acquire interests in additional TRSs in the future.

A TRS is subject to U.S. federal income tax at regular corporate rates (currently a maximum rate of 35%), and also may be subject to state and local taxation. Any dividends paid or deemed paid by any one of the Company's TRSs will be taxable to the Company's stockholders to the extent the dividends received from the TRS are paid to the Company's shareholders. The Company may own more than 10% of the stock of a TRS without jeopardizing its qualification as a REIT. However, as noted below, in order for the Company to qualify as a REIT, the securities of all of the TRSs in which it has invested either directly or indirectly may not represent more than 20% of the total value of its assets. The Company expects that the aggregate value of all of its interests in TRSs will represent less than 20% of the total value of its assets; however, the Company cannot assure that this will always be true. In addition, a TRS may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the TRS's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of a TRS will not be subject to the 10% or 5% asset tests described below, and its operations will be subject to the provisions described above.

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Asset Tests

At the close of each quarter of our taxable year, we must satisfy four tests relating to the nature and diversification of our assets.

First, at least 75% of the value of our total assets, including assets held by our QRSs and our allocable share of the assets held by the partnerships and other entities treated as partnerships under the Code in which we own an interest, must be represented by (1) interests in real property, (2) interests in mortgages on real property, (3) share (or transferable certificates of beneficial interest) in other REITs, (4) cash, (5) cash items (including receivables arising in the ordinary course of the REITs business) and (6) government securities (as well as certain temporary investments in stock or debt instruments purchased with the proceeds of new capital raised by EPR for the one-year period beginning on the date of receipt of such new capital).

Second, not more than 25% of our total assets may be represented by securities, other than those securities includable in the 75% asset test.

Third, of the investments included in the 25% asset class, and except for certain investments in other REITs, a QRS or a TRS, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of the outstanding securities of any one issuer except, in the case of the 10% value test, securities satisfying the straight debt safe-harbor. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

Fourth, for taxable years beginning on or after January 1, 2009, no more than 25% (20% for taxable years beginning on or after January 1, 2001 and ending on or before December 31, 2008) of the value of our assets may be comprised of securities of one or more TRSs.

The assets tests described above must be satisfied at the close of each calendar quarter of our taxable year. After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy an asset test because we acquire securities or other property during a quarter, we can cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe we have maintained and intend to continue to maintain adequate records of the value of our assets to ensure compliance with the asset tests. If we fail to cure any noncompliance with the asset tests within the 30 day cure period, we would cease to qualify as a REIT unless we are eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we fail to satisfy the asset tests described above after the 30 day cure period. Under these provisions, we will be deemed to have met the 5% and 10% REIT asset tests if (i) the value of our nonqualifying assets does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) \$10,000,000, and (ii) we dispose of the nonqualifying assets or otherwise satisfy such tests within six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or the period of time prescribed by Treasury Regulations. For a failure that exceeds the de minimis thresholds described above that is due to reasonable cause and not willful neglect, we may avoid disqualification as a REIT under any of the asset tests, after the 30 day cure period, by taking steps including (i) the disposition of sufficient nonqualifying assets, or the taking other actions, which allow us to meet the asset test within six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or the period of time prescribed by Treasury Regulations, (ii) paying a tax equal to the greater of (a) \$50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets and (iii) filing a schedule describing each asset that caused the failure in accordance with applicable Treasury Regulations.

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Although we believe that we have satisfied the asset tests described above and plan to take steps to ensure that we satisfy such tests for any quarter end, there can be no assurance we always will be successful. If we fail to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, we would cease to qualify as a REIT.

Gross Income Tests

We must satisfy two gross income requirements for each taxable year to maintain our qualification as a REIT. First, in each taxable year at least 75% of our gross income must be qualifying income. Qualifying income generally includes (i) rents from real property (except as modified below), (ii) interest on obligations collateralized by mortgages on, or interests in, real property and real estate mortgages, other than gain from property held primarily for sale to customers in the ordinary course of our trade or business (dealer property), (iii) dividends or other distributions on shares in other REITs, as well as gain from the sale of those shares, (iv) abatements and refunds of real property taxes, (v) income from the operation, and gain from the sale, of property acquired at or in lieu of a foreclosure of the mortgage collateralized by such property (foreclosure property), (vi) commitment fees received for agreeing to make loans collateralized by mortgages on real property or to purchase or lease real property, (vii) qualified temporary investment income, and (viii) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction. Second, in each taxable year at least 95% of our gross income (excluding gross income from prohibited transactions) must be derived directly or indirectly from income from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities (or from any combination of the foregoing).

Rents we receive will qualify as rents from real property for purposes of satisfying the gross income tests for a REIT described above only if all of the following conditions are met:

The amount of rent must not be based in any way on the income or profits of any person, although rents generally will not be excluded solely because they are based on a fixed percentage or percentages of gross receipts or gross sales.

We, or an actual or constructive owner of 10% or more of our capital shares, must not actually or constructively own 10% or more of the interests in the tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents received from any such tenant that is our TRS, however, will not be excluded from the definition of rents from real property as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the TRS are comparable to rents paid by our other tenants for comparable space. Whether rents paid by a TRS are substantially comparable to rents paid by other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a controlled taxable REIT subsidiary is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as rents from real property. For purposes of this rule, a controlled taxable REIT subsidiary is a TRS in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of outstanding stock of such TRS. In addition, rents we receive from a tenant that also is our TRS will not be excluded from the definition of rents from real property as a result of our ownership interest in the TRS if the property to which the rents relate is a qualified lodging facility, or on or after January 1, 2009, a qualified healthcare property, and such property is operated on behalf of the TRS by a person who is an independent contractor and certain other requirements are met. Our TRSs will be subject to U.S. federal income tax on their income from the operation of these properties.

Rent attributable to personal property, leased in connection with a lease of real property, must not be greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as rents from real property. We currently have several leases that generate non-qualifying rent from personal property but such amounts are not material in relation to our gross income.

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The REIT generally must not operate or manage the property for which the rents are received or furnish or render services to the tenants of the property (subject to a 1% de minimis exception), other than through an independent contractor from whom the REIT derives no revenue or through a TRS. The REIT may, however, directly perform certain services that are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise considered rendered to the occupant of the property. Any amounts we receive from a TRS with respect to the TRS's provision of non-customary services will be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

We do not intend to charge rent for any property that is based in whole or in part on the net income or profits of any person (except by reason of being based on a percentage of gross receipts or sales, as described above), and generally we do not intend to rent any personal property (other than in connection with a lease of real property where either less than 15% of the total rent is attributable to personal property or an amount immaterial to our operations is attributable to personal property). Currently, we do have several leases in which the rent attributable to personal property may exceed the 15% limitation based on the original respective fair market values of the real property and personal property at the time the lease was executed.

We directly perform services under certain of our leases, but such services are not rendered to the occupant of the property. Furthermore, these services are usual and customary management services provided by landlords renting space for occupancy in the geographic areas in which we own property. To the extent that the performance of any services provided by us would cause amounts received from our tenants to be excluded from rents from real property, we intend to hire a TRS, or an independent contractor from whom we derive no revenue, to perform such services.

