SONIC AUTOMOTIVE INC
Form DEF 14A
March 08, 2016
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement
¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
x Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material Pursuant to §240.14a-12

Sonic Automotive, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

¨ Fee paid previously with preliminary materials.

¨

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

Sonic Automotive, Inc.

4401 Colwick Road

Charlotte, North Carolina 28211

March 8, 2016

Dear Stockholder:

You are cordially invited to attend our 2016 Annual Meeting of Stockholders to be held at 2:00 p.m., Eastern Time, on Monday, April 18, 2016 at Charlotte Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina 28027. We look forward to greeting personally those stockholders who are able to attend.

The accompanying formal Notice of 2016 Annual Meeting of Stockholders and Proxy Statement describe the matters on which action will be taken at the meeting.

Whether or not you plan to attend the meeting on Monday, April 18, 2016, it is important that your shares be represented. To ensure that your vote will be received and counted, at your earliest convenience please follow the instructions for voting your shares provided in the accompanying Proxy Statement and proxy card or voting instruction form, notice letter or the voting instructions you receive by e-mail. Your vote is important regardless of the number of shares you own.

Sincerely,

/s/ O. Bruton Smith

O. Bruton Smith

Executive Chairman

Table of Contents

SONIC AUTOMOTIVE, INC.

4401 Colwick Road

Charlotte, North Carolina 28211

(704) 566-2400

NOTICE OF 2016 ANNUAL MEETING OF STOCKHOLDERS

March 8, 2016

The 2016 Annual Meeting of Stockholders (the Annual Meeting) of Sonic Automotive, Inc. will be held at 2:00 p.m., Eastern Time, on Monday, April 18, 2016 at Charlotte Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina 28027, for the following purposes as described in the accompanying Proxy Statement:

1. To elect nine directors;

2. To ratify the appointment of KPMG LLP as Sonic s independent registered public accounting firm for the fiscal year ending December 31, 2016;

3. To approve, on an advisory basis, Sonic s named executive officer compensation; and

4. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

The Board of Directors recommends a vote FOR items 1, 2 and 3. The persons named as proxy holders will use their discretion to vote on other matters that may properly arise at the Annual Meeting.

Only holders of record of Sonic s Class A common stock and Class B common stock as of the close of business on February 22, 2016 will be entitled to notice of, and to vote at, the Annual Meeting.

Your vote is important. Whether or not you plan to attend the Annual Meeting, you are encouraged to vote as soon as possible to ensure that your shares are represented at the meeting. For specific voting instructions, please refer to the information provided in the accompanying Proxy Statement and your proxy card or voting instruction form, notice letter or the voting instructions you receive by e-mail. Submitting your proxy does not deprive you of your right to attend the Annual Meeting and to vote your shares in person.

By Order of the Board of Directors,

/s/ Stephen K. Coss

Stephen K. Coss
Senior Vice President, General Counsel and

Secretary

Important Notice Regarding the Availability of Proxy Materials

for the Annual Meeting of Stockholders to be Held on April 18, 2016:

The Notice of 2016 Annual Meeting of Stockholders, Proxy Statement

and 2015 Annual Report to Stockholders are available at *www.proxydocs.com/SAH*.

Table of Contents

TABLE OF CONTENTS

Table of Contents

PROXY STATEMENT

GENERAL INFORMATION

The 2016 Annual Meeting of Stockholders of Sonic Automotive, Inc. will be held at 2:00 p.m., Eastern Time, on Monday, April 18, 2016 at Charlotte Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina 28027, for the purposes set forth in the accompanying Notice of 2016 Annual Meeting of Stockholders. We refer to this meeting, together with any adjournment or postponement thereof, as the Annual Meeting. Only holders of record of Sonic s Class A common stock and Class B common stock as of the close of business on February 22, 2016 (the Record Date) will be entitled to notice of, and to vote at, the Annual Meeting. This Proxy Statement and form of proxy are furnished to stockholders in connection with the solicitation by the Board of Directors (the Board of Directors or the Board) of proxies to be used at the Annual Meeting. On or about March 8, 2016, Sonic began mailing to its stockholders this Proxy Statement, the accompanying proxy card or voting instruction form and the 2015 Annual Report to Stockholders, or a notice letter, as applicable. References in this Proxy Statement to Sonic, the Company, we, us, our and similar terms refer to Sonic Automotive, Inc. We sometimes refer to our Class A common stock and Class B common stock together as our Common Stock.

Shares Entitled to Vote and Voting Rights

Sonic currently has authorized under its Amended and Restated Certificate of Incorporation (the Charter) 100,000,000 shares of Class A common stock, of which 34,010,864 shares were outstanding as of the Record Date and are entitled to vote at the Annual Meeting, and 30,000,000 shares of Class B common stock, of which 12,029,375 shares were outstanding as of the Record Date and are entitled to vote at the Annual Meeting. As provided in the Charter, on all matters presented at the Annual Meeting, holders of Class A common stock will have one vote per share and holders of Class B common stock will have 10 votes per share. All outstanding shares of Common Stock are entitled to vote as a single class on any matter submitted to a vote at the Annual Meeting. The presence at the Annual Meeting in person or by proxy of a majority of the shares entitled to vote will constitute a quorum for the transaction of business at the Annual Meeting.

Votes Required to Approve Each Proposal

A quorum being present, directors will be elected by the affirmative vote of a plurality of the total votes of all shares of Common Stock present in person or represented by proxy and entitled to vote on the election of directors at the Annual Meeting and each of the other proposals referred to in the accompanying Notice of 2016 Annual Meeting of Stockholders will be approved if a majority of the total votes of all shares of Common Stock present in person or represented by proxy and entitled to vote on the proposal at the Annual Meeting are cast in favor thereof.

Methods of Voting

If your shares of Class A common stock are registered directly in your name, you may vote by mail, by telephone, via the Internet or in person at the Annual Meeting. If your shares of Class A common stock are held in the name of your bank, broker or other nominee, you may vote by mail or in person at the Annual Meeting, and depending on the voting procedures of the stockholder of record, you may be able to vote by telephone or via the Internet. If you are a registered holder of Class B common stock, you may vote by mail or in person at the Annual Meeting.

Voting by Mail. By signing and dating the proxy card or voting instruction form and returning it in the prepaid and addressed envelope enclosed with the proxy materials delivered by mail, you are authorizing the individuals named on the proxy card or voting instruction form to vote your shares at the Annual Meeting in the manner you indicate.

Table of Contents

Voting by Telephone or Via the Internet. To vote by telephone or via the Internet, please follow either the instructions included on your proxy card or voting instruction form or notice letter or the voting instructions you receive by e-mail. If you vote by telephone or via the Internet, you do not need to complete and mail a proxy card or voting instruction form. You may incur costs such as telephone and Internet access charges if you vote by telephone or via the Internet. If you choose to vote by telephone or via the Internet, you must do so by 11:59 p.m., Eastern Time, on Sunday, April 17, 2016.

Voting in Person at the Annual Meeting. If you attend the Annual Meeting and plan to vote in person, we will provide you with a ballot at the Annual Meeting. If your shares are registered directly in your name, you are considered the stockholder of record and you have the right to vote in person at the Annual Meeting. If your shares are held in the name of your bank, broker or other nominee, you are considered the beneficial owner of shares held in street name. As a beneficial owner, if you wish to vote at the Annual Meeting, you will need to bring to the Annual Meeting a legal proxy from your bank, broker or other nominee authorizing you to vote those shares.

Even if you plan to attend the Annual Meeting, we encourage you to vote as soon as possible to ensure that your shares will be voted if you are unable to attend the Annual Meeting. If you receive more than one proxy card, voting instruction form, notice letter or e-mail notification, it is an indication that your shares are held in multiple accounts. To vote all of your shares, you must vote separately as described above for each proxy card, voting instruction form, notice letter or e-mail notification that you receive.

Withhold Votes, Abstentions and Broker Non-Votes

Abstentions and broker non-votes are counted as present or represented for purposes of determining the presence or absence of a quorum for the Annual Meeting. A broker non-vote occurs when a nominee holding shares for a beneficial owner votes on one proposal but does not vote on another proposal because, with respect to such other proposal, the nominee does not have discretionary voting power and has not received voting instructions from the beneficial owner.

Under the rules and regulations of the New York Stock Exchange (the NYSE rules), the proposal to ratify the appointment of the independent registered public accounting firm is considered a discretionary matter, which means that brokerage firms may vote in their discretion on this matter on behalf of clients who have not furnished voting instructions. However, the election of directors and the advisory vote to approve Sonic s named executive officer compensation are non-discretionary matters under the NYSE rules, which means brokerage firms that have not received voting instructions from their clients on these matters may not vote on these proposals.

With respect to Proposal 1, the election of directors, only for and withhold votes may be cast, and withhold votes, broker non-votes and abstentions will have no effect on the outcome of the proposal. With respect to Proposals 2 and 3, the proposal to ratify the appointment of KPMG LLP as Sonic s independent registered public accounting firm for the fiscal year ending December 31, 2016 and the advisory vote to approve Sonic s named executive officer compensation, an abstention will be counted as a vote present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposals and will have the same effect as a vote against the proposals, and a broker non-vote will not be considered entitled to vote on these proposals and will therefore have no effect on their outcome.

Voting of Proxies

Each valid proxy received and not revoked before the Annual Meeting will be voted at the Annual Meeting. To be valid, a written proxy card must be properly executed. Proxies voted by telephone or via the Internet must be properly completed pursuant to this solicitation. If you specify your vote regarding any matter

Table of Contents

presented at the Annual Meeting, your shares will be voted by one of the individuals indicated on the proxy in accordance with your specification. If you do not specify your vote, your shares will be voted (i) in favor of electing Sonic s nine nominees to the Board of Directors; (ii) in favor of the proposal to ratify the appointment of KPMG LLP as Sonic s independent registered public accounting firm for the fiscal year ending December 31, 2016; (iii) in favor of the proposal to approve, on an advisory basis, Sonic s named executive officer compensation; and (iv) in the discretion of the proxy holders on any other business as may properly come before the Annual Meeting. The Board of Directors currently knows of no other business that will be presented for consideration at the Annual Meeting.

Revoking Your Proxy or Changing Your Vote

You may revoke your proxy or change your vote at any time before the vote is taken at the Annual Meeting. If you are a stockholder of record, you may revoke your proxy or change your vote by (i) submitting a written notice of revocation to Stephen K. Coss, Senior Vice President, General Counsel and Secretary at Sonic Automotive, Inc., 4401 Colwick Road, Charlotte, North Carolina 28211; (ii) delivering a proxy bearing a later date by telephone, the Internet or mail until the applicable deadline for each method; or (iii) attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not cause your previously granted proxy to be revoked unless you specifically make that request or vote in person at the Annual Meeting. For all methods of voting, the last vote cast will supersede all previous votes. If you hold your shares in street name and you have instructed your bank, broker or other nominee to vote your shares, you may change or revoke your voting instructions by following the specific instructions provided to you by your bank, broker or other nominee, or, if you have obtained a legal proxy from your bank, broker or other nominee, by attending the Annual Meeting and voting in person.

Table of Contents

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding the beneficial ownership of Sonic s Common Stock as of February 22, 2016, by (i) each stockholder known by Sonic to beneficially own more than 5% of a class of the outstanding Common Stock, (ii) each director and director nominee, (iii) each named executive officer listed in the Summary Compensation Table, and (iv) all directors and executive officers of Sonic as a group. Except as otherwise indicated below, each of the persons named in the table has sole voting and investment power with respect to the securities indicated as beneficially owned by them, subject to community property laws where applicable. Unless otherwise noted below, the address for each of the beneficial owners is 4401 Colwick Road, Charlotte, North Carolina 28211.

Beneficial Owner	Number of Shares of Class A Common Stock[1]	Percentage of Outstanding Class A Common Stock	Number of Shares of Class B Common Stock	Percentage of Outstanding Class B Common Stock	Percentage of All Outstanding Voting Stock[2]
O. Bruton Smith [3][4][5]	567,325	1.7%	11,052,500	91.9%	25.0%
Sonic Financial Corporation [3][4]			8,881,250	73.8%	19.3%
B. Scott Smith [3][4][6][7][8]	325,538	1.0%	9,858,125	82.0%	22.1%
David Bruton Smith [3][4][6][9]	214,604	*	8,881,250	73.8%	19.7%
Marcus G. Smith [3][4][6]	70,586	*	8,881,250	73.8%	19.4%
Jeff Dyke [10]	159,007	*			*
Heath R. Byrd [11]	45,901	*			*
William I. Belk [12][13]	57,258	*			*
William R. Brooks [12]	61,623	*			*
Victor H. Doolan [12]	43,513	*			*
John W. Harris III [12]	6,121	*			*
Robert Heller [12][14]	57,258	*			*
R. Eugene Taylor [12]	3,016	*			*
All directors and executive officers as a group (11 persons) [6]	1,471,478	4.2%	12,029,375	100.0%	28.9%
BlackRock, Inc. [15]	3,141,351	9.2%			6.8%
Hotchkis and Wiley Capital Management, LLC [16]	2,714,689	8.0%			5.9%
Dimensional Fund Advisors LP [17]	2,581,396	7.6%			5.6%
The Vanguard Group, Inc. [18]	2,328,572	6.8%			5.1%
Paul P. Rusnak [19]	5,344,000	15.7%			11.6%

* Less than 1%.

(1) Includes shares of Class A common stock and shares of restricted stock (which have both dividend and voting rights) held by these individuals, including those shares of Class A common stock shown below as to which the following persons currently have a right, or will have the right within 60 days after February 22, 2016, to acquire beneficial ownership through the exercise of stock options or the vesting of restricted stock units: (i) Messrs. O. Bruton Smith, 373,877 shares; B. Scott Smith, 83,972 shares; David Bruton Smith, 54,234 shares; Jeff Dyke, 86,386 shares; and Heath R. Byrd, 29,547 shares; and (ii) all directors and executive officers as a group, 628,016 shares.

(2) The percentage of total voting power of Sonic is as follows: (i) Mr. O. Bruton Smith, 71.8%; Sonic Financial Corporation (SFC), 57.6%; Mr. B. Scott Smith, 64.1%; Mr. David Bruton Smith, 57.7%; Mr. Marcus G. Smith, 57.6%; BlackRock, Inc., 2.0%; Hotchkis and Wiley Capital Management, LLC, 1.8%; Dimensional Fund Advisors LP, 1.7%; The Vanguard Group, Inc., 1.5%; Mr. Paul P. Rusnak, 3.5%; and less than 1% for all other stockholders shown; and (ii) all directors and executive officers as a group, 78.6%.

(3) The address for Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith and Marcus G. Smith and SFC is 5401 East Independence Boulevard, Charlotte, North Carolina 28212.

Table of Contents

(4) The amount of Class B common stock shown for Mr. O. Bruton Smith consists of 2,171,250 shares owned directly by him and 8,881,250 shares owned by SFC. The amount of Class B common stock shown for Mr. B. Scott Smith consists of 76,110 shares owned directly by him, 900,765 shares owned by BWI Financial, LLC, an entity controlled by him, and 8,881,250 shares owned by SFC. The amount of Class B common stock shown for each of Messrs. David Bruton Smith and Marcus G. Smith consists of 8,881,250 shares owned by SFC. Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith and Marcus G. Smith jointly control a majority of SFC s outstanding voting stock, are executive officers of SFC and are deemed to have shared voting and investment power with respect to the shares of Class B common stock held by SFC.

(5) Includes 15,119 restricted stock units convertible into shares of Class A common stock that vested on February 12, 2016; 22,804 restricted stock units convertible into shares of Class A common stock that will vest on March 22, 2016; and 15,277 restricted stock units convertible into shares of Class A common stock that will vest on March 31, 2016.

(6) Includes 69,686 shares of Class A common stock held by SMDA Development 1, LLC, an entity in which Messrs. B. Scott Smith, David Bruton Smith and Marcus G. Smith are members. Each of Messrs. B. Scott Smith, David Bruton Smith and Marcus G. Smith disclaims beneficial ownership of such shares, except to the extent of his pecuniary interest, if any, therein.

(7) Approximately 173,905 shares of Class A common stock and 976,875 shares of Class B common stock owned directly or indirectly by Mr. B. Scott Smith are pledged to secure loans.

(8) Includes 13,058 restricted stock units convertible into shares of Class A common stock that vested on February 12, 2016; 19,694 restricted stock units convertible into shares of Class A common stock that will vest on March 22, 2016; and 13,195 restricted stock units convertible into shares of Class A common stock that will vest on March 31, 2016.

(9) Includes 8,882 restricted stock units convertible into shares of Class A common stock that vested on February 12, 2016; 13,393 restricted stock units convertible into shares of Class A common stock that will vest on March 22, 2016; and 8,974 restricted stock units convertible into shares of Class A common stock that will vest on March 31, 2016.

(10) Includes 11,660 restricted shares of Class A common stock that vested on February 12, 2016; 17,587 restricted stock units convertible into shares of Class A common stock that will vest on March 22, 2016; and 11,782 restricted stock units convertible into shares of Class A common stock that will vest on March 31, 2016.

(11) Includes 7,995 restricted shares of Class A common stock that vested on February 12, 2016; 12,055 restricted stock units convertible into shares of Class A common stock that will vest on March 22, 2016; and 8,234 restricted stock units convertible into shares of Class A common stock that will vest on March 31, 2016. Approximately 16,367 shares of Class A common stock are pledged as security for a personal loan.

(12) Includes 3,016 restricted shares of Class A common stock for each of Messrs. Belk, Brooks, Doolan, Harris, Heller and Taylor that will vest on April 15, 2016.

(13) Includes 6,000 shares held by Mr. Belk s children. Mr. Belk disclaims beneficial ownership of these shares.

(14) Mr. Heller shares voting and investment power over 11,000 shares with his wife.

(15) This information is based upon a Schedule 13G/A filed with the SEC on January 27, 2016 by BlackRock, Inc. (BlackRock), whose address is 55 East 52nd Street, New York, New York 10055. The Schedule 13G/A reports that BlackRock has sole voting power over 3,020,683 shares, shared voting power over no shares and sole investment power over all of the shares shown.

(16) This information is based upon a Schedule 13G/A filed with the SEC on February 12, 2016 by Hotchkis and Wiley Capital Management, LLC (HWCM), whose address is 725 S. Figueroa Street, 39th Floor, Los Angeles, California 90017. The Schedule 13G/A reports that HWCM has sole voting power over 2,234,389

Table of Contents

shares, shared voting power over no shares and sole investment power over all of the shares shown. The securities reported on the Schedule 13G/A are owned of record by clients of HWCM for whom HWCM serves as an investment adviser. HWCM disclaims beneficial ownership of all of the shares shown.

(17) This information is based upon a Schedule 13G filed with the SEC on February 9, 2016 by Dimensional Fund Advisors LP (Dimensional), whose address is Building One, 6300 Bee Cave Road, Austin, Texas 78746. The Schedule 13G reports that Dimensional has sole voting power over 2,451,357 shares, shared voting power over no shares and sole investment power over all of the shares shown. Dimensional provides investment advice to four registered investment companies and serves as investment manager or sub-adviser to certain other commingled funds, group trusts and separate accounts (such investment companies, funds, trusts and accounts, collectively referred to as the Funds). Subsidiaries of Dimensional may act as an adviser or sub-adviser to certain Funds. In its role as investment adviser, sub-adviser and/or manager, Dimensional or its subsidiaries may possess voting and/or investment power over the securities owned by the Funds and may be deemed to beneficially own these shares. However, all securities reported on the Schedule 13G are owned by the Funds, and Dimensional and its subsidiaries disclaim beneficial ownership of all of the shares shown.

(18) This information is based upon a Schedule 13G/A filed with the SEC on February 11, 2016 by The Vanguard Group, Inc. (Vanguard), whose address is 100 Vanguard Boulevard, Malvern, Pennsylvania 19355. The Schedule 13G/A reports that Vanguard has sole voting power over 40,923 shares, shared voting power over 4,400 shares, sole investment power over 2,285,649 shares and shared investment power over 42,923 shares.