The term interest generally does not include any amount received or accrued (directly or indirectly) if the determination of some or all of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely by reason of being based on a fixed percentage or percentages of receipts or sales.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income from a hedging transaction, including gain from the sale or disposition of such a transaction, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 95% gross income test to the extent such a hedging transaction is entered into on or after January 1, 2005, and from the 75% gross income test to the extent such hedging transaction is entered into after July 30, 2008. Income and gain from a hedging transaction, including gain from the sale or disposition of such a transaction will be treated as nonqualifying income for purposes of the 75% gross income test if entered into on or prior to July 30, 2008 and will be treated as qualifying income for purposes of the 95% gross income test if entered into prior to January 1, 2005. The term hedging transaction, as used above, generally means any transaction we enter into in the normal course of our business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, or (2) for hedging transactions entered into after July 30, 2008, currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test. To the extent that we do not properly identify such transactions as hedges, we hedge other risks or we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

We have made an investment in a property located in Canada. This investment could cause us to incur foreign currency gains or losses. Prior to July 30, 2008, the characterization of any such foreign currency gains for purposes of the gross income tests was unclear, though the IRS had indicated that REITs may apply the principles of proposed Treasury Regulations to determine whether such foreign currency gain constitutes qualifying income under the gross income tests. As a result, we anticipate that any foreign currency gain we

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recognized relating to rents we receive from our property located in Canada was qualifying income for purposes of the 75% and 95% gross income tests. Any foreign currency gains recognized after July 30, 2008, to the extent attributable to specific items of qualifying income or gain, or specific qualifying assets, however, generally will not constitute gross income for purposes of the 75% and 95% gross income tests, and therefore will be exempt from these tests.

Dividends we receive from our taxable REIT subsidiaries will qualify under the 95%, but not the 75%, gross income test.

The Department of Treasury has the authority to determine whether any item of income or gain recognized after July 30, 2008, which does not otherwise qualify under the 75% or 95% gross income tests, may be excluded as gross income for purposes of such tests or may be considered income that qualifies under either such test.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. Commencing with our taxable year beginning January 1, 2005, we generally may make use of the relief provisions if:

our failure to meet these tests was due to reasonable cause and not due to willful neglect; and

following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations.

For our taxable year ended December 31, 2006, we generally may avail ourselves of the relief provisions if:

our failure to meet these tests was due to reasonable cause and not due to willful neglect;

we attach a schedule of the sources of our income to our U.S. federal income tax return; and

any incorrect information on the schedule was not due to fraud with intent to evade tax.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed above, even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income.

Prohibited Transaction Income

Any gain we realize on the sale of any property, other than foreclosure property, held as inventory or otherwise primarily for sale to customers in the ordinary course of business, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Whether property is held primarily for sale to customers in the ordinary course of a trade or business depends on all the facts and circumstances surrounding the particular transaction. We intend to engage in the business of acquiring, developing and owning our properties for investment with a view to long-term appreciation. We have made, and may in the future make, occasional sales of the properties consistent with our investment objectives. We do not intend to engage in prohibited transactions. The IRS may contend, however, that one or more of these sales is subject to the 100% penalty tax.

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Penalty Tax

Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by one of our TRSs, and redetermined deductions and excess interest generally represent any amounts that are deducted by a TRS for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's-length negotiations. Rents we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

We believe that all fees paid to our TRSs for tenant services are at arm's-length rates, although the fees may not satisfy the safe harbor provisions referenced above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully makes such an assertion, we would be required to pay a 100% penalty tax on the excess of an arm's-length fee for tenant services over the amount actually paid.

Annual Distribution Requirements

To maintain our qualification as a REIT, we are required to make distributions (other than those designated as capital gain dividends) to our shareholders each year in an amount at least equal to (A) the sum of (i) 90% of our REIT taxable income (computed before deductions for dividends paid and excluding net capital gain) and (ii) 90% of our net income (after tax), if any, from foreclosure property; minus (B) the excess of the sum of certain items of noncash income (i.e., income attributable to leveled stepped rents, original issue discount on purchase money debt, or a like-kind exchange that is later determined to be taxable) over 5% of REIT taxable income as described above.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a Subchapter C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that Subchapter C corporation, within the ten year period following our acquisition of such asset, we would be required to distribute at least 90% of the after-tax built in gain, if any, we recognized on the disposition of the asset.

We must pay the distributions described above in the taxable year to which they relate (current distributions), or, at our election, in the following taxable year if they are either (i) declared before we timely file our tax return for such year and paid on or before the first regular distribution payment after such declaration, provided such payment is made during the twelve months following the close of such year (throwback distributions) or (ii) paid during January to shareholders of record in October, November or December of the prior year (deemed current distributions).

To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be subject to tax thereon at regular ordinary and capital gain corporate tax rates. In addition, we would be subject to a 4% excise tax to the extent we fail to distribute during each calendar year (or in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of January immediately following such year) at least the sum of 85% of our REIT ordinary income for such year, 95% of our REIT capital gain income for the year (other than certain long-term capital gains for which we make a capital gains designation and on which we pay the tax), and any undistributed taxable income from prior periods. Any REIT taxable income and net capital gain on which a REIT-level corporate income tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating the excise tax.

We believe we have made, and intend to continue to make, timely distributions sufficient to satisfy these annual distribution requirements.

We generally expect that our REIT taxable income will be less than our cash flow because of the allowance of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate

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that we generally will have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements because of timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in arriving at our taxable income. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt or for other reasons. Further, it is possible that from time to time we may be allocated a share of net capital gain attributable to any depreciated property we sell that exceeds our allocable share of cash attributable to that sale. If these circumstances occur, we may need to arrange for borrowings, or may need to pay distributions in the form of taxable stock distributions, in order to meet the distribution requirements. The IRS recently issued guidance that sets forth a safe harbor for certain part-stock and part-cash REIT distributions for 2008 and 2009 that will satisfy the REIT distribution requirements. Under this guidance, up to 90% of our distributions could be paid in our common shares.

Under certain circumstances, we may be able to rectify an inadvertent failure (due to, for example, an IRS adjustment such as an increase in our taxable income or a reduction in reported expenses) to meet the 90% distribution requirement for a year by paying deficiency dividends to shareholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described below. However, we will be required to pay interest to the IRS based on the amount of any deduction taken for deficiency dividends.

Failure to Qualify

Certain cure provisions may be available to us in the event that we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT. Except with respect to violations of the gross income tests and assets tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a \$50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Distributions to shareholders in any year in which we fail to qualify will not be deductible by us, and we will not be required to distribute any amounts to our shareholders. As a result, our failure to qualify as a REIT would reduce the cash available for distribution by us to our shareholders. In addition, if we fail to qualify as a REIT, all distributions to shareholders would be taxable as ordinary income to the extent of our current and accumulated earnings and profits, and, subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we lost our qualification. As a result, our failure to qualify as a REIT would likely reduce the cash available for distribution to our shareholders. In addition, if we fail to qualify as a REIT, all distributions to our shareholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In this event, subject to certain limitations under the Code, corporate distributees may be eligible for the dividends-received deduction and individual distributees may be eligible for preferential rates, if any, on any qualified dividend income. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

Taxation of Taxable U.S. Shareholders

The following summary describes certain U.S. federal income tax consequences to U.S. shareholders with respect to an investment in our shares. This discussion does not address the tax consequences to persons who receive special treatment under the U.S. federal income tax law. Shareholders subject to special treatment include, without limitation, insurance companies, financial institutions or broker-dealers, tax-exempt organizations, shareholders holding securities as part of a conversion transaction, or a hedge or hedging transaction or as a position in a straddle for tax purposes, foreign corporations or partnerships and persons who are not citizens or residents of the United States. If you are a U.S. shareholder, as defined below, this section or the section entitled Taxation of Tax-Exempt Shareholders applies to you. Otherwise, the section entitled Taxation of Non-U.S. Shareholders, applies to you.

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As used herein, the term "U.S. shareholders" means a holder of shares who, for U.S. federal income tax purposes is:

a citizen or resident of the United States;

a corporation, partnership or other entity classified as a corporation or partnership for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any political subdivision thereof unless, in the case of a partnership, Treasury Regulations provide otherwise;

an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust that is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

Distributions Generally

As long as we qualify as a REIT, distributions made out of our current or accumulated earnings and profits (and not designated as capital gain dividends), generally will constitute dividends taxable to our U.S. shareholders as ordinary income when actually or constructively received. For purposes of determining whether distributions to holders of shares are out of current or accumulated earnings and profits, our earnings and profits will be allocated first to our outstanding preferred shares and then to our common shares. These distributions will not be eligible for the dividends-received deduction in the case of U.S. shareholders that are corporations.

Because we generally are not subject to U.S. federal income tax on the portion of our REIT taxable income distributed to our shareholders, our ordinary distributions generally are not "qualified dividend income" eligible for the reduced 15% rate available to most non-corporate taxpayers through 2010 under the Tax Increase Prevention and Reconciliation Act of 2006, and will continue to be taxed at the higher tax rates applicable to ordinary income. However, the reduced 15% rate does apply to our distributions:

designated as long-term capital gain dividends (except to the extent attributable to real estate depreciation, in which case such distributions continue to be subject to tax at a 25% rate);

to the extent attributable to dividends received by us from non-REIT corporations or other taxable REIT subsidiaries; and

to the extent attributable to income upon which we have paid corporate income tax (for example, if we distribute taxable income that we retained and paid tax on in the prior year).

It is not likely that a significant amount of our distributions paid to individual U.S. shareholders will constitute "qualified dividend income" eligible for the current reduced tax rate of 15%.

To the extent that we make distributions (not designated as capital gain dividends) in excess of our current and accumulated earnings and profits, these distributions will be treated as a tax-free return of capital to each U.S. shareholder. This treatment will reduce the adjusted basis which each U.S. shareholder has in his or her shares of stock for tax purposes by the amount of the distribution (but not below zero). Distributions in excess of a U.S. shareholder's adjusted basis in his or her shares will be taxable as capital gains (provided that the shares have been held as a capital asset) and will be taxable as long-term capital gain if the shares have been held for more than one year. Distributions we declare in October, November, or December of any year and payable to a shareholder of record on a specified date in any of these months shall be treated as both paid by us and received by the shareholders on December 31 of that year, provided we actually pay the distribution on or before January 31 of the following calendar year. U.S. Shareholders may not include in their own income tax returns any of our net operating losses or capital losses.

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Certain stock distributions, including distributions partially paid in our common shares and partially paid in cash that comply with recent IRS guidance, will be taxable to recipient U.S. shareholders to the same extent as if paid in cash. See [Taxation of the Company Annual Distribution Requirements](#) above.

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Capital Gain Distributions

Distributions that we properly designate as capital gain dividends (and undistributed amounts for which we properly make a capital gains designation) will be taxable to U.S. shareholders as gains (to the extent that they do not exceed our actual net capital gain for the taxable year) from the sale or disposition of a capital asset. Depending on the period of time we have held the assets which produced these gains, and on certain designations, if any, which we may make, these gains may be taxable to non-corporate U.S. shareholders at either a 15% or 25% rate, depending on the nature of the asset giving rise to the gain. Corporate U.S. shareholders may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

Passive Activity Losses and Investment Interest Limitations

Distributions we make and gain arising from the sale or exchange by a U.S. shareholder of our shares will be treated as portfolio income. As a result, U.S. shareholders generally will not be able to apply any passive losses against this income or gain. A U.S. shareholder may elect to treat capital gain dividends, capital gains from the disposition of stock and qualified dividend income as investment income for purposes of computing the investment interest limitation, but in such case, the shareholders will be taxed at ordinary income rates on such amounts. Other distributions we make (to the extent they do not constitute a return of capital) generally will be treated as investment income for purposes of computing the investment interest limitation. Gain arising from the sale or other disposition of our shares, however, will not be treated as investment income under certain circumstances.

Retention of Net Long-Term Capital Gains

We may elect to retain, rather than distribute as a capital gain dividend, our net long-term capital gains. If we make this election (a Capital Gains Designation) we would pay tax on our retained net long-term capital gains. In addition, to the extent we make a Capital Gains Designation, a U.S. shareholder generally would:

include its proportionate share of our undistributed long-term capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls (subject to certain limitations as to the amount that is includable);

be deemed to have paid the capital gains tax imposed on us on the designated amounts included in the U.S. shareholder's long-term capital gains;

receive a credit or refund for the amount of tax deemed paid by it;

increase the adjusted basis of its shares by the difference between the amount of includable gains and the tax deemed to have been paid by it; and

in the case of a U.S. shareholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated.

Dispositions of Shares

Generally, if you are a U.S. shareholder and you sell or dispose of your shares, you will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between (i) the amount of cash and the fair market value of any property you receive on the sale or other disposition and (ii) your adjusted basis in the shares for tax purposes. This gain or loss will be capital in nature if you have held the shares as a capital asset and will be long-term capital gain or loss if you have held the shares for more than one year. However, if you are a U.S. shareholder and you recognize loss upon the sale or other disposition of shares that you have held for six months or less (after applying certain holding period rules), the loss you recognize will be treated as a long-term capital loss, to the extent you received distributions from us or which were retained by us and which were required to be treated as long-term capital gains.

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The maximum tax rate for individual taxpayers on net long-term capital gains (i.e., the excess of net long-term capital gain over net short-term capital loss) is currently 15% for most assets. In the case of individuals

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whose ordinary income is taxed at a 10% or 15% rate, the 15% rate is reduced to 5%. Absent future legislation, the maximum tax rate on long-term capital gains for individuals will return to 20% in 2011.

Redemption of Shares

If we redeem any of our shares held by you, the tax treatment of the redemption must be determined based on facts at the time of redemption. In general, you will recognize gain or loss (as opposed to dividend income) equal to the difference between the amount received by you in the redemption and your adjusted tax basis in your shares redeemed if such redemption results in a complete termination of your interest in all classes of our equity securities, is a substantially disproportionate redemption or is not essentially equivalent to a dividend within the meaning of Section 302(b) of the Code with respect to you.

In applying these tests, you must take into account your ownership of all classes of our equity securities. You also must take into account any equity securities that are considered to be constructively owned by you under the Code.

If, as a result of a redemption by us of your shares, you no longer own (either actually or constructively) any of our equity securities or only own (actually and constructively) an insubstantial percentage of our equity securities, then it is likely that the redemption of your shares would be considered not essentially equivalent to a dividend and, thus, would result in gain or loss to you. Gain from the sale or exchange of our shares held for more than one year is taxed at a maximum long-term capital gain rate of 15% through 2010. However, whether a distribution is not essentially equivalent to a dividend depends on all of the facts and circumstances, and if you rely on any of these tests at the time of redemption, you should consult your tax advisor to determine their application to your situation.