(19) This information is based upon a Schedule 13D/A and a Form 4 filed with the SEC on May 26, 2010 and February 1, 2016, respectively, by Mr. Paul P. Rusnak, whose address is 325 W. Colorado Boulevard, PO Box 70489, Pasadena, California 91117-7489. The Schedule 13D/A reports that Mr. Rusnak has sole voting and investment power over 5,000,000 shares and shared voting and investment power over no shares.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), requires Sonic s executive officers, directors and persons who beneficially own more than 10% of a class of Sonic s outstanding Common Stock (collectively, the reporting persons) to file with the SEC initial reports of their beneficial ownership and changes in their beneficial ownership of Sonic s Common Stock. Based solely on a review of such reports and written representations made by Sonic s executive officers and directors that no other reports were required, Sonic believes that the reporting persons complied with all applicable filing requirements on a timely basis during fiscal 2015, except for (i) Messrs. O. Bruton Smith, B. Scott Smith and David Bruton Smith, each of whom is an executive officer and a director of Sonic, who filed a late Form 4 with respect to a transaction to report the transfer of voting shares of SFC by Mr. O. Bruton Smith (and, therefore, a proportionate transfer of his pecuniary interest in shares of Sonic s Class B common stock held by SFC) to certain of his lineal descendants, including Messrs. B. Scott Smith and David Bruton Smith, in connection with estate and financial planning; and (ii) Mr. Paul P. Rusnak, a greater than 10% stockholder, who filed a late Form 4 to report the distribution of shares from his IRA to his personal account.

Table of Contents

PROPOSAL 1

ELECTION OF DIRECTORS

Nine directors currently serve on Sonic s Board of Directors and all were elected by our stockholders at our 2015 annual meeting of stockholders. Under our Bylaws, the director nominees are elected by the stockholders for a one-year term expiring at the next annual meeting of stockholders. Any director elected by the Board of Directors as a result of a newly created directorship or to fill a vacancy on the Board will hold office until the next annual meeting of stockholders. All directors terms expire and their successors will be elected at the Annual Meeting and each annual meeting of stockholders thereafter.

Upon the recommendation of the Nominating and Corporate Governance Committee of the Board of Directors (the N&CG Committee), the Board nominated each of our current directors to stand for reelection for a new term expiring at the 2017 annual meeting of stockholders or until their successors are duly elected and qualified. At the Annual Meeting, shares represented by all proxies received by the Board and not marked to withhold authority to vote for the nominees will be voted for the election of O. Bruton Smith, B. Scott Smith, David Bruton Smith, William I. Belk, William R. Brooks, Victor H. Doolan, John W. Harris III, Robert Heller and R. Eugene Taylor to the Board of Directors. All of these individuals consented to be named in this Proxy Statement and have agreed to serve, if elected, as directors. If for any reason any director nominee is unable to stand for reelection, the proxy holders will vote your shares for the election of the other director nominees and the Board will designate a substitute nominee or reduce the number of directors in accordance with our Charter and Bylaws. If a substitute nominee is designated by the Board, the proxy holders intend to vote your shares for the substitute nominee. At the Annual Meeting, proxies cannot be voted for a greater number of individuals than the nine nominees named in this Proxy Statement.

Director Nominees

We have set forth below information regarding each of the director nominees. The N&CG Committee and the Board believe that the experience, qualifications, attributes and skills of the director nominees described below and in the Corporate Governance and Board of Directors Board Committees N&CG Committee section of this Proxy Statement provide the Board with the ability to address the evolving needs of Sonic and represent the best interests of Sonic and its stockholders.

O. Bruton Smith, 89, is the Founder of Sonic and has served as Sonic s Executive Chairman since July 2015. Prior to his appointment as Executive Chairman, Mr. Smith had served as Chairman and Chief Executive Officer of the Company since its organization in January 1997. Mr. Smith has also served as a director of Sonic since its organization in January 1997. Mr. Smith is also a director of many of Sonic s subsidiaries. Mr. Smith has worked in the retail automobile industry since 1966. Mr. Smith is also the Executive Chairman and a director of Speedway Motorsports, Inc. (SMI), which is controlled by Mr. Smith and his family. SMI is a public company whose shares are traded on the New York Stock Exchange (the NYSE). Among other things, SMI owns and operates the following NASCAR racetracks: Atlanta Motor Speedway, Bristol Motor Speedway, Charlotte Motor Speedway, Kentucky Speedway, Las Vegas Motor Speedway, New Hampshire Motor Speedway, Sonoma Raceway and Texas Motor Speedway. He is also a director of most of SMI s operating subsidiaries.

B. Scott Smith, 48, is the Co-Founder of Sonic. He is also Chief Executive Officer, President and a director of Sonic. Prior to his appointment as Chief Executive Officer in July 2015, Mr. Smith served as President and Chief Strategic Officer of Sonic since March 2007. Prior to that, Mr. Smith served as Sonic s Vice Chairman and Chief Strategic Officer from October 2002 to March 2007 and President and Chief Operating Officer from April 1997 until October 2002. Mr. Smith has been a director of Sonic since its organization in January 1997. Mr. Smith also serves as a director and executive officer of many of Sonic s subsidiaries. Mr. Smith, who is the son of O. Bruton Smith and the brother of David Bruton Smith, has been an executive

Table of Contents

officer of Town & Country Ford since 1993, and was a minority owner of both Town & Country Ford and Fort Mill Ford before Sonic s acquisition of those dealerships in 1997. Mr. Smith became the General Manager of Town & Country Ford in November 1992 where he remained until his appointment as President and Chief Operating Officer of Sonic in April 1997. Mr. Smith has over 26 years of experience in the automobile dealership industry.

David Bruton Smith, 41, was appointed to the office of Vice Chairman in March 2013. He has served as Executive Vice President and a director of Sonic since October 2008 and has served in Sonic s organization since 1998. Prior to being named a director and Executive Vice President in 2008, Mr. Smith served as Sonic s Senior Vice President of Corporate Development. Mr. Smith served as Sonic s Vice President of Corporate Strategy from October 2005 to March 2007, and also served prior to that time as Dealer Operator and General Manager of several Sonic dealerships. He is the son of Mr. O. Bruton Smith and the brother of Mr. B. Scott Smith.

William I. Belk, 66, has been a director of Sonic since March 1998. Mr. Belk is currently affiliated with Southeast Investments, N.C. Inc., a FINRA member firm headquartered in Charlotte, North Carolina. Mr. Belk s past professional experience includes serving as a North Carolina District Court Judge, serving as a partner in the investment banking firm Carolina Financial Group, Inc., and serving in the positions of Chairman and director for certain Belk stores, a retail department store chain. Mr. Belk has also previously served as a director of Monroe Hardware Co., Inc., a wholesaler of hardware materials. Mr. Belk has a JD with an LLM Taxation and a Masters in Business Administration. He is also a director of British West Indies Trading Company.

William R. Brooks, 66, has been a director of Sonic since its organization in January 1997. Mr. Brooks also served as Sonic s initial Chief Financial Officer, Treasurer, Vice President and Secretary from January 1997 to April 1997. Since December 1994, Mr. Brooks has been the Vice President, Treasurer, Chief Financial Officer and a director of SMI, became Executive Vice President of SMI in February 2004 and became Vice Chairman in 2008. Mr. Brooks also serves as an executive officer and a director for various operating subsidiaries of SMI and as an officer and director of SFC, the largest stockholder of Sonic. Before the formation of SMI in December 1994, Mr. Brooks was a Vice President of Charlotte Motor Speedway and a Vice President and director of Atlanta Motor Speedway.

Victor H. Doolan, 75, has been a director of Sonic since July 2005. Prior to being appointed as a director, Mr. Doolan served for approximately three years as President and Chief Executive Officer of Volvo Cars North America until his retirement in March 2005. Prior to joining Volvo, Mr. Doolan served as the Executive Director of the Premier Automotive Group, the luxury division of Ford Motor Company during his tenure, from July 1999 to June 2002. Mr. Doolan also enjoyed a 23-year career with BMW, culminating with his service as President of BMW of North America from September 1993 to July 1999. Mr. Doolan has worked in the automotive industry for approximately 47 years.

John W. Harris III, 37, has served as a director of Sonic since October 2014. Mr. Harris currently serves as President of Lincoln Harris, LLC, a privately-held corporate real estate services firm focused on commercial brokerage, construction services, development and property management. From March 2012 to September 2015, he served as Chief Operating Officer and Executive Vice President of Lincoln Harris. Prior to joining Lincoln Harris, Mr. Harris held various positions at Fortress Investment Group LLC, a global investment management firm, from August 2004 to February 2012. During his tenure at Fortress, Mr. Harris worked on assignments in Europe and the United States. Mr. Harris currently serves on the boards of directors of Lincoln Harris, LLC and Intrawest Resorts Holdings, Inc., a public company traded on the NYSE.

Robert Heller, 76, has been a director of Sonic since January 2000. Mr. Heller served as a director of FirstAmerica Automotive, Inc. from January 1999 until its acquisition by Sonic in December 1999. Mr. Heller was a director and Executive Vice President of Fair, Isaac and Company from 1994 until 2001, where he was responsible for strategic relationships and marketing. From 1991 to 1993, Mr. Heller was President and Chief Executive Officer of Visa U.S.A. Mr. Heller is a former Governor of the Federal Reserve System and has had an

Table of Contents

extensive career in banking, international finance, government service and education. Mr. Heller currently serves as a director of the Bank of Marin Bancorp, a public company traded on the NASDAQ Capital Market.

R. Eugene Taylor, 68, has been a director of Sonic since February 2015. Mr. Taylor has served as Chairman and Chief Executive Officer of Capital Bank Financial Corp. (CBFC), a bank holding company, since co-founding CBFC in 2009. Prior to co-founding CBFC, Mr. Taylor spent 38 years at Bank of America Corporation and its predecessor companies, most recently as Vice Chairman of Bank of America and President of Global Corporate & Investment Banking. After retiring from Bank of America, Mr. Taylor served as a Senior Advisor at Fortress Investment Group LLC. Mr. Taylor currently serves on the boards of directors of CBFC and Capital Bank, N.A., CBFC s operating bank subsidiary (Capital Bank). Mr. Taylor was previously a director of Capital Bank Corporation, Green Bankshares, Inc. and TIB Financial Corp., each of which CBFC held controlling interests in prior to their merger into CBFC.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR

THE ELECTION OF ALL OF THE DIRECTOR NOMINEES.

Table of Contents

CORPORATE GOVERNANCE AND BOARD OF DIRECTORS

Director Independence

Because Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith and Marcus G. Smith (the Smith family), directly or indirectly, hold or control more than 50% of the voting power of Sonic s Common Stock, Sonic qualifies as a controlled company for purposes of the NYSE rules and, therefore, is not required to comply with all of the requirements of those rules, including the requirement that a listed company have a majority of independent directors. Nevertheless, Sonic is committed to having its Board membership in favor of independent directors as evidenced by Sonic s Corporate Governance Guidelines, which provide that it is desirable that any non-employee director be qualified as an independent director under the NYSE rules and the rules and regulations of the Securities and Exchange Commission (the SEC rules).

Our Board believes that a majority of its members are independent under the applicable NYSE rules and the applicable SEC rules. The NYSE rules provide that a director does not qualify as independent unless the board of directors affirmatively determines that the director has no material relationship with the company (either directly or as a partner, stockholder or officer of an organization that has a relationship with the company). The NYSE rules recommend that a board of directors consider all of the relevant facts and circumstances in determining the materiality of a director s relationship with a company. The Board has adopted Categorical Standards for Determination of Director Independence (the Categorical Standards), which incorporate the independence standards of the NYSE rules, to assist the Board in determining whether a director has a material relationship with Sonic. The Categorical Standards are available on Sonic s website, *www.sonicautomotive.com*.

In February 2016, the Board of Directors, with the assistance of the N&CG Committee, conducted an evaluation of director independence based on the Categorical Standards. The Board considered all relationships and transactions between each director (and his immediate family and affiliates) and each of Sonic, its management and its independent registered public accounting firm, including, with respect to Mr. R. Eugene Taylor, who serves as Chairman and Chief Executive Officer of CBFC, that Capital Bank in the ordinary course of business provides automotive retail loans to consumers, including to customers at certain of Sonic s dealership subsidiaries. For each auto loan referred to Capital Bank by one of Sonic s dealerships, Capital Bank compensated both the dealership and Sonic. The Board and the N&CG Committee determined that the level of business between Capital Bank and Sonic in fiscal 2015 was not material to either party. As a result of this evaluation, the Board determined those relationships that do exist or did exist within the last three years (except for Messrs. O. Bruton Smith s, B. Scott Smith s, David Bruton Smith s and William R. Brooks) all fall well below the thresholds in the Categorical Standards. Consequently, the Board of Directors determined that each of Messrs. Belk, Doolan, Harris, Heller and Taylor is an independent director under the Categorical Standards, the NYSE rules and the SEC rules. The Board also determined that each member of the Audit, Compensation and N&CG Committees (see membership information below under Board Committees) is independent, including that each member of the Audit Committee is independent as that term is defined under Rule 10A-3(b)(1)(ii) of the Exchange Act, and that each member of the Compensation Committee is an outside director as defined under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code).

Board Leadership Structure and Role in Risk Oversight

Sonic separated the roles of Chairman of the Board and Chief Executive Officer in fiscal 2015. The Board believes that the existing leadership structure, under which Mr. O. Bruton Smith serves as Executive Chairman, and Mr. B. Scott Smith serves as Chief Executive Officer, is the most appropriate and in the best interests of Sonic and its stockholders at this time. Given Sonic s current needs, the Board believes this structure is optimal as it allows Mr. B. Scott Smith to focus on the day-to-day operation of the business, while allowing Mr. O. Bruton Smith to focus on overall leadership and strategic direction of Sonic, guidance of Sonic s senior management and leadership of the Board. Although the Board believes that this leadership structure is currently in the best interests of Sonic and its stockholders, the Board has the flexibility to elect the same individual to the position of Chairman of the Board and Chief Executive Officer if, in the future, the Board determines that returning to such a leadership structure would be appropriate.

Table of Contents

It is management s responsibility to manage risk and bring to the Board of Directors attention the most material risks to Sonic. Sonic s Board of Directors, including through Board committees comprised solely of independent directors, regularly reviews various areas of significant risk to Sonic, and advises and directs management on the scope and implementation of policies, strategic initiatives and other actions designed to mitigate various types of risks. Specific examples of risks primarily overseen by the full Board include competition risks, industry risks, economic risks, liquidity risks, business operations risks and risks related to acquisitions and dispositions.

Sonic s Audit Committee regularly reviews with management and the independent registered public accounting firm significant financial risk exposures and the processes management has implemented to monitor, control and report such exposures. Specific examples of risks primarily overseen by the Audit Committee include risks related to the preparation of Sonic s financial statements, disclosure controls and procedures, internal controls and procedures required by the Sarbanes-Oxley Act of 2002, accounting, financial and auditing risks, treasury risks (insurance, interest rate hedging, credit and debt), matters reported to the Audit Committee through the Internal Audit Department and through anonymous reporting procedures, risks posed by significant litigation matters, cyber risks and compliance with applicable laws and regulations.

Sonic s Compensation Committee reviews and evaluates potential risks related to the attraction and retention of talent, and risks related to the design of compensation programs established by the Compensation Committee for Sonic s executive officers.

Sonic s N&CG Committee monitors compliance with Sonic s Code of Business Conduct and Ethics, evaluates proposed affiliate transactions for compliance with Sonic s Charter and applicable contracts, and reviews compliance with applicable laws and regulations related to corporate governance.

Board Committees

The Board of Directors has three standing committees: the Audit Committee, the Compensation Committee and the N&CG Committee. Each of these committees acts pursuant to a written charter adopted by the Board of Directors.

Committee members and committee chairs are appointed by the Board and are identified in the following table:

Director	Audit Committee	Compensation Committee	N&CG Committee
O. Bruton Smith			
B. Scott Smith			
David Bruton Smith			
William I. Belk	X	X	X
William R. Brooks			
Victor H. Doolan	X		Chairman
John W. Harris III	Vice Chairman	Vice Chairman	X
Robert Heller	Chairman	X	
R. Eugene Taylor		Chairman	Vice Chairman

Table of Contents

Set forth below is a summary of the principal functions of each committee.

Audit Committee. The Audit Committee appoints Sonic s independent registered public accounting firm, reviews and approves the scope and results of audits performed by such firm and the Company s internal auditors, and reviews and approves the independent registered public accounting firm s fees for audit and non-audit services. It also reviews certain corporate compliance matters and reviews the adequacy and effectiveness of the Company s internal accounting and financial controls, its significant accounting policies, and its financial statements and related disclosures. A more detailed description of the Audit Committee s functions can be found in its charter. The Board of Directors has determined that each of Messrs. Belk, Doolan, Harris and Heller qualifies as an audit committee financial expert within the meaning of the SEC rules, is financially literate as determined by the Board, in its business judgment, and has accounting or related financial management expertise within the meaning of the NYSE rules. The Audit Committee met nine times during fiscal 2015.

Compensation Committee. The Compensation Committee administers certain compensation and employee benefit plans of Sonic and annually reviews and determines compensation of all executive officers of Sonic. The Compensation Committee administers the Sonic Automotive, Inc. 1997 Stock Option Plan (the Stock Option Plan), the Sonic Automotive, Inc. Employee Stock Purchase Plan (the Employee Plan), the Sonic Automotive, Inc. Incentive Compensation Plan (the Incentive Compensation Plan), the Sonic Automotive, Inc. 2004 Stock Incentive Plan (the 2004 Stock Incentive Plan), the Sonic Automotive, Inc. Supplemental Executive Retirement Plan (the SERP), the Sonic Automotive, Inc. 2012 Stock Incentive Plan (the 2012 Stock Incentive Plan) and certain other employee stock plans, approves individual grants of equity-based compensation under the plans it administers and periodically reviews Sonic s executive compensation program and takes action to modify programs that yield payments or benefits not closely related to Sonic s or its executives performance. The Compensation Committee also periodically reviews compensation of non-employee directors and makes recommendations to the Board of Directors, who determines the amount of such compensation. In formulating its recommendation to the Board, the Compensation Committee considers the recommendations of management and, from time to time, independent consulting firms that specialize in executive compensation. A more detailed description of the Compensation Committee s functions can be found in its charter. In affirmatively determining the independence of any director who serves on the Compensation Committee, the Board considers all factors specifically relevant to determining whether a director has a relationship to Sonic which is material to that director s ability to be independent from management in connection with the duties of a compensation committee member. The Compensation Committee met five times during fiscal 2015.

N&CG Committee. The N&CG Committee is responsible for identifying individuals who are qualified to serve as directors of Sonic and for recommending qualified nominees to the Board for election or reelection as directors of Sonic. The N&CG Committee will consider director nominees submitted by stockholders in accordance with the provisions of Sonic s Bylaws. The N&CG Committee is also responsible for recommending to the Board for the Board s approval committee members and chairpersons of committees of the Board and for establishing a system for, and monitoring the process of, performance reviews of the Board and its committees. Finally, the N&CG Committee is responsible for developing and recommending to the Board of Directors for the Board s approval a set of corporate governance principles applicable to Sonic and for monitoring compliance with Sonic s Code of Business Conduct and Ethics. A more detailed description of the N&CG Committee s functions can be found in its charter. The N&CG Committee met three times during fiscal 2015.

The N&CG Committee has a process of identifying and evaluating potential nominees for election as members of the Board of Directors, which includes considering recommendations by directors and management and may include engaging third-party search firms to assist the N&CG Committee in identifying and evaluating potential nominees. The N&CG Committee has adopted a policy that potential director nominees shall be evaluated no differently regardless of whether the nominee is recommended by a stockholder, a Board member or Sonic s management. As set forth in Sonic s Bylaws, Sonic s Corporate Governance Guidelines and the charter of Sonic s N&CG Committee, the N&CG Committee considers potential nominees for directors from all sources,

Table of Contents

develops information from many sources concerning the potential nominee, evaluates the potential nominee as to the qualifications that the N&CG Committee and the Board have established and in light of the current skill, background and experience of the Board s members and the future, ongoing needs of the Company, and makes a decision whether to recommend any potential nominee for consideration for election as a member of the Board of Directors.

Sonic s qualification standards for directors are set forth in its Corporate Governance Guidelines. These standards include the director s or nominee s:

- independent judgment;
- ability to qualify as an independent director (as defined under applicable SEC rules and applicable NYSE rules);
- ability to broadly represent the interests of all of the Company s stockholders and other constituencies;
- maturity and experience in policy making decisions;
- time commitments, including service on other boards of directors;
- business skills, background and relevant expertise that are useful to Sonic and its future needs;
- willingness and ability to serve on committees of the Board of Directors; and
- other factors relevant to the N&CG Committee s determination.

As stated in Sonic s Corporate Governance Guidelines, the Board of Directors should be composed ideally of persons having a diversity of skills, background and expertise that are useful to Sonic and its future and ongoing needs. With this goal in mind, when considering potential nominees for the Board of Directors, the N&CG Committee considers the standards above and each potential nominee s individual qualifications in light of the composition and needs of the Board of Directors at such time and its anticipated composition and needs in the future, but a director nominee should not be chosen nor excluded based on race, color, gender, national origin or sexual orientation.

Based on this process, the N&CG Committee recommended that Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith, William I. Belk, William R. Brooks, Victor H. Doolan, John W. Harris III, Robert Heller and R. Eugene Taylor be nominated for reelection to the Board of Directors. In determining each nomination was appropriate and that each nominee is qualified to serve on the Board of Directors, the N&CG Committee considered the following:

O. Bruton Smith: Mr. Smith is the Founder of Sonic and has served as Sonic s Executive Chairman since July 2015; served as Chairman and Chief Executive Officer of Sonic from the Company s inception in January 1997 until July 2015; is the father of Mr. B. Scott Smith and Mr. David Bruton Smith; owns, directly and indirectly, a significant percentage of Sonic s outstanding Common Stock that provides him, together with the other members of the Smith family, with majority voting control of Sonic; and has extensive expertise in the automotive dealership industry, having worked in the industry since 1966.

B. Scott Smith: Mr. Smith is the Co-Founder of Sonic; has served as Sonic s Chief Executive Officer since July 2015, as President since March 2007 and as an executive officer and director of Sonic since the Company s inception in January 1997; has over 26 years of experience working in the automobile dealership industry; is the son of Mr. O. Bruton Smith and the brother of Mr. David Bruton Smith; and owns, directly and indirectly, a significant percentage of Sonic s outstanding Common Stock that provides him, together with the other members of the Smith family, with majority voting control of Sonic.

David Bruton Smith: Mr. Smith has over 17 years of experience working in the automobile dealership industry; has served in several key roles as a manager and officer of Sonic over his more than 17 years of

Table of Contents

employment with the Company; has served on Sonic s Board of Directors since October 2008; is the son of Mr. O. Bruton Smith and the brother of Mr. B. Scott Smith; and owns, directly and indirectly, a significant percentage of Sonic s outstanding Common Stock that provides him, together with the other members of the Smith family, with majority voting control of Sonic.

William I. Belk: Mr. Belk has extensive consumer retail experience, serving in many positions of responsibility over a lengthy previous career at Belk Stores, a retail department store chain; has served on Sonic s Board of Directors, Audit Committee and Compensation Committee since March 1998 and N&CG Committee since December 2014; and has further served as Sonic s Lead Independent Director since August 2002.

William R. Brooks: Mr. Brooks has significant accounting and financial management expertise, having served as Chief Financial Officer of SMI, a publicly traded corporation, since 1994; has further served on Sonic s Board of Directors since the Company s inception in January 1997; and also serves as an officer and director of SFC, the largest stockholder of Sonic.

Victor H. Doolan: Mr. Doolan has significant expertise in the automotive industry, and particularly in manufacturing, sales and marketing, serving previously as President and Chief Executive Officer of Volvo Cars North America, as Executive Director of the Premier Automotive Group (the luxury division of Ford Motor Company during his tenure), and a 23-year career with BMW culminating with his service as President of BMW of North America; and has served on Sonic s Board of Directors, Audit Committee and N&CG Committee since July 2005, and served on Sonic s Compensation Committee from December 2009 to December 2014.

John W. Harris III: Mr. Harris has significant expertise in commercial real estate and finance, having served as President of Lincoln Harris, LLC since September 2015, Chief Operating Officer and Executive Vice President of Lincoln Harris from March 2012 to September 2015 and in various positions at Fortress Investment Group LLC from 2004 to 2012. In addition, Mr. Harris also has experience as a director of other organizations. Mr. Harris has served on Sonic s Board of Directors, Audit Committee, Compensation Committee and N&CG Committee since October 2014.

Robert Heller: Mr. Heller has significant expertise in economics, business, banking and consumer finance, having served previously as a Governor of the Federal Reserve System, President and Chief Executive Officer of Visa U.S.A., and as a director and Executive Vice President of Fair, Isaac and Company; and has served on Sonic s Board of Directors, Audit Committee and Compensation Committee since January 2000.

R. Eugene Taylor: Mr. Taylor has significant management experience and expertise in the banking and finance industry, having served as Chairman, Chief Executive Officer and a director of CBFC since 2009 and previously in various leadership positions with Bank of America Corporation. Prior to co-founding CBFC, Mr. Taylor spent 38 years at Bank of America Corporation and its predecessor companies, most recently as Vice Chairman of Bank of America and President of Global Corporate & Investment Banking. Mr. Taylor has served on Sonic s Board of Directors since February 2015 and on the Compensation Committee and N&CG Committee of the Board since April 2015.

Director Meetings

Our Board of Directors held four meetings during fiscal 2015. Each incumbent director attended 75% or more of the aggregate number of meetings of the Board and committees of the Board on which such director served during fiscal 2015, except for Mr. O. Bruton Smith. Pursuant to the Company s Corporate Governance Guidelines, the independent directors meet in executive session without members of management present prior to or after each regularly scheduled Board meeting. Mr. William I. Belk, as Lead Independent Director, presides over these executive sessions.

Table of Contents

Annual Meetings of Sonic s Stockholders

It is the Board s policy that the directors should attend our annual meeting of stockholders. All 10 of our directors in office at the time attended last year s annual stockholders meeting.

Annual Evaluation of Board of Directors and Committees

The Board of Directors evaluates the performance of each committee of the Board, the Lead Independent Director and the Board of Directors as a whole on an annual basis. In connection with this annual self-evaluation, each director anonymously records his views on the performance of each committee, the Lead Independent Director and the Board of Directors. The entire Board of Directors reviews these reports and determines what, if any, actions should be taken in the upcoming year to improve its effectiveness and the effectiveness of each committee of the Board and the Lead Independent Director.

Policies and Procedures for Review, Approval or Ratification of Transactions with Affiliates

Pursuant to its written charter, the N&CG Committee reviews and evaluates all transactions between Sonic and its affiliates and considers issues of possible conflicts of interest, if such issues arise. In addition, transactions between Sonic and its affiliates are reviewed by the full Board of Directors and/or its independent directors in accordance with the terms of Sonic s Charter, its senior credit facilities and the indentures governing its outstanding senior subordinated notes. These documents require, subject to certain exceptions, that a transaction between Sonic and an affiliate:

- be made in good faith and in writing and be on terms no less favorable to Sonic than those obtainable in a comparable arm s-length transaction between Sonic and an unrelated third party;
- involving aggregate payments in excess of $500,000, be (i) approved by a majority of the members of Sonic s Board of Directors and a majority of Sonic s independent directors or (ii) Sonic must receive an opinion as to the financial fairness of the transaction from an investment banking or appraisal firm of national standing; and
- involving aggregate value in excess of:
  - $5.0 million, be approved by a majority of Sonic s disinterested directors; and
  - $15.0 million, be approved by a majority of Sonic s disinterested directors or Sonic must obtain a written opinion as to the financial fairness of the transaction from an investment banking firm of national standing or other recognized independent expert with experience appraising the terms and conditions of the type of such transaction.

Transactions with Affiliates

Our Executive Chairman, Mr. O. Bruton Smith, is also the Executive Chairman of SMI, and Mr. Marcus G. Smith, a greater than 10% beneficial owner of Sonic, is the Chief Executive Officer and President of SMI. Certain of Sonic s dealerships purchase the zMAX micro-lubricant from Oil-Chem Research Company (Oil-Chem), a subsidiary of SMI, for resale to customers of Sonic s dealerships in the ordinary course of business. Total purchases from Oil-Chem by Sonic dealerships were approximately $2.1 million in the fiscal year ended December 31, 2015. Sonic also engaged in other transactions with various SMI subsidiaries, consisting primarily of merchandise and apparel purchases from SMI Properties, for a net amount of approximately $0.8 million in the fiscal year ended December 31, 2015. Because the Smith family and SFC, an entity jointly controlled by the members of the Smith family, own collectively approximately 70% of SMI, under applicable SEC rules, the amount of Messrs. O. Bruton Smith s, B. Scott Smith s, David Bruton Smith s and Marcus G. Smith s interest in these transactions may be deemed to be approximately $1.5 million and $0.6 million, respectively.

15

Table of Contents

Sonic participates in various aircraft-related transactions with SFC. Such transactions include, but are not limited to, the use of aircraft owned by SFC for business-related travel by Sonic executives, a management agreement with SFC for storage and maintenance of aircraft leased by Sonic from unrelated third parties and the use of Sonic s aircraft for business-related travel by certain affiliates of SFC. Sonic incurred net expenses of approximately $0.6 million in the fiscal year ended December 31, 2015 in aircraft-related transactions with these related parties. Because the Smith family owns 100% of SFC, under applicable SEC rules, the amount of Messrs. O. Bruton Smith s, B. Scott Smith s, David Bruton Smith s and Marcus G. Smith s interest in these transactions may be deemed to be approximately $0.6 million.

Stockholder Nominations of Directors

Stockholders may recommend a director candidate for consideration by the N&CG Committee by submitting the candidate s name in accordance with provisions of our Bylaws, which require advance notice to Sonic and certain other information. In general, under the Bylaws, the written notice must be delivered to, or mailed and received at, Sonic s principal executive offices not less than 60 days and not more than 90 days prior to the first anniversary of the preceding year s annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is more than 30 days before or after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the close of business on the 10th day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first.

The notice must contain certain information about the nominee and the stockholder submitting the nomination, including, (i) with respect to the nominee, the nominee s name, date of birth, business and residential addresses and the information that would be required to be disclosed about the nominee pursuant to the SEC rules in a proxy statement and, (ii) with respect to the stockholder submitting the nomination and any person acting in concert with that stockholder, the name and business address of such stockholder and each such person, a representation that the stockholder is a stockholder of record of shares of Sonic s Common Stock entitled to vote at the meeting to which the notice pertains and intends to appear in person or by proxy at the meeting to nominate the nominee, a description of all arrangements, understandings or relationships between or among the stockholder, any person acting in concert with the stockholder and the nominee, and the class and number of shares of Common Stock beneficially owned by the stockholder and any person acting in concert with that stockholder. A stockholder who is interested in recommending a director candidate should request a copy of Sonic s Bylaw provisions by writing to Stephen K. Coss, Senior Vice President, General Counsel and Secretary at Sonic Automotive, Inc., 4401 Colwick Road, Charlotte, North Carolina 28211.

How to Communicate with the Board of Directors and Non-Management Directors

Stockholders and other interested parties wishing to communicate with our Board of Directors, or any of our individual directors, including the Lead Independent Director, may do so by sending a written communication addressed to the respective director(s), or in the case of communications to the entire Board of Directors addressed to the attention of Stephen K. Coss, Senior Vice President, General Counsel and Secretary at Sonic Automotive, Inc., 4401 Colwick Road, Charlotte, North Carolina 28211. Stockholders and other interested parties wishing to communicate with our non-management directors as a group may do so by sending a written communication to Mr. William I. Belk, as Lead Independent Director, at the above address. Any communication addressed to any director that is received at Sonic s principal office will be delivered or forwarded to the respective director(s) as soon as practicable. Any communication addressed to the Board of Directors, in general, will be promptly delivered or forwarded to each director. Sonic generally will not forward to directors a stockholder communication that it determines is primarily commercial in nature, relates to an improper or irrelevant topic or requests general information about Sonic.

Table of Contents

DIRECTOR COMPENSATION

The following table sets forth the compensation paid to each non-employee director who served on the Board in fiscal 2015. Directors who are also employees of Sonic (currently Messrs. O. Bruton Smith, B. Scott Smith and David Bruton Smith) do not receive compensation (other than their compensation as employees of Sonic) for their service on the Board of Directors.

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)[1][2]	All Other Compensation ($)[3]	Total ($)
William I. Belk	$ 82,500	$ 74,676	$ 16,535	$ 173,711
William R. Brooks	$ 70,000	$ 74,676	$ 10,238	$ 154,914
Bernard C. Byrd, Jr. [4]	$ 82,500	$ 74,676	$ 15,045	$ 172,221
Victor H. Doolan	$ 82,500	$ 74,676	$ 16,084	$ 173,260
John W. Harris III	$ 82,500	$ 74,676	$ 27,991	$ 185,168
Robert Heller	$ 82,500	$ 74,676	$ 22,186	$ 179,362
R. Eugene Taylor	$ 65,153	$ 74,676	$ 18,468	$ 158,297

(1) The non-employee directors had the following stock awards outstanding as of December 31, 2015:

Director	Outstanding Stock Awards (#)
William I. Belk	3,016
William R. Brooks	3,016
Bernard C. Byrd, Jr.	3,016
Victor H. Doolan	3,016
John W. Harris III	3,016
Robert Heller	3,016
R. Eugene Taylor	3,016

(2) The dollar amount shown for these stock awards represents the aggregate grant date fair value as calculated under the provisions of Stock Compensation in the Financial Accounting Standards Board Accounting Standards Codification (ASC) Topic 718. See Note 10 to Sonic s Consolidated Financial Statements included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2015 for the valuation assumptions used in determining the fair value of the awards. These amounts reflect the accounting expense and do not correspond to the actual value that will be recognized by the directors.

(3) The amounts shown in this column include the imputed value of demonstrator vehicles provided by the Company. The value assigned to the demonstrator vehicles was calculated under rules established by the Internal Revenue Service (the IRS). The incremental cost of demonstrator vehicles is not calculable because those vehicles are provided to the directors by our dealership subsidiaries.

(4) Mr. Byrd resigned from the Board on January 11, 2016, and his 2015 restricted stock award of 3,016 shares was forfeited at that time. Each non-employee director receives a $70,000 annual cash retainer, payable in quarterly installments, and a demonstrator vehicle for personal use. Sonic s Lead Independent Director and the chairpersons of the Audit Committee, the Compensation Committee and the N&CG Committee each receive an additional annual cash retainer of $12,500, payable in quarterly installments. The vice chairperson of any committee of the Board receives an additional annual cash retainer of $6,250, payable in quarterly installments. Non-employee directors are eligible to participate in the Sonic Automotive, Inc. Deferred Compensation Plan (the Deferred Plan) and may elect to defer up to 100% of their annual cash retainer fees under the Deferred Plan. No non-employee directors elected to participate in the Deferred Plan for fiscal 2015.

17

Table of Contents

Non-employee directors also receive automatic grants of restricted stock during each year of service under the Sonic Automotive, Inc. 2012 Formula Restricted Stock Plan for Non-Employee Directors (the 2012 Formula Plan). The 2012 Formula Plan provides for an annual grant of restricted stock to each eligible non-employee director on the first business day following each annual meeting of Sonic s stockholders, beginning with the 2012 annual meeting of stockholders. The number of restricted shares of Class A common stock granted to an eligible non-employee director each year will equal $75,000 divided by the average closing price of the Class A common stock on the NYSE for the 20 trading days immediately prior to the grant date (rounded up to the nearest whole share). Generally, subject to the director s continued service on the Board, the restricted stock will vest in full on the first anniversary of the grant date or, if earlier, the day before the next annual meeting of Sonic s stockholders following the grant date. If a non-employee director initially becomes a member of Sonic s Board during any calendar year, but after the meeting of Sonic s stockholders for that year, the non-employee director will receive a restricted stock grant upon his or her election to the Board with the number of shares determined as described above and, subject to the director s continued service on Sonic s Board, the restricted stock generally will vest in full on the first anniversary of the grant date.

Shares of restricted stock granted under the 2012 Formula Plan may not be sold, assigned, pledged or otherwise transferred to the extent they remain unvested. A director holding restricted stock will have voting and dividend rights with respect to such shares of restricted stock, although dividends paid in shares will be considered restricted stock.

Except in the event of a termination of service immediately prior to or upon a change in control (as defined in the 2012 Formula Plan), if a director s service on the Board terminates for any reason other than death or disability (as defined in the 2012 Formula Plan), all shares of restricted stock not vested at the time of such termination are forfeited. If the director s service on the Board terminates due to his death or disability or immediately prior to or upon a change in control of Sonic, the director s restricted stock will become fully vested. Upon either the consummation of a tender or exchange offer that constitutes a change in control of Sonic or the third business day prior to the effective date of any other change in control of Sonic, all outstanding restricted stock will become fully vested.

AUDIT COMMITTEE REPORT

The Audit Committee is appointed by the Board of Directors to assist the Board in fulfilling its oversight responsibilities relating to Sonic s accounting policies, reporting policies, internal controls, compliance with legal and regulatory requirements, and the integrity of Sonic s financial reports. The Audit Committee manages Sonic s relationship with the Company s independent registered public accounting firm, who is ultimately accountable to the Audit Committee. The Board of Directors has determined that each member of the Audit Committee is financially literate as such term is defined by the NYSE rules and independent as such term is defined by the NYSE rules and the SEC rules.

The Audit Committee reviewed and discussed the audited financial statements of Sonic with management and KPMG LLP, Sonic s independent registered public accounting firm. Management has the responsibility for preparing the financial statements, certifying that Sonic s financial statements are complete, accurate and prepared in accordance with U.S. generally accepted accounting principles (GAAP), and implementing and maintaining internal controls and attesting to internal control over financial reporting. The independent registered public accounting firm has the responsibility for performing an independent audit of the financial statements in accordance with generally accepted auditing standards and expressing an opinion on the effectiveness of internal control over financial reporting. The Audit Committee also discussed and reviewed with the independent registered public accounting firm all matters required to be discussed by generally accepted auditing standards, including those described in Auditing Standard No. 16, Communications with Audit Committees (AS 16). With and without management present, the Audit Committee discussed and reviewed the results of the independent registered public accounting firm s audit of the financial statements.

Table of Contents

During fiscal 2015, the Audit Committee met nine times, including meetings to discuss the interim financial information contained in each quarterly earnings announcement for the quarters ended December 31, 2014, March 31, 2015, June 30, 2015 and September 30, 2015 with the Chief Financial Officer and the independent registered public accounting firm prior to public release. In addition, the Audit Committee regularly monitored the progress of management and the independent registered public accounting firm in assessing Sonic s compliance with Section 404 of the Sarbanes-Oxley Act of 2002, including their findings, required resources and progress throughout the year.

In discharging its oversight responsibility as to the audit process, the Audit Committee received from the independent registered public accounting firm the written disclosures and the letter from the independent registered public accounting firm required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accounting firm s communications with the Audit Committee concerning independence, and has discussed with the independent registered public accounting firm the independent registered public accounting firm s independence. The Audit Committee met separately with management, internal auditors and the independent registered public accounting firm to discuss, among other things, the adequacy and effectiveness of Sonic s internal accounting and financial controls, the internal audit function s organization, responsibilities, budget and staffing and reviewed with both the independent registered public accounting firm and the internal auditors their audit plans, audit scope and identification of audit risks.

Based on these reviews and discussions with management and the independent registered public accounting firm, the Audit Committee recommended to the Board, and the Board approved, that Sonic s audited financial statements be included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2015 for filing with the SEC. The Audit Committee also recommended the appointment of the independent registered public accounting firm, KPMG LLP, as Sonic s independent registered public accounting firm for the fiscal year ending December 31, 2016 and the Board concurred in such recommendation.

Robert Heller, Chairman

John W. Harris III, Vice Chairman

William I. Belk

Victor H. Doolan

Table of Contents

PROPOSAL 2

RATIFICATION OF THE APPOINTMENT OF

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of the Board of Directors has appointed KPMG LLP to serve as Sonic s independent registered public accounting firm for the fiscal year ending December 31, 2016. KPMG LLP has acted in such capacity for Sonic since May 2, 2014 when the Audit Committee approved the engagement of KPMG LLP as Sonic s independent registered public accounting firm for the fiscal year ended December 31, 2014, and thereby dismissed Ernst & Young LLP from that role.