Generally, if the redemption does not meet the tests described above, then the proceeds received by you from the redemption of your shares will be treated as a distribution taxable as a dividend to the extent of the allocable portion of current or accumulated earnings and profits. The amount of the dividend will be the amount of cash and the fair market value of any property received. If the redemption is taxed as a dividend, your adjusted tax basis in the redeemed shares will be transferred to any other shares in us that you own. If you own no other shares in us, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

Backup Withholding

We report to our U.S. shareholders and the IRS the amount of distributions paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a shareholder may be subject to backup withholding with respect to distributions paid at the fourth lowest rate of tax under Section 1(c) of the Code (which is currently 28%) unless the holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A U.S. shareholder that does not provide us with its correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the shareholders' income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status. See *Taxation of Non-U.S. shareholders*.

Taxation of Tax-Exempt Shareholders

The IRS has ruled that amounts distributed as dividends by a REIT to a tax-exempt employees' pension trust do not constitute unrelated business taxable income (UBTI). Based on that ruling, dividend income from us should not be UBTI to a tax-exempt shareholder so long as the tax-exempt shareholder (except certain tax-exempt shareholders described below) has not held its shares as debt-financed property within the meaning of the Code and the shares are not otherwise used in an unrelated trade or business of the tax-exempt entity.

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Generally, debt financed property is property the acquisition of which was financed through a borrowing by the tax-exempt shareholder. Similarly, income from the sale of shares will not constitute UBTI unless a tax-exempt shareholder has held its shares as debt financed property within the meaning of the Code or has used the shares in a trade or business.

For tax-exempt shareholders which are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans exempt from U.S. federal income taxation under Code Sections 501(c)(7), (c)(9), (c)(17) and (c)(20), respectively, income from an investment in our shares will constitute UBTI unless the organization is able to properly deduct amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their own tax advisors concerning these set aside and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a pension held REIT may be treated as UBTI to certain types of trusts that hold more than 10% (by value) of the interests in the REIT. A pension held REIT is any REIT if more than 25% (by value) of its shares are owned by at least one pension trust, or one or more pension trusts, each of which owns more than 10% (by value) of such shares, and in the aggregate such pension trusts own more than 50% (by value) of its shares. We do not expect to be classified as a pension held REIT, but because our shares are publicly traded, we cannot guarantee this will always be the case.

Tax-exempt shareholders should consult their own tax advisors concerning the U.S. federal, state, local and foreign tax consequences of an investment in our shares.

Taxation of Non-U.S. Shareholders

The rules governing U.S. federal income taxation of the ownership and disposition of shares by persons that are not U.S. shareholders (Non-U.S. shareholders) are complex. No attempt is made herein to provide more than a brief summary of such rules. Accordingly, this discussion does not address all aspects of U.S. federal income taxation that may be relevant to a Non-U.S. shareholder in light of its particular circumstances and does not address any state, local or foreign tax consequences. **Non-U.S. shareholders should consult their own tax advisors to determine the impact of U.S. federal, state, local and foreign tax consequences to them of an investment in our shares, including tax return filing requirements.**

Distributions

Distributions (including certain stock distributions) that are neither attributable to gain from our sale or exchange of U.S. real property interests nor designated by us as capital gain dividends will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to U.S. withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty unless the distributions are treated as effectively connected with the conduct by you of a U.S. trade or business (or, if an income tax treaty applies, are attributable to a U.S. permanent establishment of the Non-U.S. shareholder). Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied to be exempt from withholding under the effectively connected income exemption. In general, Non-U.S. shareholders will not be considered engaged in a U.S. trade or business (or in the case of an income tax treaty, as having a U.S. permanent establishment) solely by reason of their ownership of shares.

Distributions that are treated as effectively connected with such a trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the Non-U.S. shareholder) will be subject to tax on a net basis (that is, after allowance for deductions) at graduated rates, in the same manner as dividends paid to U.S. shareholders are subject to tax, and are generally not subject to withholding. Any such distributions received by a Non-U.S. shareholder that is a corporation also may be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

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We expect to withhold U.S. federal income tax at the rate of 30% on any distributions made to a Non-U.S. shareholder unless:

a lower treaty rate applies and you file with us an IRS Form W-8BEN evidencing eligibility for such reduced treaty rate of withholding; or

you file an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with your trade or business.

Return of Capital Distributions

Distributions in excess of our current and accumulated earnings and profits will not be taxable to you to the extent that such distributions do not exceed your adjusted basis in our shares, but rather will reduce the adjusted basis of such shares. Distributions in excess of your adjusted basis in our shares will give rise to gain from the sale or exchange of such shares. The tax treatment of this gain is described below.

For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld generally should be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits.

Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of U.S. Real Property Interests

Distributions to you that we properly designate as capital gain dividends, other than those arising from the disposition of a U.S. real property interest, generally should not be subject to U.S. federal income taxation, unless:

the investment in our shares is treated as effectively connected with your U.S. trade or business, in which case you will be subject to the same treatment as U.S. shareholders with respect to such gain, except that a Non-U.S. shareholder (or, if an income tax treaty applies, it is attributable to a U.S. permanent establishment of the Non-U.S. shareholder) that is a foreign corporation may also be subject to the 30% branch profits tax, as discussed above; or

you are a nonresident alien individual who is present in the U.S. for 183 days or more during the taxable year and certain other conditions are met, in which case you will be subject to a 30% tax on your capital gains.

For each year during which we qualify as a REIT, distributions that are attributable to net capital gain from the sale or exchange of U.S. real property interests, such as properties beneficially owned by us, will be taxed to a Non-U.S. shareholder under the provisions of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under FIRPTA, such distributions paid to a Non-U.S. shareholder who owns more than 5% of the value of our shares at any time during the one-year period ending on the date of distribution will be subject to U.S. federal income tax as income effectively connected with a U.S. trade or business. The FIRPTA tax will apply to these distributions whether or not the distribution is designated as a capital gain dividend.

Generally, you will be taxed at the same capital gain rates applicable to U.S. shareholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). We will be required to withhold and to remit 35% (or 15% to the extent provided in Treasury Regulations) of any distribution to you that could be treated as a capital gain dividend. The amount withheld is creditable against your U.S. federal income tax liability. However, any distribution with respect to any class of shares which is regularly traded on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if you did not own more than 5% of such class of shares at any time during the one-year period ending on the date of the distribution (the 5% Exception). Instead, such distributions will be treated as ordinary dividend distributions.

Table of Contents***Retention of Net Capital Gains***

Although the law is not clear on the matter, it appears that amounts designated by us as retained capital gains in respect of the shares held by Non-U.S. shareholders generally should be treated in the same manner as actual distributions by us of capital gain dividends. Under this approach, you would be able to offset as a credit against your U.S. federal income tax liability resulting from your proportionate share of the tax paid by us on such retained capital gains, and to receive from the IRS a refund to the extent your proportionate share of such tax paid by us exceeds your actual U.S. federal income tax liability.