Neither the reports of Ernst & Young LLP nor KPMG LLP on Sonic s consolidated financial statements as of and for the fiscal years ended December 31, 2014 and 2015, respectively, contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope or accounting principles. During the fiscal year ended December 31, 2014, and the subsequent interim period through May 2, 2014, there were no (i) disagreements (as that term is defined in Item 304(a)(1)(iv) of Regulation S-K) with Ernst & Young LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to Ernst & Young LLP s satisfaction, would have caused Ernst & Young LLP to make reference to the subject matter thereof in its reports for such fiscal year and interim period, or (ii) reportable events as that term is described in Item 304(a)(1)(v) of Regulation S-K.

Representatives of KPMG LLP are expected to be present at the Annual Meeting. They will have an opportunity to make a statement if they so desire and are expected to be available to respond to appropriate questions.

Stockholder ratification of the Audit Committee s appointment of KPMG LLP as our independent registered public accounting firm is not required by our Bylaws or otherwise. Nevertheless, the Board is submitting the appointment of KPMG LLP to the stockholders for ratification as a matter of good corporate practice and will reconsider whether to retain KPMG LLP if the stockholders fail to ratify the Audit Committee s appointment. In addition, even if the stockholders ratify the appointment of KPMG LLP, the Audit Committee may in its discretion appoint a different independent registered public accounting firm at any time during the year if the Audit Committee determines that a change is in the best interests of Sonic and its stockholders.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR

THE RATIFICATION OF THE APPOINTMENT OF KPMG LLP

AS SONIC S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

FOR THE FISCAL YEAR ENDING DECEMBER 31, 2016.

Table of Contents

Fees Paid to Independent Registered Public Accounting Firm

The following table presents fees for professional audit services rendered by KPMG LLP for the audit of Sonic s consolidated financial statements for the fiscal years ended December 31, 2014 and 2015 and fees billed for other services rendered by KPMG LLP during those periods.

	FY 2014	FY 2015
Audit Fees [1]	$ 2,350,000	$ 2,467,850
Audit-Related Fees [2]	$ 90,700	$ 57,106
Tax Fees	$	$
All Other Fees [3]	$	$ 185,726

(1) Audit fees consist of fees billed for the respective year for professional services rendered in connection with or related to the audit of our annual consolidated financial statements and the review of interim consolidated financial statements included in our Form 10-Qs, or services normally provided in connection with statutory and regulatory filings or engagements, including registration statements, and for services related to compliance with Section 404 of the Sarbanes-Oxley Act of 2002.

(2) Audit-related fees consist of fees billed for the respective year for assurance and related services reasonably related to the performance of the audit or review of our annual or interim consolidated financial statements and are not reported under the heading Audit Fees.

(3) All other fees for fiscal 2015 consist of fees billed for consulting services related to Sonic s accounting centralization/shared services initiative.

Pre-Approval of Audit and Non-Audit Services of Independent Registered Public Accounting Firm

The Audit Committee s policy is to pre-approve all audit and permissible non-audit services to be performed by the independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services. All such services provided in fiscal year 2015 were approved by the Audit Committee. The Audit Committee concluded that the provision of such services by KPMG LLP was compatible with the maintenance of that firm s independence. The Audit Committee has delegated pre-approval authority to its chairperson when necessary due to timing considerations. The chairperson in turn reports to the Audit Committee at least quarterly on any services he pre-approved since his last report.

Table of Contents

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

This Compensation Discussion and Analysis (CD&A) provides a detailed description of our executive compensation philosophy and programs, the compensation decisions the Compensation Committee has made under those programs and the factors considered in making those decisions. This CD&A focuses on the compensation of our named executive officers for 2015 (Named Executive Officers), who were:

Name	Title
O. Bruton Smith	Executive Chairman *(beginning July 22, 2015)*
	Chairman and Chief Executive Officer *(before July 22, 2015)*
B. Scott Smith	President and Chief Executive Officer *(beginning July 22, 2015)*
	President and Chief Strategic Officer *(before July 22, 2015)*
David Bruton Smith	Vice Chairman
Jeff Dyke	Executive Vice President of Operations
Heath R. Byrd	Executive Vice President and Chief Financial Officer

2015 Executive Officer Compensation Program

The Compensation Committee believes that its compensation philosophy continues to drive our Named Executive Officers and salaried employees to produce sustainable, positive results for the Company and our stockholders. In this regard, the policy of the Compensation Committee is to:

- link executive compensation to Sonic s business strategy and performance to attract, retain and reward key executive officers;
- provide performance incentives and equity-based compensation intended to align the long-term interests of executive officers with those of Sonic s stockholders; and
- offer salaries, incentive performance pay opportunities and perquisites that are competitive in the marketplace.

Sonic s executive compensation program is comprised primarily of two components: annual cash compensation, paid in the form of base salary and performance-based bonuses, and long-term equity compensation, principally in the form of performance-based equity awards with respect to our Class A common stock, such as restricted shares, restricted stock units and stock options. This compensation program is designed to place emphasis on performance-based compensation. The Compensation Committee typically reviews and adjusts base salaries and awards of cash bonuses and equity-based compensation in the first quarter of each year based on several factors, including management s recommendations that are developed by the President and the Chief Financial Officer together with the Chief Executive Officer through a collaborative process involving members of Sonic s senior management team. The President, the Chief Financial Officer and other members of senior management presented management s written recommendations, reports and proposals on 2015 compensation to the Compensation Committee. These recommendations, reports and proposals addressed topics such as base salaries, overall structure, target levels and payout levels for the annual cash bonus program under Sonic s Incentive Compensation Plan, equity awards to executive officers and the rationale for these recommendations. The Compensation Committee considered these recommendations before determining compensation.

The Compensation Committee also weighed the affirmative stockholder advisory votes on named executive officer compensation at the Company s 2015 annual meeting of stockholders and at the Company s 2014 annual meeting of stockholders as one of the many factors it considered in connection with determining

22

Table of Contents

executive compensation. Approximately 99% of the votes cast by our stockholders at the 2015 annual meeting were in favor of the proposal to approve, on an advisory basis, our named executive officer compensation, and approximately 96% of the votes cast by our stockholders at the 2014 annual meeting were in favor of the proposal to approve, on an advisory basis, our named executive officer compensation.

Use of Compensation Consultant

The Compensation Committee has the authority to retain, at the Company s expense, such independent consultants or other advisers it deems necessary to carry out its responsibilities. For fiscal year 2015, the Compensation Committee did not retain a compensation consultant. Instead, the Compensation Committee reviewed aspects of our historical compensation practices and other information which it considered together with the competitiveness of our compensation and the recommendations developed and presented by the Chief Executive Officer, the President and the Chief Financial Officer, all in order to determine executive compensation for the Named Executive Officers in 2015 in a manner that it believes best reflects individual responsibilities and contributions and provides incentives to achieve our business and financial objectives.

The Compensation Committee did engage Towers Watson in October 2015 to provide a market comparison of compensation for five executive officer positions and one officer position regarding base salaries, annual incentives and long-term incentives, to provide insights into retail sector compensation trends, and to present its findings to the Compensation Committee. The Compensation Committee may use or refer to this information along with management s recommendations and other factors in determining executive officer compensation for 2016. The Compensation Committee previously retained Towers Watson in 2013 to provide certain analysis of the competitiveness of base salaries, annual cash bonus programs, total cash compensation (base salary plus cash bonus), long-term incentives and total direct compensation (total cash compensation plus the value of long-term incentives), paid by Sonic to its executive officers in comparison to similarly-situated executive officers of certain publicly traded automotive retail peer companies. Towers Watson also later was engaged in 2013 to advise the Compensation Committee on the design of a long-term incentive plan for EchoPark Automotive, Inc., a subsidiary of Sonic, and to provide related services. This engagement ended during 2014.

Although Sonic qualifies as a controlled company for purposes of the NYSE rules and, therefore, is not required to comply with all of the requirements of those rules, the Compensation Committee has assessed Towers Watson s independence as a compensation consultant by reference to the NYSE rules. At the time that Towers Watson provided the services during 2015 as described above, Towers Watson did not provide other significant services to Sonic and had no other direct or indirect business relationships with Sonic or any of its affiliates.

Taking these and other factors into account, the Compensation Committee has determined that the work performed by Towers Watson does not raise any conflicts of interest. Additionally, based on its analysis of certain factors identified as being relevant to compensation consultant independence, the Compensation Committee has concluded that Towers Watson is independent of the Company s management.

Annual Cash Compensation

Annual cash compensation for Sonic s Named Executive Officers consists of a base salary and the potential for an annual performance-based cash bonus. The annual cash compensation paid by Sonic to its Named Executive Officers during 2015 was targeted to be competitive principally in relation to other automotive retailing companies (such as those included in the Peer Group Index in the performance graph appearing in our annual report to stockholders). While the Compensation Committee analyzes the competitiveness of annual cash compensation paid by Sonic to its executives in comparison to data from comparable companies, the Compensation Committee has not adopted any specific benchmarks for compensation of Sonic s executives in comparison to other companies.

Table of Contents

Base Salary

The base salaries of Sonic s Named Executive Officers and adjustments to such executive officers base salaries are generally based upon a subjective evaluation of the executive s performance by the Compensation Committee, executive compensation of comparable companies and management s recommendations. The Compensation Committee s evaluation is based upon non-quantitative factors such as the current responsibilities of each executive officer, the compensation of similarly situated executive officers of comparable companies, the performance of each executive officer during the prior calendar year (including subjective and objective evaluations of the performance of business units and functions under the particular executive s supervision) and Sonic s strong operating and financial performance during the 2014 calendar year. The Compensation Committee approved base salary increases, effective March 1, 2015, for the following executive officers in the following amounts: Mr. O. Bruton Smith, from $1,202,000 to $1,226,040; Mr. B. Scott Smith, from $1,038,200 to $1,058,964; Mr. David Bruton Smith, from $706,100 to $720,222; Mr. Jeff Dyke, from $927,000 to $945,540; and Mr. Heath R. Byrd, from $647,850 to $660,807.

Performance-Based Cash Bonuses

During 2015, Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith, Jeff Dyke and Heath R. Byrd participated in the Incentive Compensation Plan. Compensation under the Incentive Compensation Plan is intended to provide highly-qualified executives and other key employees with an incentive to devote their best efforts to Sonic and enhance the value of Sonic for the benefit of stockholders. After consideration of management s recommendations, on February 12, 2015, the Compensation Committee established a two-tiered approach to determine potential incentive cash bonus awards for Messrs. O. Bruton Smith, B. Scott Smith, David Bruton Smith, Jeff Dyke and Heath R. Byrd for the performance period beginning January 1, 2015 and ending December 31, 2015. The first tier was an objective threshold achievement level of defined adjusted earnings per share (EPS as described below) for Sonic for the 2015 calendar year of at least $1.39 (75% of the adjusted EPS Target Objective for the second tier). No bonuses were payable under the Incentive Compensation Plan for 2015 if such threshold performance goal was not achieved. If the threshold adjusted EPS goal was achieved, then each Named Executive Officer was eligible for a bonus of $3,000,000 (the maximum bonus amount). Adjusted EPS was selected as the primary performance goal under the 2015 bonus program in order to align the Named Executive Officers cash bonuses with profitability realized by the Company during 2015. However, the second tier of the bonus program established additional performance criteria that the Compensation Committee intended to use to determine actual bonus amounts payable to the Named Executive Officers. These performance goals included additional achievement levels related to adjusted EPS goals and also customer satisfaction (CSI as described below) performance goals based on the percentage of Sonic s dealerships that meet or exceed specified objectives, as reported by the respective manufacturers for such brands. If the first tier performance requirement was achieved, the Compensation Committee could, in its determination, exercise negative discretion to reduce the dollar amount of a Named Executive Officer s actual bonus to less than the maximum bonus amount based upon achievement of the adjusted EPS and CSI goals under the second tier of the bonus program along with other factors the Compensation Committee determined relevant, such as its subjective assessment of financial, operational, strategic, corporate and individual performance, and unanticipated contingencies and events. A Named Executive Officer s bonus amount under the Incentive Compensation Plan may be less than (but not more than) the maximum bonus amount, with annual cash bonuses (if any) to be paid as soon as administratively practicable following the Compensation Committee s determination of the extent to which the specified performance goals were achieved.

Under the second tier of the 2015 bonus program, the potential performance-based cash bonuses for the Named Executive Officers were based on a percentage of their respective annual base salary during the performance period. The Compensation Committee established two categories of performance goals for each of the Named Executive Officers: defined adjusted EPS levels and CSI performance for Sonic s dealerships. In establishing the potential bonus awards for each executive officer under the second tier of the 2015 bonus program, the Compensation Committee chose to more heavily weight the EPS component to more closely tie the executive s bonus to the profitability of the Company.

Table of Contents

For purposes of the Incentive Compensation Plan performance goals in 2015, adjusted EPS was defined as (A) Sonic s net income determined in accordance with GAAP, adjusted to fix the income tax rate on continuing and discontinued operations at 38.5% and to take into account the timing of the disposition of dealerships during 2015 such that the budget and actual performance of dealerships disposed of during 2015 are included in the calculation of adjusted EPS performance objective levels and adjusted EPS only for the period up to the date of such disposition, and excluding the effects of (i) any gain or loss recognized by Sonic on the disposition of dealerships (including asset or lease impairment charges related to a decision to sell a specific dealership), (ii) asset write-downs and impairment charges, (iii) debt restructuring charges and costs, (iv) litigation judgments or settlements attributable to two identified lawsuits in which Sonic or a subsidiary of Sonic is a party, (v) any assessed withdrawal liability or settlement against Sonic and/or any of Sonic s subsidiaries with respect to any of Sonic s dealership subsidiaries that participate in or have participated in a specified multiemployer pension plan, and (vi) the cumulative effect of any changes in GAAP during 2015, divided by (B) a diluted weighted average share count of 52,000,000 shares.

Under the second tier of the 2015 bonus program, the minimum, interim, target and maximum objective levels for 2015 based on achievement of adjusted EPS T>

the date on which we or the trustee receives written notice from the representative of holders of senior debt or the holders of at least a majority of the senior debt terminating the blockage period.

Any number of notices of non-payment defaults may be given, but during any 365-day consecutive period only one blockage period may commence, and the period may not exceed 179 days. No non-payment default with respect to senior debt that existed or was continuing on the date a blockage period for our subordinated debt securities commenced may be made the basis of another blockage period for those securities whether or not within a period of 365 consecutive days, unless at least 90 consecutive days have elapsed since the default was cured or waived.

Default Provisions

Events of Default. Unless we say otherwise in a prospectus supplement, each of the following is an event of default as to any of our senior or subordinated debt securities:

1. A default in the payment of any interest or any additional amounts on any debt security of that series or of any coupon appertaining thereto when it becomes due and payable, if the default continues for a period of 30 days.

Table of Contents

2. A default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity (upon acceleration, optional or mandatory redemption, required purchase or otherwise).

3. A default in the deposit of any sinking fund payment as required by the terms of any debt security of that series.

4. A default in the performance, or a breach, of any covenant or agreement by us under the applicable indenture (other than a default in the performance, or a breach of a covenant or agreement which is specifically dealt with in clause (1) through (8) hereof) if such default or breach continues for a period of 60 days after written notice has been given, by registered or certified mail:

(a) to us by the trustee; or

(b) to us and the trustee by the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series.

5. The occurrence of one or more defaults under any bond, debenture, note or other evidence of indebtedness for money borrowed by us (including obligations under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles but not including any indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of $5,000,000 or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us (including such leases but not including such indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of $5,000,000, whether such indebtedness now exists or shall hereafter be created, if the default has resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable or in the acceleration of such obligations, without such acceleration having been rescinded or annulled.

6. The entry by a court of competent jurisdiction under any applicable bankruptcy law that:

(a) is for relief against us or any of our significant subsidiaries in an involuntary case,

(b) appoints a receiver in respect of us or any of our significant subsidiaries or for all or substantially all of the property of any of us; or

(c) orders our liquidation or the liquidation of any of our significant subsidiaries,

and the order or decree remains unstayed and in effect for 90 days.

7. We or any of our significant subsidiaries do any of the following:

(a) commence a voluntary case or proceeding under any applicable bankruptcy law;

(b) consent to the entry of a decree or order for relief in respect of us or any of our significant subsidiaries in an involuntary case or proceeding under any applicable bankruptcy law;

(c) consent to the appointment of a receiver in respect of us or any of our significant subsidiaries for all or substantially all of our or its property; or

(d) makes a general assignment for the benefit of our creditors or the creditors of any of our significant subsidiaries.

Table of Contents

8. Any other event of default provided with respect to the debt securities of that series.

Waiver of Default. Unless we say otherwise in a prospectus supplement, holders of not less than a majority of the debt securities of a series may waive any past default except for:

a payment default; or

a default on any provision that requires the consent of all holders to modify.

Acceleration of Payment. Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that if an event of default occurs and continues, the trustee or the holders of not less than 25% in aggregate principal amount of the debt securities of the applicable series outstanding may declare all unpaid principal of, premium, if any, and accrued interest on, all the debt securities of the applicable series to be due and payable immediately by a notice given in writing to us (and to the trustee if given by the holders of the debt securities of the applicable series). The trustee may, then, at its discretion, proceed to protect and enforce the rights of the holders of the applicable debt securities by appropriate judicial proceeding.

Waiver of Acceleration. Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that, after a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in aggregate principal amount of the debt securities, by written notice to us and the trustee, may rescind and annul such declaration if:

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

all overdue interest and any additional amounts payable on all outstanding debt securities of the applicable series and any related coupons,

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

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

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

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

Notices of Default. Unless we say otherwise in a prospectus supplement, we are required to deliver to the trustee, on or before a date not more than 120 days after the end of each fiscal year, a certificate of compliance with the indenture, and, in the event of any noncompliance, specifying such noncompliance, including whether or not any default has occurred. The trustee is required to give notice to the holders of debt securities within 90 days of a default under the applicable indenture unless such default shall have been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to such series (except a default in the payment of the principal of, and premium, if any, or interest on or any additional amounts with respect to any debt security of such series or in the payment of any sinking fund installment in respect of any debt security of such series) if the trustee considers such withholding to be in the interest of the holders.

Table of Contents

Limitation on Suits. Unless we say otherwise in a prospectus supplement, each indenture provides or will provide that no holders of debt securities of any series may institute any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder unless the trustee has failed to act for a period of 60 days after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in aggregate principal amount of the debt securities of the applicable series outstanding together with an offer of indemnity from such holders that is reasonably satisfactory to the trustee and the trustee has received no direction inconsistent with such written request during such 60-day period from the holders of a majority in aggregate principal amount of the debt securities of the applicable series outstanding. This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of, and premium, if any, and interest on such debt securities at the respective due dates of the securities.

Obligations of Trustee. Unless we say otherwise in a prospectus supplement, the trustee is under no obligation to exercise any of the rights or powers vested in it by the indenture at the request or direction of any of the holders of the debt securities unless they shall have offered to the trustee security or indemnity satisfactory to the trustee against the costs, expenses and liabilities that might be incurred thereby.

The Trust Indenture Act limits the trustee, should it become a creditor of ours or of any guarantor, from obtaining payment of claims in certain cases or realizing certain property received by it in respect of those claims, as security or otherwise. The trustee is permitted to engage in certain other transactions as long as, if it acquires any conflicting interest and an event of default occurs, it either cures the conflict or resigns as trustee.

For information regarding the acceleration of a portion of the principal amount of any original issue discount securities on the occurrence of an event of default, please read the prospectus supplement relating to the issuance of those securities.

Defeasance or Covenant Defeasance of Indenture

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

- the rights of holders of outstanding debt securities to receive, solely from funds deposited for this purpose, payments in respect of the principal of, premium, if any, and interest on those debt securities when the payments are due;
- the obligations with respect to the debt securities concerning issuing temporary debt securities, registration of debt securities, mutilated, destroyed, lost or stolen debt securities, and the maintenance of an office or agency for payment and money for security payments held in trust;
- the rights, powers, trusts, duties and immunities of the trustee; and
- the defeasance provisions of the indenture.

We will also be able to free ourselves from certain covenants that are described in an indenture by taking the actions described below. The discharge of obligations using this process is known as covenant defeasance. If we defease covenants under debt securities, then certain events (not including non-payment, enforceability of any guarantee, bankruptcy and insolvency events) described under Events of Default will no longer constitute an event of default with respect to the debt securities.

Table of Contents

Unless we say otherwise in a prospectus supplement, in order to exercise either defeasance or covenant defeasance as to the outstanding debt securities of a series:

we must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the debt securities of the applicable series, an amount in (i) currency, currencies or currency units in which those debt securities are then specified as payable at maturity, (ii) government obligations (as defined in the applicable indenture) or (iii) any combination thereof, as will be sufficient, without consideration of reinvestment of principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the trustee, to pay and discharge the principal of, premium, if any, and interest on the debt securities of the applicable series on the stated maturity of such principal or installment of principal or interest and any mandatory sinking fund payments;

in the case of defeasance, we will deliver to the trustee an opinion of counsel confirming that either:

we have received from, or there has been published by, the Internal Revenue Service a ruling, or

since the date of execution of the indenture, there has been a change in the applicable federal income tax law,

the effect of either being that the holders of the outstanding debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to 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;

in the case of covenant defeasance, we will deliver to the trustee an opinion of counsel to the effect that the holders of the debt securities of the applicable series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

no default, event of default or event which with notice or lapse of time or both would become an event of default shall have occurred and be continuing on the date of such deposit or insofar as clause 6 or 7 of Default Provisions Events of Default is concerned, at any time during the period ending on the 91st day after the date of deposit;

the defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, the indenture or any other material agreement or instrument to which we are a party or by which we are bound;

we will deliver to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent provided for that relate to either the defeasance or the covenant defeasance, as the case may be, have been met; and

we will deliver to the trustee an opinion of counsel to the effect that either (i) as a result of the deposit pursuant to the first bullet in this paragraph and the election to defease, registration is not required under the Investment Company Act of 1940, as amended, with respect to the trust funds representing the deposit, or (ii) all necessary registrations under the Investment Company Act have been effected.

Modifications and Amendments

Unless we say otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture with the consent of the holders of a majority in aggregate principal amount of the outstanding debt

Table of Contents

securities of all series affected by the modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each outstanding debt security of all series affected by the modification or amendment:

- change the stated maturity of the principal of, or any installment of interest on, any debt security;
- reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change any obligation of ours to pay additional amounts under the indenture, except as contemplated in the indenture, or reduce the amount of the principal of an original issue discount security that would be due and payable upon a declaration of acceleration of the maturity thereof or the amount thereof provable in bankruptcy;
- adversely affect any right of repayment at the option of the holder of any series of outstanding debt security;
- change the place of repayment where, or the currency, currency unit or composite currency in which, the principal or premium, if any, of any debt security or the interest thereon is payable;
- impair the right to institute suit for the enforcement of any such payment after the stated maturity of the debt security (or in the case of redemption, on or after the redemption date);
- reduce the percentage in principal amount of outstanding debt securities of any series for which the consent of the holders is required for any such supplemental indenture, or for any waiver of compliance with certain provisions of the indenture or certain defaults, or reduce the requirements for quorum or voting as provided in the indenture; or
- modify any of the provisions that relate to supplemental indentures and that require the consent of holders, that relate to the waiver of past defaults, that relate to the waiver of certain covenants, except to increase the percentage in principal amount of outstanding debt securities required to take such actions or to provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each debt security affected thereby.

Unless we say otherwise in a prospectus supplement, we and the trustee may modify and amend either indenture without the consent of the holders if the modification or amendment does only the following:

- evidences the succession of another person to us and the assumption by any such successor of any covenants under the indenture and in the debt securities of any series;
- adds to our covenants for the benefit of the holders of all or any series of debt securities or surrenders any of our rights or powers;
- adds any additional event of default for the benefit of the holders of all or any series of debt securities;
- secures the debt securities of any series;

adds or changes any provisions to the extent necessary to provide that bearer securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on bearer securities, to permit bearer securities to be issued in exchange for registered securities or bearer of securities of other authorized denominations, or to permit or facilitate the issuance of securities in uncertificated form, provided that any such action shall not adversely affect the interests of the holders of any series of outstanding debt securities in any material respect;

changes or eliminates any provision affecting only debt securities not yet issued;

Table of Contents

establishes the form or terms of debt securities of any series not yet issued;

evidences and provides for successor trustees or adds or changes any provisions of the indenture to the extent necessary to permit or facilitate the appointment of a separate trustee or trustees for specific series of debt securities;

cures any ambiguity, corrects or supplements any provisions which may be defective or inconsistent with any other provision, or makes any other provisions with respect to matters or questions arising under the indenture which shall not be inconsistent with the provisions of the indenture; provided, however, that no such modification or amendment may adversely affect the interest of holders of debt securities of any series then outstanding in any material respect; or

supplements any provision of the indenture to such extent as shall be necessary to permit the facilitation of defeasance and discharge of any series of debt securities; provided, however, that any such action may not adversely affect the interest of holders of debt securities of any series then outstanding in any material respect.

The holders of a majority in aggregate principal amount of the debt securities of a series outstanding may waive compliance with certain restrictive covenants and provisions of either indenture with respect to that series.

Original Issue Discount

We may issue debt securities under either indenture for less than their stated principal amount. Such securities may be treated as original issue discount securities, and they may be subject to special tax consequences. In addition, some debt securities that are offered and sold at their stated principal amount may, under certain circumstances, be treated as issued at an original issue discount for federal income tax purposes. We will describe the federal income tax consequences and other special consequences applicable to securities treated as original issue discount securities in the prospectus supplement relating to such securities. Original issue discount security generally means any debt security that:

does not provide for the payment of interest prior to maturity; or

is issued at a price lower than its face value and provides that upon redemption or acceleration of its stated maturity an amount less than its principal amount shall become due and payable.

Notices

Unless we say otherwise in a prospectus supplement, we will send notices to holders of debt securities by mail to the holder s address as it appears in the register.

Governing Law

Unless we say otherwise in a prospectus supplement, each indenture and the debt securities will be governed by the laws of the State of New York.

Table of Contents

DESCRIPTION OF SHARES OF BENEFICIAL INTEREST

We are a Maryland REIT. Your rights as a shareholder are governed by the Code of Maryland, including Title 8 of the Corporations and Associations Article, or Maryland REIT Law, our declaration of trust, our bylaws and our shareholder rights plan. The following summary of the material terms, rights and preferences of the shares of beneficial interest is not complete and is subject to and qualified in its entirety by reference to the laws of the State of Maryland, including Maryland REIT law, our declaration of trust, bylaws and shareholder rights plan and the articles supplementary with respect to our Series 1 preferred shares.

Authorized Shares

Our declaration of trust allows us to issue up to 100,000,000 common shares of beneficial interest, par value $.01 per share, and 15,000,000 preferred shares of beneficial interest, par value $.01 per share. As of June 11, 2009, we had issued and outstanding 59,156,354 common shares, and 399,896 preferred shares, which are designated as 5.417% Series 1 Cumulative Convertible Preferred Shares, which we refer to as the Series 1 preferred shares.

Authority of the Board of Trustees Relating to Authorization and Classification of Shares. Our declaration of trust allows our Board of Trustees to take the following actions without approval by you or any shareholder:

- classify or reclassify any authorized but unissued common shares or preferred shares into one or more classes or series of shares of beneficial interest;
- amend the declaration of trust to change the total number of shares of beneficial interest authorized; and
- amend the declaration of trust to change the authorized number of shares of any class or series of shares of beneficial interest.

If there are any laws or stock exchange rules which require us to obtain shareholder approval in order for us to take these actions, however, we will contact you and other shareholders to solicit that approval.

We believe that the power of the Board of Trustees to issue additional shares of beneficial interest will provide us with greater flexibility in structuring possible future financings and acquisitions and in meeting other future needs. Although the Board of Trustees does not currently intend to do so, it has the ability to issue a class or series of beneficial shares that could have the effect of delaying or preventing a change of our control that might involve a premium price for holders of our common shares or otherwise be favorable to them.

Common Shares

All common shares offered through this prospectus will be duly authorized, fully paid and nonassessable. As a shareholder, you will be entitled to receive distributions, or dividends, on the shares you own if the Board of Trustees authorizes a dividend to the holders of our common shares out of our legally available assets. Your right to receive those dividends may be affected, however, by the preferential rights of the Series 1 preferred shares or any other class or series of shares of beneficial interest and the provisions of our declaration of trust regarding restrictions on the transfer of shares of beneficial interest. For example, you may not receive dividends if no funds are available for distribution after we pay dividends to holders of preferred shares. In the event of our liquidation, dissolution or winding up, holders of our common shares will be entitled to share pro rata in all of our assets remaining after payment or provision for all of our debts and other liabilities and preferential amounts owing in respect of our Series 1 preferred shares and any other shares of beneficial interest having a priority over our common shares in the event of our liquidation, dissolution or winding up. As noted above under

Table of Contents

Authorized Shares, our outstanding Series 1 preferred shares rank prior to our common shares with respect to the payment of dividends and as to the distribution of assets in the event of our liquidation, dissolution or winding up.

Voting Rights. Each outstanding common share owned by a shareholder entitles that holder to one vote on all matters submitted to a vote of common shareholders, including the election of trustees. The right to vote is subject to the provisions of our declaration of trust regarding the restriction of the transfer of shares of beneficial interest, which we describe under Restrictions on Ownership and Transfer, below. There is no cumulative voting in the election of trustees, which means that, under Maryland law and our bylaws, the holders of a plurality of all of the votes cast at a meeting of shareholders duly called and at which a quorum is present can elect a trustee. The holders of the remaining shares will not be able to elect any trustees.

As a holder of a common share, you will not have any right to:

- convert your shares into any other security;
- have any funds set aside for future payments;
- require us to repurchase your shares; or
- purchase any of our securities, if other securities are offered for sale, other than as a member of the general public.

Subject to the terms of our declaration of trust regarding the restrictions on transfer of shares of beneficial interest, each common share has the same dividend, distribution, liquidation and other rights as each other common share.

According to the terms of our declaration of trust and bylaws, and Maryland law, all matters submitted to the shareholders for approval, except for those matters listed below, are approved if a majority of all the votes cast at a meeting of shareholders duly called and at which a quorum is present are voted in favor of approval. The following matters require approval other than by a majority of all votes cast:

- the election of trustees (which requires a plurality of all the votes cast at a meeting of our shareholders at which a quorum is present), provided, however, that if any trustee does not receive a majority of all the votes cast where the number of nominees is the same as the number of trustees to be elected, such trustee shall tender his or her resignation within five business days after certification of the vote and such resignation shall be acted upon by our Board of Trustees within sixty days of such certification;
- the removal of trustees (which requires the affirmative vote of the holders of two-thirds of the number of shares outstanding and entitled to vote on such a matter if the removal is approved or recommended by a vote of at least two-thirds of the Board of Trustees or the affirmative vote of the holders of not less than 80% of the number of shares then outstanding and entitled to vote on such matter if the removal is not approved or recommended by a vote of at least two-thirds of the Board of Trustees);
- the amendment of our declaration of trust by shareholders (which requires the affirmative vote of two-thirds of all votes entitled to be cast on the matter only if the amendment was not approved by a unanimous vote of the Board of Trustees, but requires the affirmative vote of only a majority of votes entitled to be cast on the matter if the amendment was approved by a unanimous vote of the Board of Trustees);
- our termination, winding up of affairs and liquidation (which requires, after approval by a majority of the entire Board of Trustees, the affirmative vote of two-thirds of all the votes entitled to be cast on the matter); and

Table of Contents

our merger or consolidation with another entity or sale of all or substantially all of our property (which requires the approval of the Board of Trustees and an affirmative vote of two-thirds of all the votes entitled to be cast on the matter).

Our declaration of trust permits the Board of Trustees to revoke our election to be taxed as a REIT under the Code or to determine that compliance with any restriction or limitations on ownership and transfers of shares set forth in the declaration of trust is no longer required in order for us to qualify as a REIT. Our declaration of trust also permits the Board of Trustees to amend the declaration of trust from time to time, without approval by you or the other shareholders, to:

qualify as a real estate investment trust under Maryland REIT law or the Code; or

to increase or decrease the authorized aggregate number of shares and number of authorized shares of any class or series.

In addition, any provision of our bylaws may be adopted, altered or repealed either by our Board of Trustees, subject to certain limitations contained in our bylaws, without any action by the shareholders or by the shareholders at any meeting of shareholders called for that purpose, by the affirmative vote of holders of not less than a majority of the shares then outstanding and entitled to vote.

Preemptive Rights. Under the declaration of trust, no holder of shares of beneficial interest has any preemptive rights to subscribe to any issuance of additional shares. The board of trustees, in classifying or reclassifying any unissued shares of beneficial interest, however, has the right to grant holders of shares preemptive rights to purchase or subscribe for additional shares of beneficial interest or other securities.

Stock Exchange Listing. The common shares are traded on the New York Stock Exchange under the trading symbol FRT.

Transfer Agent and Registrar. The transfer agent and registrar for the common shares is American Stock Transfer & Trust Company, New York, New York.

Series 1 Preferred Shares

In March 2007, we issued 399,896 Series 1 preferred shares and we filed articles supplementary to our declaration of trust setting forth the terms of the Series 1 preferred shares. Below is a brief description of the terms of the Series 1 preferred shares, which is subject to and qualified in its entirety by reference to the articles supplementary.

Rank. The Series 1 preferred shares rank prior to the common shares with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up. Our declaration of trust provides that, unless full cumulative dividends on all outstanding Series 1 preferred shares and any other class or series of our shares of beneficial interest ranking, as to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, on a parity with the Series 1 preferred shares, or Parity Shares, shall have been declared and paid or declared and set apart for payment for all past dividend periods, then no dividends, other than dividends paid solely in common shares, or options, warrants or rights to subscribe for or purchase common shares, or any other shares of beneficial interest which rank junior to the Series 1 preferred shares with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, or Junior Shares, shall be declared or paid or set apart for payment on the common shares nor shall any Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of common shares made for purposes of any employee incentive or benefit plan of ours) for any consideration by us, directly or indirectly (except by conversion into or exchange for shares of Junior Shares).

Table of Contents

Dividends. Each Series 1 preferred share is entitled to receive, when, as and if authorized by our Board of Trustees out of funds legally available for that purpose, cumulative preferential dividends payable in cash at a rate of 5.417% of the liquidation price of $25, which is equivalent to $1.35425 per annum.

Liquidation Preference. In the event of our liquidation, dissolution or winding up, the holders of Series 1 preferred shares shall be entitled to receive $25 per share, plus all accrued and unpaid dividends, before any distribution shall be made with respect to the common shares.

Voting Rights. The Series 1 preferred shares shall have no voting rights.

Conversion Rights. Subject to other applicable provisions within the articles supplementary for the Series 1 preferred shares, from the date of issuance, the Series 1 preferred shares shall be convertible, at the option of each holder, into a number of fully paid and nonassessable common shares determined by dividing (A) the product obtained by multiplying (i) the number of Series 1 preferred shares being converted by (ii) liquidation price; by (B) the option conversion price as in effect immediately prior to the close of business on the option conversion date.

Transfer Agent and Registrar. The transfer agent and registrar for the Series 1 preferred shares is American Stock Transfer & Trust Company, New York, New York.

Preferred Shares

In addition to the Series 1 preferred shares, the terms of which are described above, we may issue one or more series of preferred shares. The following is a general description of the preferred shares that we may offer from time to time. The particular terms of the preferred shares being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement.

General. Preferred shares may be offered and sold from time to time, in one or more series, as authorized by the Board of Trustees. The Board of Trustees is authorized by Maryland law and our declaration of trust to set for each series the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption. The Board of Trustees has the power to set preferences, powers and rights, voting or other terms of preferred shares that are senior to, or better than, the rights of holders of common shares or other classes or series of preferred shares. The offer and sale of preferred shares could have the effect of delaying or preventing a change of our control that might involve a premium price for holders of our common shares or otherwise be favorable to them.

Terms. You should refer to the prospectus supplement relating to the offering of any preferred shares for specific terms, including the following terms:

- the title of those preferred shares;
- the number of preferred shares offered and the offering price of those preferred shares;
- the dividend rate(s), period(s), amounts and/or payment date(s) or method(s) of calculation of any of those terms that apply to those preferred shares;
- the date from which dividends on those preferred shares will accumulate, if applicable;
- the terms and amount of a sinking fund, if any, for the purchase or redemption of those preferred shares;
- the redemption rights, including conditions, time(s) and the redemption price(s), if applicable, of those preferred shares;

22

Table of Contents

the voting rights, if any, of those preferred shares;

any listing of those preferred shares on any securities exchange;

the terms and conditions, if applicable, upon which those preferred shares will be convertible into common shares or any of our other securities, including the conversion price or rate (or manner of calculation thereof);

the relative ranking and preference of those preferred shares as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs;

any limitations on issuance of any series of preferred shares ranking senior to or on a parity with that series of preferred shares as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs;

the procedures for any auction and remarketing, if any, for those preferred shares;

any other specific terms, preferences, rights, limitations or restrictions of those preferred shares;

a discussion of any additional federal income tax consequences applicable to those preferred shares; and

any limitations on direct or beneficial ownership and restrictions on transfer in addition to those described in Restrictions on Ownership and Transfer, in each case as may be appropriate to preserve our status as a REIT.

The terms of any preferred shares we issue through this prospectus will be set forth in articles supplementary to our declaration of trust. We will file the articles supplementary as an exhibit to the registration statement that includes this prospectus, or as an exhibit to a filing with the SEC that is incorporated by reference into this prospectus. The description of preferred shares in any prospectus supplement will not describe all of the terms of the preferred shares in detail. You should read the applicable articles supplementary for a complete description of all of the terms.

Rank. Unless we say otherwise in a prospectus supplement, the preferred shares offered through that supplement will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank:

senior to all classes or series of our common shares, and to all other equity securities ranking junior to those preferred shares;

on a parity with all of our equity securities ranking on a parity with the preferred shares; and

junior to all of our equity securities ranking senior to the preferred shares.

For purposes of this description of our preferred shares, the term equity securities does not include convertible debt securities that we may offer from time to time.

Dividends. Subject to any preferential rights of any outstanding shares or series of shares and to the provisions of our declaration of trust regarding ownership of shares in excess of the ownership limitation described below under Restrictions on Ownership and Transfer, our preferred shareholders are entitled to receive dividends, when and as authorized by our Board of Trustees, out of legally available funds.

23

Table of Contents

Redemption. If we provide for a redemption right in a prospectus supplement, the preferred shares offered through that supplement will be subject to mandatory redemption or redemption at our option, in whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in that supplement.

Liquidation Preference. As to any liquidation preference applicable to preferred shares offered through this prospectus, the applicable supplement shall provide that, upon the voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of those preferred shares shall receive, before any distribution or payment shall be made to the holders of any other class or series of shares ranking junior to those preferred shares in our distribution of assets upon any liquidation, dissolution or winding up, and after payment or provision for payment of our debts and other liabilities, out of our assets legally available for distribution to stockholders, liquidating distributions in the amount of any liquidation preference per share (set forth in the applicable supplement), plus an amount, if applicable, equal to all distributions accrued and unpaid thereon (not including any accumulation in respect of unpaid distributions for prior distribution periods if those preferred shares do not have a cumulative distribution). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of those preferred shares will have no right or claim to any of our remaining assets. In the event that, upon our voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all of those outstanding preferred shares and the corresponding amounts payable on all of our shares of other classes or series of equity security ranking on a parity with those preferred shares in the distribution of assets upon liquidation, dissolution or winding up, then the holders of those preferred shares and all other such classes or series of equity security shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If the liquidating distributions are made in full to all holders of preferred shares entitled to receive those distributions prior to any other classes or series of equity security ranking junior to the preferred shares upon our liquidation, dissolution or winding up, then our remaining assets shall be distributed among the holders of those junior classes or series of equity shares, in each case according to their respective rights and preferences and their respective number of shares.