Sale of Shares

Gain recognized by a Non-U.S. shareholder upon the sale or exchange of our shares generally will not be subject to U.S. taxation unless such shares constitutes a U.S. real property interest. Our shares will not constitute a U.S. real property interest so long as (i) we are a domestically-controlled qualified investment entity, which includes a REIT, if at all times during a specified testing period less than 50% in value of its stock is held directly or indirectly by non-U.S. shareholders or (ii) such class of our shares is regularly traded, as defined by applicable Treasury regulations, on an established securities market such as the NYSE; and you owned, actually and constructively, 5% or less in value of such class of our shares throughout the shorter of the period during which you held such shares or the five-year period ending on the date of the sale or exchange.

Notwithstanding the foregoing, gain from the sale or exchange of our shares not otherwise subject to FIRPTA will be taxable to you if either (1) the investment in our shares is treated as effectively connected with your U.S. trade or business or (2) you are a nonresident alien individual who is present in the U.S. for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our shares (subject to the 5% exception applicable to regularly traded stock described above), you may be treated as having gain from the sale or exchange of a U.S. real property interest if you (1) dispose of our shares within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a U.S. real property interest and (2) acquire, or enter into a contract or option to acquire, or are deemed to acquire, substantially identical shares during the 61 day period beginning 30 days before the ex-dividend date.

If gain on the sale or exchange of our shares were subject to taxation under FIRPTA, you would be subject to regular U.S. federal income tax with respect to such gain in the same manner as a taxable U.S. shareholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, if our shares are not then traded on an established securities market, the purchaser of the shares would be required to withhold and remit to the IRS 10% of the purchase price. If amounts withheld on a sale, redemption, repurchase, or exchange of our shares exceed the Non-U.S. shareholder's tax liability resulting from such disposition, such excess may be refunded or credited against such Non-U.S. shareholder's U.S. federal income tax liability, provided that the required information is provided to the IRS on a timely basis. Amounts withheld on any such sale, exchange or other taxable disposition of our shares may not satisfy a Non-U.S. shareholder's entire tax liability under FIRPTA, and such Non-U.S. shareholder remains liable for the timely payment of any remaining tax liability.

Backup Withholding Tax and Information Reporting

Generally, we must report annually to the IRS the amount of distributions paid to you, your name and address, and the amount of tax withheld, if any. A similar report is sent to you. Pursuant to tax treaties or other agreements, the IRS may make its reports available to tax authorities in your country of residence.

Payments of distributions or of proceeds from the disposition of shares made to you may be subject to information reporting and backup withholding unless you establish an exemption, for example, by properly certifying your Non-U.S. shareholder status on an IRS Form W-8BEN or another appropriate version of IRS

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Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we have or our paying agent has actual knowledge, or reason to know, that you are a U.S. person.

Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained, provided that the required information is furnished to the IRS.

Taxation of Holders of Our Debt Securities

The following summary describes certain of the principal U.S. federal income tax consequences of ownership and disposition of our debt securities. This discussion assumes the debt securities will be issued without original issue discount, sometimes referred to as OID. OID with respect to a debt security is the excess, if any, of the debt security's stated redemption price at maturity over its issue price. The stated redemption price at maturity is the sum of all payments provided by the debt security, whether designated as interest or as principal, other than payments of qualified stated interest. Interest on a debt security generally will constitute qualified stated interest if the interest is unconditionally payable, or will be constructively received under Section 451 of the Code, in cash or in property, other than debt instruments issued by us, at least annually at a single fixed rate. The issue price of a debt security is the first price at which a substantial amount of the debt securities in the issuance that includes such debt security is sold for money, excluding sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers. The amount of OID with respect to a debt security will be treated as zero if the OID is less than an amount equal to 0.0025 multiplied by the product of the stated redemption price at maturity and the number of complete years to maturity, or, in the case of a debt security that provides for payment of any amount other than qualified stated interest prior to maturity, the weighted average maturity of the debt security. If one or more series of debt securities are issued with OID, disclosure concerning the tax considerations arising therefrom will be included with the applicable prospectus supplement or other applicable offering materials under which those securities are offered.

Taxation of Taxable U.S. Debt Holders

As used herein, the term U.S. debt holders means a holder of our debt securities who, for U.S. federal income tax purposes is:

a citizen or resident of the United States;

a corporation, partnership or other entity classified as a corporation or partnership for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any political subdivision thereof unless, in the case of a partnership, Treasury Regulations provide otherwise;

an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust that is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If you are a U.S. debt holder, this section applies to you. Otherwise, the section entitled *Taxation of Non-U.S. Debt Holders*, applies to you.

Stated Interest

U.S. debt holders generally must include interest on the debt securities in their U.S. federal taxable income as ordinary income:

when it accrues, if the U.S. debt holder uses the accrual method of accounting for U.S. federal income tax purposes; or

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when the U.S. debt holder actually or constructively receives it, if the U.S. debt holder uses the cash method of accounting for U.S. federal income tax purposes.

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If we redeem or otherwise repurchase any of our debt securities, we may be obligated to pay additional amounts in excess of stated principal and interest. We intend to take the position that the debt securities should not be treated as contingent payment debt instruments because of this additional payment. Assuming such position is respected, a U.S. debt holder would be required to include in income the amount of any such additional payment at the time such payment is received or accrued in accordance with such U.S. debt holder's method of accounting for U.S. federal income tax purposes. If the IRS successfully challenged this position, and the debt securities were treated as contingent payment debt instruments, U.S. debt holders could be required to accrue interest income at a rate higher than the stated interest rate on the debt securities and to treat as ordinary income, rather than capital gain, any gain recognized on a sale, exchange or redemption of a debt security. U.S. debt holders are urged to consult their tax advisors regarding the potential application to the debt securities of the contingent payment debt instrument rules and the consequences thereof.

Sale, Exchange or Other Taxable Disposition of the Debt Securities

Unless a nonrecognition provision applies, U.S. debt holders must recognize taxable gain or loss on the sale, exchange, redemption, retirement or other taxable disposition of a debt security. The amount of gain or loss equals the difference between (i) the amount the U.S. debt holder receives for the debt security in cash or other property, valued at fair market value, less the amount thereof that is attributable to accrued but unpaid interest on the debt security and (ii) the U.S. debt holder's adjusted tax basis in the debt security. A U.S. debt holder's initial tax basis in a debt security generally will equal the price the U.S. debt holder paid for the debt security.

Gain or loss generally will be long-term capital gain or loss if at the time the debt security is disposed of it has been held for more than one year. Otherwise, it will be a short-term capital gain or loss.

Payments attributable to accrued interest which have not yet been included in income will be taxed as ordinary interest income. The maximum U.S. federal income tax rate on long-term capital gain on most capital assets held by an individual is currently 15%. The U.S. federal income tax laws relating to this 15% tax rate are scheduled to sunset or revert to provisions of prior law effective for taxable years beginning after December 31, 2010, at which time the capital gains tax rate will be increased to 20%. The deductibility of capital losses is subject to limitations.

Information Reporting and Backup Withholding

Backup withholding at the applicable statutory rate may apply when a U.S. debt holder receives interest payments on a debt security or proceeds upon the sale or other disposition of a debt security. Certain holders including, among others, corporations, financial institutions and certain tax-exempt organizations, are generally not subject to backup withholding. In addition, backup withholding will not apply to a U.S. debt holder who provides his or her social security or other taxpayer identification number in the prescribed manner unless:

the IRS notifies us or our paying agent that the taxpayer identification number provided is incorrect;

the U.S. debt holder fails to report interest and dividend payments received on the U.S. debt holder's tax return and the IRS notifies us or our paying agent that backup withholding is required; or

the U.S. debt holder fails to certify under penalty of perjury that backup withholding does not apply.

A U.S. debt holder who provides us or our paying agent with an incorrect taxpayer identification number may be subject to penalties imposed by the IRS. If backup withholding does apply, the U.S. debt holder may request a refund of the amounts withheld or use the amounts withheld as a credit against the U.S. debt holder's U.S. federal income tax liability as long as the U.S. debt holder provides the required information to the IRS. U.S. debt holders should consult their tax advisors as to their qualification for exemption from backup withholding and the procedures for obtaining the exemption.

We will be required to furnish annually to the IRS and to U.S. debt holders information relating to the amount of interest paid on the debt securities, and that information reporting may also apply to payments of

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proceeds from the sale of the debt securities to those holders. Some U.S. debt holders, including corporations, financial institutions and certain tax-exempt organizations, generally are not currently subject to information reporting.

Taxation of Non-U.S. Debt Holders

This section applies to you if you are not a U.S. debt holder, as defined above (Non-U.S. debt holders).

Special rules may apply to certain Non-U.S. debt holders such as controlled foreign corporations and passive foreign investment companies. Such entities are encouraged to consult their tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.

Payments of Interest

Interest paid to a Non-U.S. debt holder will not be subject to U.S. federal income taxes or withholding tax if the interest is not effectively connected with the Non-U.S. debt holder's conduct of a trade or business within the United States, and the Non-U.S. debt holder:

does not actually or constructively own a 10% or greater interest in the total combined voting power of all classes of our voting stock;

is not a controlled foreign corporation with respect to which we are a related person within the meaning of Section 864(d)(4) of the Code;

is not a bank that received such debt securities on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and

provides the appropriate certification as to the Non-U.S. debt holder's status. A Non-U.S. debt holder can generally meet this certification requirement by providing a properly executed IRS Form W-8BEN or appropriate substitute form to us or our paying agent. If the debt securities are held through a financial institution or other agent acting on the Non-U.S. debt holder's behalf, the Non-U.S. debt holder may be required to provide appropriate documentation to the agent. The agent will then generally be required to provide appropriate certifications to us or our paying agent, either directly or through other intermediaries. Special certification rules apply to foreign partnerships, estates and trusts, and in certain circumstances certifications as to foreign status of partners, trust owners or beneficiaries may have to be provided to us or our paying agent.

If a Non-U.S. debt holder does not qualify for an exemption under these rules, interest income from the debt securities may be subject to withholding tax at the rate of 30% (or lower applicable treaty rate) at the time such interest is paid. The payment of interest effectively connected with a U.S. trade or business, however, would not be subject to a 30% withholding tax so long as the Non-U.S. debt holder provides us or our paying agent an adequate certification (currently on IRS Form W-8ECI), but such interest would be subject to U.S. federal income tax on a net basis at the rates applicable to U.S. persons generally. In addition, if the payment of interest is effectively connected with a foreign corporation's conduct of a U.S. trade or business, that foreign corporation may also be subject to a 30% (or lower applicable treaty rate) branch profits tax. To claim the benefit of a tax treaty, a Non-U.S. debt holder must provide a properly executed IRS Form W-8BEN before the payment of interest and a Non-U.S. debt holder may be required to obtain a U.S. taxpayer identification number and provide documentary evidence issued by foreign governmental authorities to prove residence in the foreign country.

Sale, Exchange or Other Taxable Disposition of Debt Securities

Non-U.S. debt holders generally will not be subject to U.S. federal income tax on any amount which constitutes capital gain upon a sale, exchange, redemption, retirement or other taxable disposition of a debt security, unless either of the following is true:

the Non-U.S. debt holder's investment in the debt securities is effectively connected with the conduct of a U.S. trade or business; or

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the Non-U.S. debt holder is a nonresident alien individual holding the debt security as a capital asset, is present in the United States for 183 or more days in the taxable year within which the sale, redemption or other disposition takes place, and certain other requirements are met.

For Non-U.S. debt holders described in the first bullet point above, the net gain derived from the retirement or disposition of the debt securities generally would be subject to U.S. federal income tax at the rates applicable to U.S. persons generally (or lower applicable treaty rate). In addition, foreign corporations may be subject to a 30% (or lower applicable treaty rate) branch profits tax if the investment in the debt security is effectively connected with the foreign corporation's conduct of a U.S. trade or business. Non-U.S. debt holders described in the second bullet point above will be subject to a flat 30% U.S. federal income tax on the gain derived from the retirement or disposition of their debt securities, which may be offset by U.S. source capital losses, even though Non-U.S. debt holders are not considered residents of the United States.

Backup Withholding and Information Reporting

Backup withholding and information reporting generally will not apply to payments made to a Non-U.S. debt holder with respect to our debt securities, provided that we do not have actual knowledge or reason to know that the Non-U.S. debt holder is a U.S. person and the holder has given us the certification described above under *Taxation of Non-U.S. Debt Holders Payments of Interest*. In addition, a Non-U.S. debt holder will not be subject to backup withholding or information reporting with respect to the proceeds of the sale of debt securities within the United States or conducted through certain U.S.-related financial intermediaries, if the payor receives the statement described above and does not have actual knowledge or reason to know that the holder is a U.S. person, as defined in the Code, or the Non-U.S. debt holder otherwise establishes an exemption. However, we may be required to report annually to the IRS and to a Non-U.S. debt holder the amount of, and the tax withheld with respect to, any interest (including any OID) paid to the Non-U.S. debt holder, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. debt holder resides.

A Non-U.S. debt holder generally will be entitled to credit any amounts withheld under the backup withholding rules against the holder's U.S. federal income tax liability, provided that the required information is furnished to the IRS in a timely manner. Non-U.S. debt holders should consult their tax advisors regarding the application of backup withholding and information reporting in their particular situation, the availability of an exemption therefrom, and the procedure for obtaining an exemption, if available.

Possible Legislative or Other Actions Affecting Tax Consequences

Prospective investors should recognize that the present U.S. federal income tax treatment of an investment in us may be modified by legislative, judicial or administrative action at any time, and that any such action may affect investments and commitments previously made. The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in U.S. federal tax laws and interpretations thereof could adversely affect the tax consequences of an investment in us.

State and Local Tax Consequences

We may be subject to state or local taxation or withholding in various state or local jurisdictions, including those in which we transact business, and our shareholders may be subject to state or local taxation or withholding in various state or local jurisdictions, including those in which they reside. The state and local tax treatment of us may not conform to the U.S. federal income tax treatment discussed above. Several states in which we may own properties treat REITs as ordinary Subchapter C corporations subject to tax at the corporate level. In addition, your state and local tax treatment may not conform to the U.S. federal income tax treatment discussed above. You should consult your own tax advisors regarding the effect of state and local tax laws on an investment in our shares.