Voting Rights. Unless otherwise indicated in the applicable supplement, holders of preferred shares we issue in the future will not have any voting rights, except as may be required by applicable law or any applicable rules and regulations of the New York Stock Exchange.

Conversion Rights. The terms and conditions, if any, upon which any series of preferred shares is convertible into common shares will be set forth in the prospectus supplement relating to the offering of those preferred shares. These terms typically will include:

- the number of common shares into which the preferred shares are convertible;
- the conversion price or rate (or manner of calculation thereof);
- the conversion period;
- provisions as to whether conversion will be at the option of the holders of the preferred shares or at our option;
- the events requiring an adjustment of the conversion price; and
- provisions affecting conversion in the event of the redemption of that series of preferred shares.

Transfer Agent and Registrar. We will identify the transfer agent and registrar for any additional series of preferred shares issued through this prospectus in a prospectus supplement.

Table of Contents

Depositary Shares

General. We may issue receipts for depositary shares, each of which will represent a fractional interest of a share of a particular series of preferred shares. We will deposit the preferred shares of any series represented by depositary shares with a depositary under a deposit agreement. We will identify the depositary in a prospectus supplement. Subject to the terms of the deposit agreement, if you own a depositary share, you will be entitled, in proportion to the fraction of the preferred share represented by your depositary share, to all of the rights and preferences to which you would be entitled if you owned the preferred share represented by your depositary share directly (including dividend, voting, redemption, conversion, subscription and liquidation rights).

The depositary shares will be represented by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following the issuance and delivery of our preferred shares to the depositary, we will cause the depositary to issue, on our behalf, the depositary receipts. Upon request, we will provide you with copies of the applicable form of deposit agreement and depositary receipt.

Dividends and Other Provisions. If you are a record holder (as defined below) of depositary receipts and we pay a cash dividend or other cash distribution with respect to the preferred share represented by your depositary share, the depositary will distribute all cash dividends or other cash distributions it receives in respect of the preferred shares represented by your depositary receipts in proportion to the number of depositary shares you owned on the record date for that dividend or distribution.

If we make a distribution in a form other than cash, the depositary will distribute the property it receives to you and all other record holders of depositary receipts in an equitable manner, unless the depositary determines that it is not feasible to do so. If the depositary decides it cannot feasibly distribute the property, it may sell the property and distribute the net proceeds from the sale to you and the other record holders. The amount the depositary distributes in any of the foregoing cases may be reduced by any amounts that we or the depositary is required to withhold on account of taxes.

A record holder is a person who holds depositary receipts on the record date for any dividend, distribution or other action. The record date for depositary shares will be the same as the record date for the preferred shares represented by those depositary receipts.

Withdrawal of Preferred Shares. If you surrender your depositary receipts, the depositary will be required to deliver certificates to you evidencing the number of preferred shares represented by those receipts (but only in whole shares). If you deliver depositary receipts representing a number of depositary shares that is greater than the number of whole shares to be withdrawn, the depositary will deliver to you, at the same time, a new depositary receipt evidencing the fractional shares.

Redemption of Depositary Shares. If we redeem a series of preferred shares represented by depositary receipts, the depositary will redeem depositary shares from the proceeds it receives after redemption of the preferred shares. The redemption price per depositary share will equal the applicable fraction of the redemption price per share payable with respect to that series of preferred shares. If fewer than all the depositary shares are to be redeemed, the depositary will select shares to be redeemed by lot, pro rata or by any other equitable method it may determine. After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. All rights of the holders of those depositary shares will cease, except the right to receive the redemption price that the holders of the depositary shares were entitled to receive upon redemption. Payments will be made when holders surrender their depositary receipts to the depositary.

Voting the Preferred Shares. When the depositary receives notice of any meeting at which the holders of preferred shares are entitled to vote, the depositary will mail information contained in the notice to you as a record holder of the depositary shares relating to the preferred shares. As a record holder of the depositary shares on the record date (which will be the same date as the record date for the preferred shares), you will be entitled to

Table of Contents

instruct the depositary as to how you would like your votes to be exercised. The depositary will endeavor, insofar as practicable, to vote the number of preferred shares represented by your depositary shares in accordance with your instructions. We will agree to take all reasonable action that the depositary may deem necessary to enable the depositary to do this. If you do not send specific instructions the depositary will not vote the preferred shares represented by your depositary shares.

Liquidation Preference. In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, you will be entitled, as a record holder of depositary shares, to the fraction of the liquidation preference accorded each applicable preferred share, as has been set forth in a prospectus supplement.

Conversion of Preferred Shares. Our depositary shares, as such, are not convertible into common shares or any of our other securities or property. Nevertheless, if so specified in a prospectus supplement, the depositary receipts may be surrendered by their holders to the depositary with written instructions to the depositary to instruct us to cause conversion of the preferred shares represented by the depositary shares into whole common or preferred shares, as the case may be. We will agree that, upon receipt of this type of instructions and any amounts payable, we will convert the depositary shares using the same procedures as those provided for delivery of preferred shares to effect such conversion. If the depositary shares are to be converted in part only, one or more new depositary receipts will be issued for any depositary shares not to be converted. No fractional common shares will be issued upon conversion, and if such conversion will result in issuance of a fractional share, we will pay an amount of cash equal to the value of the fractional interest based upon the closing price of the common shares on the last business day prior to the conversion.

Amendment and Termination of the Deposit Agreement. We and the depositary may amend the form of depositary receipt and any provision of the deposit agreement at any time. However, any amendment which materially and adversely alters your rights as a holder of depositary shares will not be effective unless the holders of at least a majority of the depositary shares then outstanding approve the amendment. The deposit agreement will only terminate if:

- we redeem all outstanding depositary shares;
- we make a final distribution in respect of the preferred shares to which the depositary shares and agreement relate, including in connection with any liquidation, dissolution or winding up and the distribution has been distributed to the holders of depositary shares; or
- each preferred share to which the depositary shares and agreement relate shall have been converted into shares of beneficial interest not represented by depositary shares.

Resignation and Removal of Depositary. The depositary may resign at any time by delivering a notice to us of its election to do so. Additionally, we may remove the depositary at any time. Any resignation or removal will take effect when we appoint a successor depositary and the successor accepts the appointment. We must appoint a successor depositary within 60 days after delivery of the notice of resignation or removal. A successor depositary must be a bank or trust company having its principal office in the U.S. and having a combined capital and surplus of at least $50 million.

Charges of Depositary. We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred shares and issuance of depositary receipts, all withdrawals of preferred shares by owners of the depositary shares and any redemption of the preferred shares. You will pay other transfer and other taxes, governmental charges and other charges expressly provided for in the deposit agreement.

Miscellaneous. The depositary will forward to you all reports and communications from us that we are required, or otherwise determine, to furnish to the holders of the preferred shares. The holders of depositary

Table of Contents

receipts shall have the right to inspect the transfer books of the depositary and the list of holders of depositary receipts as provided in the applicable deposit agreement or as required by law.

Neither we nor the depositary will be liable under the deposit agreement to you other than for the depositary s gross negligence, willful misconduct or bad faith. Neither we nor the depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred shares unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred shares for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Restrictions on Ownership and Transfer

Restrictions on ownership and transfer of shares are important to ensure that we meet certain conditions under the Code to qualify as a REIT. For example, the Code contains the following requirements.

- No more than 50% in value of a REIT s shares may be owned, actually or constructively (based on attribution rules in the Code), by five or fewer individuals during the last half of a taxable year or a proportionate part of a shorter taxable year, which we refer to as the 5/50 Rule. Under the Code, individuals include certain tax-exempt entities except that qualified domestic pension funds are not generally treated as individuals.

- If a REIT, or an owner of 10% or more of a REIT, is treated as owning 10% or more of a tenant of the REIT s property, the rent received by the REIT from the tenant will not be qualifying income for purposes of the REIT gross income tests of the Code.

- A REIT s stock or beneficial interests must be owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year.

In order to maintain our qualification as a REIT, our declaration of trust, subject to certain exceptions described below, provides that no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the outstanding common shares or more than 9.8% in value of our outstanding capital stock. In this prospectus, the term ownership limitation is used to describe this provision of our declaration of trust.

Any transfer of shares will be null and void, and the intended transferee will acquire no rights in such shares if the transfer:

- results in any person owning, directly or indirectly, shares in excess of the ownership limitation;

- results in the shares being owned by fewer than 100 persons (determined without reference to any rules of attribution);

- results in our being closely held (within the meaning of Section 856(h) of the Code);

- causes us to own, directly or constructively, 10% or more of the ownership interests in a tenant of our real property (within the meaning of Section 856(d)(2)(B) of the Code); or

- otherwise results in our failure to qualify as a REIT.

Automatic Transfer of Shares to Trust. With certain exceptions described below, if any purported transfer of shares would violate any of the restrictions described in the immediately preceding paragraph, then the transfer will be null and void, and those shares will be designated as shares-in-trust and transferred automatically to a charitable trust. The transfer to the trust is effective as of the end of the business day before the

Table of Contents

purported transfer of such shares. The record holder of the shares that are designated as shares-in-trust must deliver those shares to us for registration in the name of the trust. We will designate a trustee who is not affiliated with us. The beneficiary of the trust will be one or more charitable organizations named by us.

Any shares-in-trust remain issued and outstanding shares and are entitled to the same rights and privileges as all other shares of the same class or series. The trust receives all dividends and distributions on the shares-in-trust and holds such dividends and distributions in trust for the benefit of the beneficiary. The trustee votes all shares-in-trust. The trustee shall also designate a permitted transferee of the shares-in-trust. The permitted transferee must purchase the shares-in-trust for valuable consideration and acquire the shares-in-trust without resulting in the transfer being null and void.

The record holder with respect to shares-in-trust must pay the trust any dividends or distributions received by such record holder that are attributable to any shares-in-trust if the record date for those shares-in-trust was on or after the date that such shares became shares-in-trust. Upon sale or other disposition of the shares-in-trust to a permitted transferee, the record holder generally will receive from the trustee, the lesser of:

the price per share, if any, paid by the record holder for the shares; or

if no amount was paid for such shares (e.g., if such shares were received through a gift or devise),

the price per share equal to the market price (which is calculated as defined in our declaration of trust) on the date the shares were received, or

the price per share received by the trustee from the sale of such shares-in-trust.

Any amounts received by the trustee in excess of the amounts paid to the record owner will be distributed to the beneficiary. Unless sooner sold to a permitted transferee, upon our liquidation, dissolution or winding up, the record owner generally will receive from the trustee its share of the liquidation proceeds but in no case more than the price per share paid by the record owner or, in the case of a gift or devise, the market price per share on the date such shares were received by the trust.

The shares-in-trust will be offered for sale to us, or our designee, at a price per share equal to the lesser of the price per share in the transaction that created the shares-in-trust (or, in the case of a gift or devise, the market price per share on the date of such transfer) or the market price per share on the date that we, or our designee, accepts such offer. We may accept such offer until the trustee has sold the shares-in-trust as provided above.

Any person who acquires or attempts to acquire shares which would be null and void under the restrictions described above, or any person who owned common shares or preferred shares that were transferred to a trust, must both give us immediate written notice of such event and provide us such other information as requested in order to determine the effect, if any, of such transfer on our status as a REIT.

If a shareholder owns more than 5% of the outstanding common shares or preferred shares, then the shareholder must notify us of its share ownership by January 30 of each year.

The ownership limitation generally does not apply to the acquisition of shares by an underwriter that participates in a public offering of such shares. In addition, the Board of Trustees may exempt a person from the ownership limitation under certain circumstances and conditions. The restrictions on ownership and transfer described in this section of this prospectus will continue to apply until the Board of Trustees determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

The Board of Trustees has agreed to exempt from the ownership limitation Morgan Stanley Investment Management, Inc., or MSIM, for itself and on behalf of its investment advisory clients on whose behalf MSIM owns our common shares. The Board of Trustees approved an exemption for MSIM, which expires on May 3, 2010 and which permits MSIM and its clients, as a group to own up to 12.0% of our outstanding common shares.

28

Table of Contents

The ownership limitation could have the effect of delaying, deferring or preventing a transaction or a change in our control that might involve a premium price for the common shares or preferred shares or otherwise be in the best interest of our shareholders. All certificates representing shares will bear a legend referring to the restrictions described above.

Warrants

Warrants. We may issue warrants for the purchase of common or preferred shares. If we offer warrants, we will describe the terms in a prospectus supplement. Warrants may be offered independently, together with other securities offered by any prospectus supplement, or through a dividend or other distribution to shareholders and may be attached to or separate from other securities. Warrants may be issued under a written warrant agreement to be entered into between us or the holder or beneficial owner, or we could issue warrants pursuant to a written warrant agreement with a warrant agent specified in a prospectus supplement. A warrant agent would act solely as our agent in connection with the warrants of a particular series and would not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of such warrants.

The following are some of the warrant terms that could be described in a prospectus supplement:

the title of the warrant;

the aggregate number of warrants;

the price or prices at which the warrant will be issued;

the designation, number and terms of the preferred shares or common shares that may be purchased on exercise of the warrant;

the date, if any, on and after which the warrant and the related securities will be separately transferable;

the price at which each security purchasable on exercise of the warrant may be purchased;

the dates on which the right to purchase the securities purchasable on exercise of the warrant will begin and end;

the minimum or maximum number of securities that may be purchased at any one time;

any anti-dilution protection;

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

a discussion of certain federal income tax considerations; and

any other warrant terms, including terms relating to transferability, exchange or exercise of the warrant.

Certain Provisions of Maryland Law and our Declaration of Trust and Bylaws

The following summary of certain provisions of the Maryland General Corporation Law and our declaration of trust and bylaws is not complete. You should read the Maryland General Corporation Law and our declaration of trust and bylaws for more complete information.

The following provisions, together with the ability of the Board of Trustees to increase the number of authorized shares, in the aggregate or by class, and to issue preferred shares without further stockholder action, the transfer restrictions described under Restrictions on Ownership and Transfer and the supermajority

Table of Contents

voting rights described under Common Shares Voting Rights, may delay or frustrate the removal of incumbent trustees or the completion of transactions that would be beneficial, in the short term, to our shareholders. The provisions may also discourage or make more difficult a merger, tender offer, other business combination or proxy contest, the assumption of control by a holder of a large block of our securities or the removal of incumbent management, even if these events would offer our shareholders a premium price on their securities or otherwise be favorable to the interests of our shareholders.

Business Combinations. Applicable Maryland law, as set forth in the Maryland General Corporation Law, limits our ability to enter into business combinations and other corporate transactions, including a merger, consolidation, share exchange, or, in certain circumstances, an asset transfer or issuance of equity securities when the combination is between us and an interested shareholder (as defined below) or an affiliate of an interested shareholder. An interested shareholder is:

- any person who beneficially owns 10% or more of the voting power of our outstanding voting shares; or
- any of our affiliates that beneficially owned, directly or indirectly, 10% or more of the voting power of our outstanding voting shares at any time within two years immediately prior to the applicable date in question.

We may not engage in a business combination with an interested shareholder or any of its affiliates for five years after the interested shareholder becomes an interested shareholder. This prohibition does not apply to business combinations involving us that are exempted by the Board of Trustees before the interested shareholder becomes an interested shareholder.

We may engage in business combinations with an interested shareholder if at least five years have passed since the person became an interested shareholder, but only if the transaction is:

- recommended by our Board of Trustees; and
- approved by at least,
  - 80% of our outstanding shares entitled to vote; and
  - two-thirds of our outstanding shares entitled to vote that are not held by the interested shareholder or any of its affiliates.

Shareholder approval will not be required if our common shareholders receive a minimum price (as defined in the statute) for their shares and our shareholders receive cash or the same form of consideration as the interested shareholder paid for its shares.

Control Share Acquisitions. Our bylaws exempt acquisitions of our shares of beneficial interest by any person from control share acquisition requirements discussed below. With the approval of our Board of Trustees, and of shareholders holding at least a majority of shares outstanding and entitled to vote on the matter, however, we could modify or eliminate the exemption in the future. If the exemption were eliminated, control share acquisitions would be subject to the following provisions.

The Maryland General Corporation Law provides that control shares of a Maryland REIT acquired in a control share acquisition have no voting rights unless two-thirds of the shareholders (excluding shares owned by the acquirer and by the officers and trustees who are employees of the Maryland REIT) approve their voting rights.

Table of Contents

Control Shares are shares that, if added to all other shares previously acquired, would entitle that person 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.

Control shares do not include shares the acquiring person is entitled to vote with shareholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

If this provision becomes applicable to us, a person who has made or proposes to make a control share acquisition could, under certain circumstances, compel our Board of Trustees to call a special meeting of shareholders to consider the voting rights of the control shares. We could also present the question at any shareholders meeting on our own.

If this provision becomes applicable to us, subject to certain conditions and limitations, we would be able to redeem any or all control shares. If voting rights for control shares were approved at a shareholders meeting and the acquirer were entitled to vote a majority of the shares entitled to vote, all other shareholders could exercise appraisal rights and exchange their shares for a fair value as defined by statute.

Rights Plan. On April 13, 1989, we adopted a shareholder rights plan and declared a dividend distribution of one right for each outstanding common share to shareholders of record at the close of business on April 24, 1989, with such rights to expire on April 24, 1999. On March 11, 1999, the expiration date of the rights plan was extended ten years and certain other amendments to the terms of the rights plan were adopted. On November 23, 2003, the rights plan was modified to increase the triggering ownership threshold to 20% and to add a provision commonly called a TIDE provision requiring that the independent trustees of the Board of Trustees review the rights under the rights plan every three years. On March 16, 2009, the rights plan was further amended to extend the expiration date for an additional three years and to add a provision commonly called a qualified offer provision, which is explained below. Except as set forth below, each right, as amended, when exercisable, entitles the registered holder to purchase from us a number of common shares (or fractional shares) having a then-current market value of two times the purchase price, initially equal to $65.00 per share, subject to adjustment upon the occurrence of specified events.

The rights become exercisable upon the distribution date, which shall be the earlier to occur of:

- a public announcement that, without the prior consent of the Board of Trustees, a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of our common shares (without regard to the ownership limits contained within our declaration of trust); or
- ten days following the commencement of (or a public announcement of an intention to make) a tender offer or exchange offer that would result in the beneficial ownership by a person or group of affiliated or associated persons of 20% or more of our common shares.

Initially, the rights will be attached to, and evidenced by, the common shares certificates representing shares then outstanding, and no separate right certificates will be distributed. Once the rights become exercisable, separate certificates evidencing the rights will be mailed as soon as practicable to holders of record of our common shares as of the close of business on the distribution date, and the separate rights certificates alone will evidence the rights.

Table of Contents

In general, the rights will expire on the earliest of

April 24, 2012;

consummation of a merger transaction with a person or group who acquired common shares pursuant to a transaction approved by the Board of Trustees; or

redemption by us as described below.

In the event that the rights become exercisable, each holder of a right will for a 60-day period thereafter have the right to receive upon exercise and payment of the purchase price (initially $65.00, but subject to adjustment) that number of our common shares (or fractional shares) having a then-current market value of two times the purchase price, subject to the availability of a sufficient number of authorized but unissued common shares. We are entitled (but not required) to deliver, upon exercise of the right, in lieu of common shares, shares of equivalent securities.

In the event that, after the first date that the rights become exercisable, we are involved in a merger or other business combination transaction in which our common shares are exchanged or changed, or 50% or more of our assets or earning power are sold (in one transaction or a series of transactions), each holder of a right (other than the person or group triggering the exercise of the rights) shall thereafter have the right to receive, upon the exercise thereof at the then-current purchase price, that number of common shares of the acquiring company (or, in the event there is more than one acquiring company, the acquiring company receiving the greatest portion of the assets or earning power transferred), which at the time of such transaction would have a market value equal to two times the then-current purchase price of the right.