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SELLING SECURITY HOLDERS

Selling security holders are persons or entities that, directly or indirectly, have acquired or will from time to time acquire from us common shares, preferred shares, depositary shares, warrants, debt securities or units, as applicable, in various private transactions. Such selling security holders may be parties to registration rights agreements with us, or we otherwise may have agreed or will agree to register their securities for resale. The initial purchasers of our securities, as well as their transferees, pledgees, donees or successors, all of whom we refer to as selling security holders, may from time to time offer and sell the securities pursuant to this prospectus and any applicable prospectus supplement.

The selling security holders may offer for sale all or some portion of the securities that they hold. To the extent that any of the selling security holders are brokers or dealers, they are deemed to be, under interpretations of the SEC, underwriters within the meaning of the Securities Act.

The applicable prospectus supplement will set forth the name of each of the selling security holders and the number and classes of our securities beneficially owned by such selling security holders that are covered by such prospectus supplement. The applicable prospectus supplement will also disclose whether any of the selling security holders has held any position or office with, has been employed by or otherwise has had a material relationship with us during the three years prior to the date of the prospectus supplement.

PLAN OF DISTRIBUTION

We and the selling security holders may sell common shares, preferred shares, depositary shares, warrants, debt securities and units:

to or through underwriters or dealers or underwriting syndicate represented by one or more managing underwriters;

to or through agents;

directly to one or more purchasers, including our affiliates;

in block trades;

if indicated in the prospectus supplement, pursuant to delayed delivery contracts; or

through any combination of these methods.

The distribution of common shares, preferred shares, depositary shares, warrants, debt securities and units may be effected from time to time in one or more transactions either:

at a fixed price or prices which may be changed;

at market prices prevailing at the time of sale;

at prices relating to those market prices; or

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at negotiated prices.

For each offering of common shares, preferred shares, depositary shares, warrants, debt securities or units, the prospectus supplement or other offering materials will describe:

the plan of distribution;

the terms of the offering;

the names of any agents, dealers or underwriters;

the name or names of any managing underwriter or underwriters;

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the securities exchanges on which the securities will be listed, if any;

the purchase price of the securities;

the net proceeds to us from the sale of the securities;

any delayed delivery arrangements;

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

any initial public offering price;

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

any commissions paid to agents.

If underwriters are used in the sale, they will buy the securities for their own account. The underwriters may then resell from time to time the securities in one or more transactions, including without limitation, negotiated transactions, at a fixed public offering price, at any market price in effect at the time of sale or at a discount from any such market price or otherwise at varying prices determined by the underwriters at the time of sale. The obligations of the underwriters to purchase the securities will be subject to certain conditions. The underwriters will be obligated to purchase all the securities offered if they purchase any securities. Any discounts or concessions allowed or re-allowed or paid to dealers may be changed by the underwriters from time to time.

In connection with the sale of the securities, underwriters may receive compensation from us, selling security holders or from purchasers of the securities, for whom they may act as agents, in the form of discounts, concessions or commissions. Underwriters may sell the securities to or through dealers, and these dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Any public offering price and any discounts or concessions allowed, reallocated, or paid to dealers may be changed from time to time. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters, and any discounts or commissions they receive from us, and any profit on the resale of the securities they realize, may be deemed to be underwriting discounts and commissions, under the Securities Act.

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

Some or all of the securities offered through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom securities are sold for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities offered pursuant to this prospectus. If dealers are used in the sale, securities will be sold to those dealers as principals. The dealers may then resell the securities to the public at any market price or other prices to be determined by the dealers at the time of resale. If agents are used in the sale, unless we inform you otherwise in the prospectus supplement or other applicable offering materials they will use their reasonable best efforts to solicit purchasers for the period of their appointment. If securities are sold directly, no underwriters or agents would be involved. Direct sales may also be made through subscription rights distributed to our shareholders on a pro rata basis, which may or may not be transferable. In any distribution of subscription rights to shareholders, if

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all of the securities are not subscribed for, the unsubscribed securities may be sold directly to third parties or one or more underwriters, dealers, or agents, including standby underwriters, may be engaged to sell the unsubscribed securities to third parties. In the prospectus supplement or other applicable offering materials, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. An offer of securities is not being made in any state that does not permit such an offer.

Underwriters, dealers and agents that participate in the distribution of securities may be deemed to be underwriters as defined in the Securities Act. Any discounts, commissions or profit they receive when they resell the securities may be treated as underwriting discounts and commissions under the Securities Act. We may have agreements with underwriters, dealers and agents to indemnify them against certain civil liabilities, including certain liabilities under the Securities Act, or to contribute to payments they may be required to make.

We may authorize underwriters, dealers or agents to solicit offers from institutions in which the institution contractually agrees to purchase the securities from us on a future date at a specified price. This type of agreement may be made only with institutions that we specifically approve. These institutions could include banks, insurance companies, pension funds, investment companies and educational and charitable institutions. The underwriters, dealers or agents will not be responsible for the validity or performance of these agreements.

Underwriters, dealers or agents may engage in transactions with us and may perform services for us in the ordinary course of business.

Securities may be sold directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement or other applicable offering materials.

To the extent that we permit this prospectus to be used for sales of securities by selling security holders, the selling security holders will act independently of us in making decisions with respect to the timing, manner and size of each sale. We will not receive any of the proceeds from sales of securities made by the selling security holders pursuant to this prospectus but in certain cases we may pay fees and expenses relating to the registration or an offering of such securities, such as registration and filing fees, fees and expenses for complying with federal and state securities laws and FINRA rules and regulations, and fees and expenses incurred in connection with a listing, if any, of any of the securities on any securities exchange or association.

The selling security holders and any dealers or agents that participate in the distribution of such securities may be deemed to be underwriters within the meaning of the Securities Act and any profit on the resale of the securities by them and any commissions received by any of these dealers or agents might be deemed to be underwriting commissions under the Securities Act.

To the extent required, the securities to be sold, the names of the selling security holders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement of which this prospectus is a part.

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LEGAL MATTERS

Stinson Morrison Hecker LLP, Kansas City, Missouri, will issue an opinion about the validity of the securities and EPR's qualification and taxation as a REIT under the Code. In addition, the description of EPR's taxation and qualification as a REIT under the caption "U.S. Federal Income Tax Considerations" is based upon the opinion of Stinson Morrison Hecker LLP. Underwriters, dealers or agents who we identify in a prospectus supplement or other applicable offering materials may have their counsel give an opinion on certain legal matters relating to the securities or the offering.

EXPERTS

The consolidated financial statements and schedules of Entertainment Properties Trust as of December 31, 2009 and 2008 and for each of the years in the three-year period ended December 31, 2009 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2009 have been incorporated by reference herein in this prospectus and in the registration statement of which this prospectus is a part, in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Exchange Act, and in accordance with those requirements, we file reports and other information with the SEC. The reports and other information can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website (<http://www.sec.gov>) that contains reports, proxy and information statements and other materials that are filed through the SEC Electronic Data Gathering Analysis and Retrieval (EDGAR) system. In addition, our common shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares and Series E Preferred Shares are listed on the New York Stock Exchange and we are required to file reports, proxy and information statements and other information with the New York Stock Exchange. These documents can be inspected at the principal office of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3, of which this prospectus is a part, covering the securities described in this prospectus. You should be aware that this prospectus does not contain all of the information contained or incorporated by reference in the registration statement and its exhibits and schedules. You may inspect and obtain the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Statements contained in this prospectus concerning the contents of any document we refer you to are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

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Entertainment Properties Trust

Common Shares, Preferred Shares, Depositary Shares, Warrants, Debt Securities and Units

Prospectus

March 16, 2010

Table of Contents**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

Set forth below is an estimate (except in the case of the registration fee) of the amount of fees and expenses to be incurred in connection with the issuance and distribution of the offered securities, other than underwriting discounts and commissions.

Registration Fee Under Securities Act of 1933	\$	*
Legal Fees and Expenses		**
Accounting Fees and Expenses		**
Printing and Engraving Expenses		**
Trustee Fees (including counsel fees)		**
Rating Agency Fees		**
Miscellaneous Fees and Expenses		**
Total	\$	**

* In accordance with Rules 456(b) and 457(r) of the Securities Act of 1933, we are deferring payment of the registration fee for the securities offered by this prospectus.

** The applicable prospectus supplement will set forth the estimated amount of expenses in respect of any offering of securities.

Item 15. Indemnification of Trustees and Officers.

The laws relating to Maryland real estate investment trusts (the Maryland REIT Law) permit a real estate investment trust to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent permitted by the Maryland General Corporation Law (the MGCL) for directors and officers of Maryland corporations. The MGCL permits a corporation to indemnify its present and former directors and officers against judgments, penalties, fines, settlements and reasonable expenses incurred in connection with any proceeding to which they may be made, or are threatened to be made, a party by reason of their service in those capacities. However, a Maryland corporation is not permitted to provide this type of indemnification if the following is established:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Additionally, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of that corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. The MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of the following:

a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that this standard of conduct was not met.

Our officers and trustees are and will be indemnified under our Declaration of Trust against certain liabilities. Our Declaration of Trust provides that we will, to the maximum extent permitted by Maryland law in effect from time to time, indemnify: (a) any individual who is a present or former trustee or officer of EPR; or (b) any individual who, while a trustee or officer of EPR and at the request of EPR, serves or has served as a director, officer, shareholder, partner, trustee, employee or agent of any real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or any other enterprises against any claim or liability, together with reasonable expenses actually incurred in advance of a final disposition of a legal proceeding, to which such person may become subject or which such person may incur by reason of his or her status as such. We have the power, with the approval of our Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of EPR in any of the capacities described in (a) or (b) above and to any employee or agent of EPR or its predecessors.

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We have also entered into indemnification agreements with our trustees and certain of our officers providing for procedures for indemnification by us to the fullest extent permitted by law and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us.

We have obtained trustee s and officers liability insurance for the purpose of funding the provision of any such indemnification.

The SEC has expressed the opinion that indemnification of trustees, officers or persons otherwise controlling a company for liabilities arising under the Securities Act of 1933, as amended, is against public policy and is therefore unenforceable.

Item 16. Exhibits.

Exhibit No.	Description
1.1	Form of Underwriting Agreement (for Debt Securities)*
1.2	Form of Underwriting Agreement (for Preferred Shares)*
1.3	Form of Underwriting Agreement (for Common Shares)*
1.4	Form of Underwriting Agreement (for Depositary Shares)*
1.5	Form of Underwriting Agreement (for Warrants)*
1.6	Form of Underwriting Agreement (for Units)*
4.1	Form of Senior Indenture, which is attached as Exhibit 4.1 to the Company s Registration Statement on Form S-3 (Registration No. 333-140978) filed February 28, 2007, is hereby incorporated by reference as Exhibit 4.1
4.2	Form of Subordinated Indenture, which is attached as Exhibit 4.2 to the Company s Registration Statement on Form S-3 (Registration No. 333-140978) filed February 28, 2007, is hereby incorporated by reference as Exhibit 4.2
4.3	Form of Senior Debt Security*
4.4	Form of Subordinated Debt Security*
4.5	Form of Articles Supplementary for Preferred Shares*
4.6	Form of Deposit Agreement, including form of Depositary Receipt for Depositary Shares*
4.7	Form of Preferred Shares Certificate*
4.8	Form of Common Shares Certificate, which is attached as Exhibit 4.5 to the Company s Registration Statement on Form S-11 (Registration No. 333-35281) filed September 10, 1997, as amended, is hereby incorporated by reference as Exhibit 4.8
4.9	Form of Warrant Agreement, including form of Warrant*
4.10	Form of Unit Agreement, including form of Unit*
5.1	Opinion of Stinson Morrison Hecker LLP regarding legality**
8.1	Opinion of Stinson Morrison Hecker LLP regarding tax matters**
12.1	Computation of Ratio of Earnings to Fixed Charges, which is attached as Exhibit 12.1 to the Company s Annual Report on Form 10-K (Commission File No. 001-13561) filed March 1, 2010, is hereby incorporated by reference as Exhibit 12.1

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Exhibit No.	Description
12.2	Computation of Ratio of Earnings to Combined Fixed Charges and Preferred Distributions, which is attached as Exhibit 12.2 to the Company's Annual Report on Form 10-K (Commission File No. 001-13561) filed March 1, 2010, is hereby incorporated by reference as Exhibit 12.2
23.1	Consent of KPMG LLP**
23.2	Consent of Stinson Morrison Hecker LLP (included in Exhibits 5.1 and 8.1)**
24.1	Powers of Attorney of certain officers and trustees (included on signature pages)**
25.1	Statement of Eligibility of Trustee on Form T-1 under the Trust Indenture Act of 1939, as amended, of the trustee under the Senior Indenture*
25.2	Statement of Eligibility of Trustee on Form T-1 under the Trust Indenture Act of 1939, as amended, of the trustee under the Subordinated Indenture*

* To be filed by amendment or incorporated by reference in connection with the offering of any securities, as appropriate.

** Filed herewith.

Item 17. Undertakings.

a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

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- (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x), for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date it is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or the prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer to sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - c) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

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- d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Kansas City, State of Missouri, on this 16th day of March, 2010.

ENTERTAINMENT PROPERTIES TRUST,

a Maryland real estate investment trust

By: /s/ GREGORY K. SILVERS
Name: **Gregory K. Silvers**
Title: **Vice President, Chief Operating Officer, General
Counsel and Secretary**

Table of Contents**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints David M. Brain, Gregory K. Silvers and Mark A. Peterson, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this registration statement, to any related Rule 462(b) registration statement and to any other documents filed with the Securities and Exchange Commission and to file the same, with all exhibits to the registration statement and other documents in connection with the registration statement, with the Securities and Exchange Commission or any other regulatory authority, grants to the attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, and ratifies and confirms all that the attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue of this power of attorney.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

By:	/s/ ROBERT J. DRUTEN Robert J. Druten	Chairman of the Board of Trustees	March 16, 2010
By:	/s/ DAVID M. BRAIN David M. Brain	President, Chief Executive Officer (Principal Executive Officer) and Trustee	March 16, 2010
By:	/s/ MARK A. PETERSON Mark A. Peterson	Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 16, 2010
By:	/s/ JACK A. NEWMAN, JR. Jack A. Newman, Jr.	Trustee	March 16, 2010
By:	/s/ JAMES A. OLSON James A. Olson	Trustee	March 16, 2010
By:	/s/ BARRETT BRADY Barrett Brady	Trustee	March 16, 2010

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** Filed herewith.