At any time prior to the earlier to occur of the date the rights become exercisable or the expiration of the rights, we may redeem the rights in whole, but not in part, at a price of $0.01 per right, payable in cash or common shares, which redemption shall be effective upon the authorization of the Board of Trustees. Additionally, after the date the rights become exercisable, we may redeem the then-outstanding rights in whole, but not in part, at a price of $0.01 per right income provided that the redemption is incidental to a merger or other business combination transaction or series of transactions involving us but not involving the person or group triggering the exercise of the rights, or if the redemption occurs after the expiration of a period during which our shareholders may acquire common shares through the exercise of the rights and, at that time, the person or group that triggered the exercise of the rights no longer has beneficial ownership of 20% or more of our common shares.

In the event we receive a qualified offer and we do not redeem the rights, within 90 days thereafter, then, upon request from holders (other than the offeror and its affiliates or associates or any officer or trustee of ours) of at least 10% of the outstanding common shares for the calling of a special meeting, we will hold a special meeting within 60 days after receipt of such a request. If, at such meeting, holders of more than 50% of the outstanding common shares (other than shares of the offeror or its affiliates or associates or any officer or trustee of ours) vote for redemption of the rights, then we will thereafter redeem the rights (or take similar action) as promptly as practicable. If such a meeting is not held on or prior to the 60th day after a qualifying request is received (which period shall be extended if we are exercising reasonable efforts to hold such a meeting and have been prevented by circumstances reasonably beyond our control), we shall promptly thereafter redeem the rights (or take similar action). However, we are not required to hold such a meeting unless the qualified offer at issue has an expiration date which is at least 10 business days after such meeting, and any obligations of us to hold such a meeting or to redeem the rights in connection therewith are null and void in the event any person, entity or group acquires, or obtains the right to acquire, beneficial ownership of 20% or more of our common shares.

A qualified offer shall mean a tender offer which, among other things, (a) is an all-cash offer for all common shares at a price per share which is at least the higher of (x) $97; or (y) an amount equal to 25% higher than the higher of (1) the average closing price of the common shares over the period of 30 trading days

Table of Contents

immediately preceding commencement of the offer or (2) the average closing price of the common shares over the period of five trading days immediately preceding commencement of the offer, (b) includes a firm financing commitment which, when added to the offeror s cash, will be sufficient, (c) has a non-waivable condition that the offeror must own, after consummating the offer, at least 50% of the common shares then outstanding (other than common shares already held by such offeror and its affiliates or associates or any trustee or officer of ours), (d) stays open for at least 60 business days (extended for any increase in price) and (e) commits the offeror to buy all other common shares at the same price paid pursuant to the offer.

In any event, upon the effective date of the redemption of the rights, the right to exercise the rights will terminate and the only right of the holders of rights will be to receive the price of $0.01 per right.

Until a right is exercised, the holder thereof, as such, will have no rights as one of our shareholders, including, without limitation, the right to vote or to receive dividends.

Duties of Trustees. Under Maryland law, there is a presumption that the act of a trustee satisfies the required standard of care. An act of a trustee relating to or affecting an acquisition or a potential acquisition of control is not subject under Maryland law to a higher duty or greater scrutiny than is applied to any other act of a trustee.

Number of Trustees. The number of trustees may be increased or decreased pursuant to the bylaws, provided that the total number of trustees may not be less than five or more than 10. Under Maryland law and our declaration of trust, trustees are elected for one-year terms.

Removal of Trustees. Under the declaration of trust, and subject to the rights of any holders of preferred shares, our trustees may remove a trustee with cause, as defined in our declaration of trust, by the vote of all the other trustees or the shareholders may remove a trustee, with or without cause, at any meeting of shareholders called for that purpose, either by:

- the affirmative vote of the holders of two-thirds of the number of shares outstanding and entitled to vote on that matter if the removal is approved or recommended by a vote of at least two-thirds of the Board of Trustees; or

- the affirmative vote of the holders of not less than 80% of the number of shares then outstanding and entitled to vote on that matter if the removal is not approved or recommended by a vote of at least two-thirds of the Board of Trustees.

Vacancies on the Board of Trustees. The bylaws provide that, subject to the rights of any holders of preferred shares, any vacancy on the Board of Trustees, including a vacancy created by an increase in the number of trustees, may be filled by vote of a majority of the remaining trustees, or, if the trustees fail to act, at a meeting called for that purpose by the vote of a majority of the shares entitled to vote on the matter. Each trustee so elected shall serve for the unexpired term of the trustee he is replacing.

Meetings of Shareholders. Our bylaws provide for an annual meeting of shareholders, to be held in May after delivery of the annual report to shareholders, to elect individuals to the Board of Trustees and transact such other business as may properly be brought before the meeting. Special meetings of shareholders may be called by our Chairman of the Board of Trustees, Chief Executive Officer, President or by one-third of the Board of Trustees, and shall be called at the request in writing of the holders of 25% of all votes entitled to be cast at the meeting.

Our declaration of trust provides that any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting, if a majority of shares entitled to vote on the matter (or such larger proportion as shall be required to take the action) consent to the action in writing and the written consents are filed with the records of the meetings of shareholders.

Table of Contents

Advance Notice for Shareholder Nominations and Shareholder New Business Proposals. Our bylaws require advance written notice for shareholders to nominate a trustee or bring other business before a meeting of shareholders. For an annual meeting, to nominate a trustee or bring other business before a meeting of shareholders, a shareholder must deliver notice to our Secretary not later than the close of business on the 120th day prior to the first anniversary of the date of the proxy statement relating to the preceding year s annual meeting. If the date of the annual meeting is changed by more than 30 days from the date of the preceding year s meeting or if we did not hold an annual meeting the preceding year, notice must be delivered within a reasonable time before we begin to print and mail our proxy materials.

For a special meeting, to nominate a trustee, a shareholder must deliver notice to our Secretary not earlier that the close of business on the 120th day prior to the special meeting and not later than the close of business on the later of the 90th day prior to the special meeting or the 10th day following the date on which public announcement is first made of the special meeting. Nominations for elections to the Board of Trustees may be made at a special meeting by shareholders of record both at the time of giving of notice of the special meeting and at the time of the special meeting and who are entitled to vote at the special meeting and who complied with the notice procedures in our bylaws only (a) pursuant to the notice of special meeting, (b) by or at the direction of the Board of Trustees or (c) if the Board of Trustees has determined that trustees shall be elected at the special meeting.

The postponement or adjournment of an annual or special meeting to a later date or time shall not commence any new time periods for the giving of notice as described above. Our bylaws contain detailed requirements for the contents of shareholder notices of trustee nominations and new business proposals.

Shareholder Liability and Indemnification. Under Maryland law, you will not be personally liable for any obligation of ours solely because you are a shareholder. Under our declaration of trust, our shareholders are not liable for our debts or obligations by reason of being a shareholder and will not be subject to any personal liability, in tort, contract or otherwise, to any person in connection with our property or affairs by reason of being a shareholder. Under our bylaws, our shareholders shall have similar indemnification and expense advancement rights as our trustees and officers.

In some jurisdictions other than Maryland, however, with respect to tort claims, contractual claims where shareholder liability is not negated by the express terms of the contract, claims for taxes and certain statutory liabilities, our shareholders may be personally liable to the extent that those claims are not satisfied by us. In addition, common law theories of piercing the corporate veil may be used to impose liability on shareholders in certain instances.

Limitation of Liability of Trustees and Officers. Our declaration of trust, to the maximum extent permitted under Maryland law in effect from time to time with respect to liability of trustees and officers of a REIT, provides that no trustee or officer of ours shall be liable to us or to any shareholder for money damages. The Maryland General Corporation Law provides that we may restrict or limit the liability of trustees or officers for money damages except to the extent:

- it is proved that the trustee or officer actually received an improper benefit or profit in money, property or services; or
- a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding that the person s action, or failure to act, was material to the cause of action adjudicated and was the result of active and deliberate dishonesty.

Our declaration of trust provides that neither amendment nor repeal or any provision of our declaration of trust, nor adoption of any other provision, shall apply to or affect in any respect the applicability of such limitation of liability with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

Table of Contents

Indemnification of Directors and Officers. Our declaration of trust permits us to indemnify and advance expenses to, to the maximum extent permitted by Maryland law in effect from time to time, any individual who is a present or former trustee or officer of ours or to any individual who, while a trustee of ours, serves or has served as a director, officer, partner, trustee, employee or agent of another REIT, corporation partnership, joint venture, trust, employee benefit plan or any other enterprise, in connection with any claim or liability to which such person may become subject or which such person may incur by reason of such status.

Our bylaws require us to indemnify: (a) any trustee, officer or former trustee or officer, including any individual who, while a trustee or officer at our express request, serves or served for another REIT, corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, shareholder, manager, member, partner or trustee of such entity, who has been successful, on the merits or otherwise, in the defense of a proceeding to which he or she was made a party by reason of service in such capacity, against reasonable expenses incurred by him or her in connection with the proceeding; and (b) any trustee or officer or any former trustee or officer against any claim or liability to which he or she may become subject by reason of such status unless it is established that: (i) his or her act or omission was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberative dishonesty; (ii) he or she actually received an improper personal benefit in money, property or services; or (iii) in the case of a criminal proceeding, he or she had reasonable cause to believe that his or her act or omission was unlawful. In addition, our bylaws require us, without requiring a preliminary determination of the ultimate entitlement to indemnification, to pay or reimburse expenses incurred by a trustee, officer or former trustee or officer made a party to a proceeding by reason of such status, provided that we have received from any such trustee or officer an affirmation and written undertaking as required by our bylaws. Our bylaws provide that neither amendment nor repeal or any provision of our bylaws, nor adoption of any other provision, shall apply to or affect in any respect the applicability of such indemnification and expense advancement rights with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

Table of Contents

MATERIAL FEDERAL INCOME TAX CONSIDERATIONS

The following sections summarize the material federal income tax issues that you may consider relevant relating to our taxation as a REIT under the Code, and the ownership and disposition of our common, preferred, and depositary shares. If we offer one or more additional series of common shares or preferred shares, debt securities, depositary shares, warrants to purchase debt or equity securities, or rights to purchase our common shares, the prospectus supplement would include information about certain additional material U.S. federal income tax considerations to holders of any of the offered securities.

Because this section is a summary, it does not address all of the tax issues that may be important to you. For example, this discussion addresses only shares held as capital assets. In addition, this section does not address the tax issues that may be important to certain types of shareholders that are subject to special treatment under the federal income tax laws, such as financial institutions, brokers, dealers in securities and commodities, insurance companies, former U.S. citizens or long-term residents, regulated investment companies, real estate investment trusts, tax-exempt organizations (except to the extent discussed in Taxation of Tax-Exempt U.S. Shareholders below), persons subject to the alternative minimum tax, persons that are, or that hold their shares through, partnerships or other pass-through entities, U.S. shareholders whose functional currency is not the U.S. dollar, persons that hold shares as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes, or non-U.S. individuals and foreign corporations (except to the extent discussed in Taxation of Non-U.S. Shareholders below). This summary does not address any aspect of state, local or foreign taxation or any U.S. federal tax other than the income tax and, only to the extent specifically provided herein, certain excise taxes potentially applicable to REITs.

This summary is based upon the provisions of the Code, the regulations of the U.S. Department of Treasury (Treasury) promulgated thereunder and judicial and administrative rulings now in effect, all of which are subject to change or differing interpretations, possibly with retroactive effect.

We urge you to consult your own tax advisor regarding the specific federal, state, local, foreign and other tax consequences to you of purchasing, owning and disposing of our securities, our election to be taxed as a REIT and the effect of potential changes in applicable tax laws.

Taxation of the Company

We elected to be taxed as a REIT under the federal income tax laws when we filed our 1962 tax return. We have operated in a manner intended to qualify as a REIT and we intend to continue to operate in that manner. This section discusses the laws governing the federal income tax treatment of a REIT and its shareholders. These laws are highly technical and complex.

In the opinion of our tax counsel, Pillsbury Winthrop Shaw Pittman LLP, (i) we qualified as a REIT under Sections 856 through 859 of the Code with respect to our taxable years ended through December 31, 2008; and (ii) we are organized in conformity with the requirements for qualification as a REIT under the Code and our current method of operation and ownership will enable us to meet the requirements for qualification and taxation as a REIT for the current taxable year and for future taxable years, provided that we have operated and continue to operate in accordance with various assumptions and factual representations made by us concerning our business, properties and operations. We may not, however, have met or continue to meet such requirements. You should be aware that opinions of counsel are not binding on the Internal Revenue Service (IRS) or any court. Our qualification as a REIT depends on our ability to meet, on a continuing basis, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that fall within certain categories, the diversity of the ownership of our shares, and the percentage of our earnings that we distribute. We describe the REIT qualification tests in more detail below. Pillsbury Winthrop Shaw Pittman LLP will not monitor our compliance with the requirements for REIT qualification on an ongoing basis. Accordingly, our actual operating results may not satisfy the

Table of Contents

qualification tests. For a discussion of the tax treatment of us and our shareholders if we fail to qualify as a REIT, see Requirements for REIT Qualification Failure to Qualify.

As a REIT, we generally will not be subject to federal income tax on the taxable income that we distribute to our shareholders. The benefit of that tax treatment is that it avoids the double taxation (i.e., at both the corporate and shareholder levels) that generally results from owning shares in a subchapter C corporation. However, we will be subject to federal tax in the following circumstances:

- we will pay federal income tax on taxable income (including net capital gain) that we do not distribute to our shareholders during, or within a specified time period after, the calendar year in which the income is earned;

- we may be subject to the alternative minimum tax on any items of tax preference that we do not distribute or allocate to our shareholders;

- we will pay income tax at the highest corporate rate on (i) net income from the sale or other disposition of property acquired through foreclosure that we hold primarily for sale to customers in the ordinary course of business and (ii) other non-qualifying income from foreclosure property;

- we will pay a 100% tax on net income from certain sales or other dispositions of property (other than foreclosure property) that we hold primarily for sale to customers in the ordinary course of business (prohibited transactions);

- if we fail to satisfy the 75% gross income test or the 95% gross income test (as described below under Requirements for REIT Qualification Income Tests), but nonetheless continue to qualify as a REIT because we meet certain other requirements, we will pay a 100% tax on (i) the gross income attributable to the greater of the amount by which we fail, respectively, the 75% or 95% gross income test, multiplied, in either case, by (ii) a fraction intended to reflect our profitability;

- if we fail, in more than a de minimis fashion, to satisfy one or more of the asset tests for any quarter of a taxable year, but nonetheless continue to qualify as a REIT because we qualify under certain relief provisions, we may be required to pay a tax of the greater of $50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset test;

- if we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect, but we would also be required to pay a penalty of $50,000 for each failure to satisfy the REIT qualification requirements;

- if we fail to distribute during a calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, we will pay a 4% excise tax on the excess of such required distribution over the amount we actually distributed;

- we may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with the rules relating to the composition of a REIT s shareholders;

we may elect to retain and pay income tax on our net long-term capital gain; or

if we acquire any asset from a C corporation (i.e., a corporation generally subject to full corporate-level tax) in a merger or other transaction in which we acquire a carryover basis in the asset (i.e., basis determined by reference to the C corporation s basis in the asset (or another asset)), and we recognize

Table of Contents

gain on the sale or disposition of such asset during the 10-year period after we acquire such asset, we will pay tax at the highest regular corporate rate applicable on the lesser of (i) the amount of gain that we recognize at the time of the sale or disposition and (ii) the amount of gain that we would have recognized if we had sold the asset at the time we acquired the asset.

Requirements for REIT Qualification

To qualify as a REIT, we must meet the following requirements:

1. we are managed by one or more trustees or directors;

2. our beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest;

3. we would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;

4. we are neither a financial institution nor an insurance company subject to certain provisions of the Code;

5. at least 100 persons are beneficial owners of our shares or ownership certificates;

6. not more than 50% in value of our outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of any taxable year (the 5/50 Rule);

7. we elect to be a REIT (or have made such election for a previous taxable year) and satisfy all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

8. we use a calendar year for federal income tax purposes and comply with the record keeping requirements of the Code and the related regulations of the Treasury; and

9. we meet certain other qualification tests, described below, regarding the nature of our income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 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. If we comply with all the requirements for ascertaining the ownership of our outstanding shares in a taxable year and have no reason to know that we violated the 5/50 Rule, we will be deemed to have satisfied the 5/50 Rule for such taxable year. For purposes of determining share ownership under the 5/50 Rule, an individual generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under Code Section 401(a), and beneficiaries of such a trust will be treated as holding our shares in proportion to their actuarial interests in the trust for purposes of the 5/50 Rule.

We believe we have issued sufficient shares with sufficient diversity of ownership to satisfy requirements 5 and 6 set forth above. In addition, our declaration of trust restricts the ownership and transfer of our shares so that we should continue to satisfy requirements 5 and 6. The provisions of our declaration of trust restricting the ownership and transfer of our shares are described in Description of Shares of Beneficial Ownership Restrictions on Ownership and Transfer.

We currently have several direct corporate subsidiaries and may have additional corporate subsidiaries in the future. A corporation that is a qualified REIT subsidiary is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary are

38

Table of Contents

treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A qualified REIT subsidiary is a corporation, all of the capital stock of which is owned by the parent REIT, unless we and the subsidiary have jointly elected to have it treated as a taxable REIT subsidiary, in which case it is treated separately from us and will be subject to federal corporate income taxation. Thus, in applying the requirements described herein, any qualified REIT subsidiary of ours will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit. We believe our direct corporate subsidiaries are qualified REIT subsidiaries, except for those that are taxable REIT subsidiaries. Accordingly, our qualified REIT subsidiaries are not subject to federal corporate income taxation, though they may be subject to state and local taxation.

A REIT is treated as owning its proportionate share of the assets of any partnership in which it is a partner and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, our proportionate share of the assets and items of income of any partnership (or limited liability company treated as a partnership) in which we have acquired or will acquire an interest, directly or indirectly, are treated as our assets and gross income for purposes of applying the various REIT qualification requirements. Our proportionate share is generally determined, for these purposes, based on our percentage interest in partnership equity capital.

Income Tests. We must satisfy two gross income tests annually to maintain our qualification as a REIT:

- At least 75% of our gross income (excluding gross income from prohibited transactions, certain real estate liability hedges and, after July 30, 2008, certain foreign currency hedges entered into and certain recognized real estate foreign exchange gains) for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income (the 75% gross income test). Qualifying income for purposes of the 75% gross income test includes rents from real property, interest on debt secured by mortgages on real property or on interests in real property, gain from the sale of real estate assets, and dividends or other distributions on and gain from the sale of shares in other REITs; and

- At least 95% of our gross income (excluding gross income from prohibited transactions, certain real estate liability hedges and, after July 30, 2008, certain foreign currency hedges entered into and certain recognized passive foreign exchange gains) for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, dividends, other types of interest, gain from the sale or disposition of stock or securities, or any combination of the foregoing (the 95% gross income test).

The following paragraphs discuss the specific application of these tests to us.

Rental Income. Our primary source of income derives from leasing properties. There are various limitations on whether rent that we receive from real property that we own and lease to tenants will qualify as rents from real property (which is qualifying income for purposes of the 75% and 95% gross income tests):

- Although, generally, rent may be based on a fixed percentage or percentages of receipts or sales, if the rent is based, in whole or in part, on the income or profits of any person, the rent will not qualify as rents from real property. We have not entered into any lease based in whole or part on the net income of any person and do not anticipate entering into such arrangements unless, in either instance, we determine or have determined in our discretion that such arrangements will not jeopardize our status as a REIT;

- Except in certain limited circumstances involving taxable REIT subsidiaries, if we or someone who owns 10% or more of our shares owns 10% or more of a tenant from whom we receive rent, the tenant is deemed a related party tenant, and the rent paid by the related party tenant will not qualify as rents from real property. Our ownership and the ownership of a tenant is determined based on direct,

Table of Contents

indirect and constructive ownership. The constructive ownership rules generally provide that if 10% or more in value of our shares are owned, directly or indirectly, by or for any person, we are considered as owning the shares owned, directly or indirectly, by or for such person. The applicable attribution rules, however, are highly complex and difficult to apply, and we may inadvertently enter into leases with tenants who, through application of such rules, will constitute related party tenants. In such event, rent paid by the related party tenant will not qualify as rents from real property, which may jeopardize our status as a REIT. We will use our best efforts not to rent any property to a related party tenant (taking into account the applicable constructive ownership rules), unless we determine in our discretion that the rent received from such related party tenant will not jeopardize our status as a REIT. We believe that we have not leased property to any related party tenant, except where we have determined that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT;

In the case of certain rent from a taxable REIT subsidiary which would, but for this exception, be considered rent from a related party tenant, the space leased to the taxable REIT subsidiary must be part of a property at least 90% of which is rented to persons other than taxable REIT subsidiaries and related party tenants, and the amounts of rent paid to us by the taxable REIT subsidiary must be substantially comparable to the rents paid by such other persons for comparable space. All space currently leased to taxable REIT subsidiaries meets these conditions, and we intend to meet them in the future, unless we determine in our discretion that the rent received from a taxable REIT subsidiary will not jeopardize our status as a REIT;

If the rent attributable to any personal property leased in connection with a lease of property is more than 15% of the total rent received under the lease, all of the rent attributable to the personal property will fail to qualify as rents from real property. In general, we have not leased a significant amount of personal property under our current leases. If any incidental personal property has been leased, or we lease personal property in connection with a future lease, we believe that rent under each lease from the personal property has been or will be less than 15% of total rent from that lease or that the amount of rent attributable to the personal property will not jeopardize our status as a REIT; and

In general, if we furnish or render services to our tenants, other than through a taxable REIT subsidiary or an independent contractor who is adequately compensated and from whom we do not derive revenue, the income received from the tenants may not be deemed rents from real property. We may provide services directly, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise considered to be provided for the tenant s convenience. In addition, we may render directly a de minimis amount of non-customary services to the tenants of a property without disqualifying the income as rents from real property, as long as our income from the services does not exceed 1% of our income from the related property. We have not provided services to leased properties that have caused rents to be disqualified as rents from real property, and in the future, we intend that any services provided will not cause rents to be disqualified as rents from real property.

Based on, and subject to, the foregoing, we believe that rent from our leases should generally qualify as rents from real property for purposes of the 75% and 95% gross income tests, except in amounts that should not jeopardize our status as a REIT. As described above, however, the IRS may assert successfully a contrary position and, therefore, prevent us from qualifying as a REIT.

On an ongoing basis, we will use our best efforts not to:

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

Table of Contents

rent any property to a related party tenant (taking into account the applicable constructive ownership rules and the exception for taxable REIT subsidiaries), unless we determine in our discretion that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT;

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

perform services considered to be provided for the convenience of the tenant that generate rents exceeding 1% of all amounts received or accrued during the taxable year with respect to such property, other than through an independent contractor from whom we derive no revenue, through a taxable REIT subsidiary, or if the provision of such services will not jeopardize our status as a REIT.

Because the Code provisions applicable to REITs are complex, however, we may fail to meet one or more of the foregoing.

Tax on Income From Property Acquired in Foreclosure. We will be subject to tax at the maximum corporate rate on any income from foreclosure property (other than income that would be qualifying income for purposes of the 75% gross income test), less expenses directly connected to the production of such income. Foreclosure property is any real property (including interests in real property) and any personal property incident to such real property:

that is acquired by a REIT at a foreclosure sale, or having otherwise become the owner or in possession of the property by agreement or process of law, after a default (or imminent default) on a lease of such property or on a debt owed to the REIT secured by the property;

for which the related loan was acquired by the REIT at a time when default was not imminent or anticipated; and

for which the REIT makes a proper election to treat the property as foreclosure property.

A REIT will not be considered to have foreclosed on a property where it takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Generally, property acquired as described above ceases to be foreclosure property on the earlier of:

the last day of the third taxable year following the taxable year in which the REIT acquired the property (or longer if an extension is granted by the Secretary of the Treasury);

the first day on which a lease is entered into with respect to such property that, by its terms, will give rise to income that does not qualify under the 75% gross income test or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify under the 75% gross income test;

the first day on which any construction takes place on such property (other than completion of a building, or any other improvement, where more than 10% of the construction of such building or other improvement was completed before default became imminent); or

the first day that is more than 90 days after the day on which such property was acquired by the REIT and the property is used in a trade or business that is conducted by the REIT (other than through an independent contractor from whom the REIT itself does not derive or receive any income).

Tax on Prohibited Transactions. A REIT will incur a 100% tax on net income derived from any prohibited transaction. A prohibited transaction generally is a sale or other disposition of property (other than foreclosure property) that the REIT holds primarily for sale to customers in the ordinary course of a trade or

Table of Contents

business. With respect to prohibited transactions occurring after July 30, 2008, any foreign currency gain (as defined in Section 988(b)(1) of the Code) and any foreign currency loss (as defined in Section 988(b)(2) of the Code) will be taken into account in determining the amount of income subject to the 100% penalty tax. The prohibited transaction rules do not apply to property held by a taxable REIT subsidiary of a REIT. We believe that none of our assets (other than certain assets held through our taxable REIT subsidiaries) are held for sale to customers and that a sale of any such asset would not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset.

The Code provides a safe harbor that, if met, allows us to avoid being treated as engaged in a prohibited transaction. In order to meet the safe harbor, (i) we must have held the property for at least 2 years (and, in the case of property which consists of land or improvements not acquired through foreclosure, we must have held the property for 2 years for the production of rental income), (ii) we must not have made aggregate expenditures includible in the basis of the property during the 2-year period preceding the date of sale that exceed 30% of the net selling price of the property, and (iii) during the taxable year the property is disposed of, we must not have made more than 7 property sales or, alternatively, the aggregate adjusted basis or fair market value of all of the properties sold by us during the taxable year must not exceed 10% of the aggregate adjusted basis or 10% of the fair market value, respectively, of all of our assets as of the beginning of the taxable year. If the 7 sale limitation in (iii) above is not satisfied, substantially all of the marketing and development expenditures with respect to the property must be made through an independent contractor from whom we do not derive or receive any income. For sales on or prior to July 30, 2008, the 2-year periods referenced in (i) and (ii) above were 4 years, and the 10% fair market value test described in the alternative in (iii) above did not apply. We believe we have complied with the terms of the safe-harbor provision and we will attempt to comply with the terms of the safe-harbor in the future. We may fail to comply with the safe-harbor provision or may own property that could be characterized as property held primarily for sale to customers in the ordinary course of a trade or business.

Tax and Deduction Limits on Certain Transactions with Taxable REIT Subsidiaries. A REIT will incur a 100% tax on certain transactions between a REIT and a taxable REIT subsidiary to the extent the transactions are not on an arms-length basis. In addition, under certain circumstances the interest paid by a taxable REIT subsidiary to the REIT may not be deductible by the taxable REIT subsidiary. We believe that none of the transactions we have had with our taxable REIT subsidiaries will give rise to the 100% tax and that none of our taxable REIT subsidiaries will be subject to the interest deduction limits.

Hedging Transactions. Except to the extent provided by Treasury regulations, any income we derive from a hedging transaction (which may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts) which is clearly identified as such as specified in the Code, including gain from the sale or disposition of such a transaction, will not constitute gross income for purposes of either the 75% or 95% gross income test, and therefore will be exempt from these tests, but only to the extent that the transaction hedges indebtedness incurred or to be incurred by us to acquire or carry real estate assets or is entered into primarily to manage the risk of foreign currency fluctuations with respect to qualifying income under the 75% or 95% gross income test. Real estate liability hedging transactions entered into on or before July 30, 2008, however, will likely generate nonqualifying income for purposes of the 75% gross income test, and foreign currency hedges entered into on or before July 30, 2008, will likely generate nonqualifying income for purposes of both the 75% and 95% gross income tests. Moreover, income from any hedging transaction not described above will likely continue to be treated as nonqualifying for both the 75% and 95% gross income test.

Relief from Consequences of Failing to Meet Income Tests. If we fail to satisfy one or both of the 75% and 95% gross income tests for any taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. Those relief provisions generally will be available if our failure to meet such tests is due to reasonable cause and not due to willful neglect, and we file a schedule of the sources of our income in accordance with regulations prescribed by the Treasury. We may not qualify for the relief provisions in all circumstances. In addition, as discussed above in Taxation of the Company, even if

Table of Contents

the relief provisions apply, we would incur a 100% tax on gross income to the extent we fail the 75% or 95% gross income test (whichever amount is greater), multiplied by a fraction intended to reflect our profitability.

***Asset Tests*.** To maintain our qualification as a REIT, we also must satisfy the following asset tests at the close of each quarter of each taxable year:

At least 75% of the value of our total assets must consist of cash or cash items (including certain receivables), U.S. government securities, real estate assets, or qualifying temporary investments (the 75% asset test).

Real estate assets include interests in real property, interests in mortgages on real property and stock in other REITs. We believe that the properties qualify as real estate assets.

Interests in real property include an interest in mortgage loans or land and improvements thereon, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures), a leasehold of real property, and an option to acquire real property (or a leasehold of real property).

Qualifying temporary investments are investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity or long-term (at least five-year) debt offerings.

For investments not included in the 75% asset test, (A) the value of our interest in any one issuer s securities, which does not include our equity ownership of other REITs, any taxable REIT subsidiary or qualified REIT subsidiary, may not exceed 5% of the value of our total assets (the 5% asset test), (B) we may not own more than 10% of the voting power or value of any one issuer s outstanding securities, which does not include our equity ownership in other REITs, any qualified REIT subsidiary, or any taxable REIT subsidiary (the 10% asset test), (C) the value of our securities in one or more taxable REIT subsidiaries may not exceed 25% of the value of our total assets (20% for taxable years ending on or before December 31, 2008), and (D) no more than 25% of the value of our total assets may consist of the securities of taxable REIT subsidiaries and our assets that are not qualifying assets for purposes of the 75% asset test. For purposes of the 10% asset test that relates to value, the following are not treated as securities: (i) loans to individuals and estates, (ii) securities issued by REITs, (iii) accrued obligations to pay rent; (iv) certain debt meeting the definition of straight debt if neither we nor a taxable REIT subsidiary that we control hold more than 1% of the issuer s securities that do not qualify as straight debt, and (v) debt issued by a partnership if the partnership meets the 75% gross income test with respect to its own gross income.

We intend to select future investments so as to comply with the asset tests.

If we fail to satisfy the asset tests at the end of a calendar quarter, we would not lose our REIT status if (i) we satisfied the asset tests at the close of the preceding calendar quarter and (ii) the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets. If we did not satisfy the condition described in clause (ii) of the preceding sentence, we still could avoid disqualification as a REIT by eliminating any discrepancy within 30 days after the close of the calendar quarter in which the discrepancy arose.

Relief from Consequences of Failing to Meet Asset Tests. If we fail to satisfy one or more of the asset tests for any quarter of a taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. Those relief provisions are available for failures of the 5% asset test and the 10% asset test if (i) the failure is due to the ownership of assets that do not exceed the lesser of 1% of our total assets or $10 million, and (ii) the failure is corrected or we otherwise return to compliance with the applicable asset test within 6 months following the quarter in which it was discovered. In addition, should we fail

Table of Contents

to satisfy any of the asset tests other than failures addressed in the previous sentence, we may nevertheless qualify as a REIT for such year if (i) the failure is due to reasonable cause and not due to willful neglect, (ii) we file a schedule with a description of each asset causing the failure in accordance with regulations prescribed by the Treasury, (iii) the failure is corrected or we otherwise return to compliance with the asset tests within 6 months following the quarter in which the failure was discovered, and (iv) we pay a tax consisting of the greater of $50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset tests. We may not qualify for the relief provisions in all circumstances.

Distribution Requirements. Each taxable year, we must distribute dividends (other than capital gain dividends and deemed distributions of retained capital gain) to our shareholders in an aggregate amount at least equal to (1) the sum of 90% of (A) our REIT taxable income (computed without regard to the dividends paid deduction and our net capital gain) and (B) our net income (after tax), if any, from foreclosure property, minus (2) certain items of non-cash income.

We generally must pay such distributions in the taxable year to which they relate, or in the following taxable year if we (i) declare a dividend in one of the last three months of the calendar year to which the dividend relates which is payable to shareholders of record as determined in one of such months, and pay the distribution during January of the following taxable year, or (ii) declare the distribution before we timely file our federal income tax return for such year and pay the distribution on or before the first regular dividend payment date after such declaration.

We will pay federal income tax at regular corporate rates on taxable income (including net capital gain) that we do not distribute to shareholders. Furthermore, we will incur a 4% nondeductible excise tax if we fail to distribute during a 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 following such calendar year) at least the sum of (1) 85% of our REIT ordinary income for such year, (2) 95% of our REIT capital gain income for such year, and (3) any undistributed taxable income from prior periods. The excise tax is on the excess of such required distribution over the amounts we actually distributed. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. See Taxation of Taxable U.S. Shareholders. For purposes of the 4% excise tax, we will be treated as having distributed any such retained amount. We have made, and we intend to continue to make, timely distributions sufficient to satisfy the annual distribution requirements.

It is possible that, from time to time, we may experience timing differences between (1) the actual receipt of income and actual payment of deductible expenses and (2) the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. For example, we may not deduct recognized capital losses from our REIT taxable income. Further, it is possible that, from time to time, we may be allocated a share of partnership net capital gain attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue preferred shares or additional common shares to raise the cash necessary to make required distributions.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying deficiency dividends to our shareholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based upon the amount of any deduction we take for deficiency dividends.

Record Keeping Requirements. We must maintain certain records to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis certain information from our shareholders designed to disclose the actual ownership of our outstanding shares. We have complied, and we intend to continue to comply, with such requirements.

Table of Contents

Relief from Other Failures of the REIT Qualification Provisions. If we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect and we pay a penalty of $50,000 for each failure to satisfy the REIT qualification requirements. We may not qualify for this relief provision in all circumstances.

Failure to Qualify. If we fail to qualify as a REIT in any taxable year, and no relief provision applied, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct amounts paid out to shareholders and we would not be required to distribute any amounts to shareholders in such year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to shareholders would be taxable as ordinary income. Any such dividends should, however, be qualified dividend income, which is taxable at long-term capital gain rates for individual shareholders who satisfy certain holding period requirements for tax years through 2010. Different rules may apply for years beginning after 2010. See Taxation of Taxable U.S. Shareholders Current Tax Rates. Furthermore, subject to certain limitations of the Code, corporate shareholders might be eligible for the dividends received deduction. Unless we qualified for relief granted by the IRS 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 ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

Taxation of Taxable U.S. Shareholders

As used herein, the term taxable U.S. shareholder means a taxable beneficial owner of our common or preferred shares that for U.S. federal income tax purposes is

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for federal income tax purposes) created or organized in or under the laws of the United States, any of its states or the District of Columbia;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- a trust if (A) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (B) it has a valid election in effect to be treated as a U.S. person.

If a partnership, including an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of our shares, the treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership.

For U.S. federal income tax purposes, holders of depositary share receipts will be treated as if they held the equivalent fraction of the underlying preferred shares. Accordingly, the discussion below with respect to the consequences of holding our preferred shares applies equally to holders of our depositary receipts.

Dividends and Other Taxable U.S. Shareholder Distributions. As long as we qualify as a REIT, a taxable U.S. shareholder must take into account distributions on our common or preferred shares out of our current or accumulated earnings and profits (and that we do not designate as capital gain dividends or retained long-term capital gain) as ordinary income. Such distributions will not qualify for the dividends received deduction generally available to corporations. In addition, dividends paid to taxable U.S. shareholders generally will not qualify for the 15% tax rate (applicable to tax years through 2010) for qualified dividend income.

Table of Contents

In determining the extent to which a distribution constitutes a dividend for federal income tax purposes, our earnings and profits will be allocated first to distributions with respect to our preferred shares and then to distributions with respect to our common shares. If, for any taxable year, we elect to designate as capital gain dividends any portion of the distributions paid for the year to our shareholders, the portion of the amount so designated (not in excess of our net capital gain for the year) that will be allocable to the holders of each class or series of preferred shares will be the amount so designated, multiplied by a fraction, the numerator of which will be the total dividends (within the meaning of the Code) paid to the holders of such class or series of preferred shares for the year and the denominator of which will be the total dividends paid to the holders of all classes of our shares for the year. The remainder of the designated capital gain dividends will be allocable to holders of our common shares.

A taxable U.S. shareholder will recognize distributions that we designate as capital gain dividends as long-term capital gain (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the taxable U.S. shareholder has held its shares. See Capital Gains and Losses below. Subject to certain limitations, we will designate whether our capital gain dividends are taxable at the usual capital gains rate or at the higher rate applicable to depreciation recapture. A corporate taxable U.S. shareholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

We may elect to retain and pay income tax on the net long-term capital gain that we receive in a taxable year. In that case, a taxable U.S. shareholder would be taxed on its proportionate share of our undistributed long-term capital gain. The taxable U.S. shareholder would receive a credit or refund for its proportionate share of the tax we paid. The taxable U.S. shareholder would increase the basis in its shares by the amount of its proportionate share of our undistributed long-term capital gain, minus its share of the tax we paid.

A taxable U.S. shareholder will not incur tax on a distribution to the extent it exceeds our current and accumulated earnings and profits if such distribution does not exceed the adjusted basis of the taxable U.S. shareholder s common or preferred shares. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such common or preferred shares. To the extent a distribution exceeds both our current and accumulated earnings and profits and the taxable U.S. shareholder s adjusted basis in its common or preferred shares, the taxable U.S. shareholder will recognize long-term capital gain (or short-term capital gain if the shares have been held for one year or less), assuming the shares are a capital asset in the hands of the taxable U.S. shareholder. In addition, if we declare a distribution in October, November, or December of any year that is payable to a taxable U.S. shareholder of record on a specified date in any such month, such distribution shall be treated as both paid by us and received by the taxable U.S. shareholder on December 31 of such year, provided that we actually pay the distribution during January of the following calendar year. We will notify taxable U.S. shareholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income or capital gain dividends.

Taxation of Taxable U.S. Shareholders on the Disposition of Our Shares. In general, a taxable U.S. shareholder who is not a dealer in securities must treat any gain or loss realized upon a taxable disposition of our common or preferred shares as long-term capital gain or loss if the taxable U.S. shareholder has held the shares for more than one year and otherwise as short-term capital gain or loss. However, a taxable U.S. shareholder must treat any loss upon a sale or exchange of common or preferred shares held by such shareholder for six months or less (after applying certain holding period rules) as a long-term capital loss to the extent of capital gain dividends and other distributions from us that such taxable U.S. shareholder treats as long-term capital gain. All or a portion of any loss a taxable U.S. shareholder realizes upon a taxable disposition of the common or preferred shares may be disallowed if the taxable U.S. shareholder purchases substantially identical shares within the 61-day period beginning 30 days before and ending 30 days after the disposition.

Capital Gains and Losses. A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate on ordinary income significantly exceeds the maximum tax rate on long-term capital

Table of Contents

gain applicable to non-corporate taxpayers. The maximum tax rate on long-term capital gain from the sale or exchange of Section 1250 property (i.e., depreciable real property) is, to the extent that such gain would have been treated as ordinary income if the property were Section 1245 property, higher than the maximum long- term capital gain rate otherwise applicable. With respect to distributions that we designate as capital gain dividends and any retained capital gain that is deemed to be distributed, we may designate (subject to certain limits) whether such a distribution is taxable to our non-corporate shareholders at the lower or higher rate. The characterization of income as capital gain or ordinary income may also affect the deductibility of capital losses. A non-corporate taxpayer may generally deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of $3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer can deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

Redemption of Preferred Shares for Cash. The treatment accorded to any redemption by us for cash (as distinguished from a sale, exchange or other disposition) of preferred shares can only be determined on the basis of particular facts as to each holder at the time of redemption. As stated above, in general a taxable U.S. shareholder of preferred shares will recognize capital gain or loss measured by the difference between the amount received upon the redemption and such holder s adjusted tax basis in the preferred shares redeemed (provided the preferred shares are held as a capital asset) if such redemption (i) results in a complete termination of the holder s interest in all classes of our shares under Section 302(b)(3) of the Code, (ii) is substantially disproportionate with respect to the holder s interest in our shares under Section 302(b)(2) of the Code (which will not be the case if only preferred shares are redeemed, since they generally do not have voting rights), or (iii) is not essentially equivalent to a dividend with respect to the holder of preferred shares under Section 302(b)(1) of the Code. In applying these tests, there must be taken into account not only the preferred shares owned by the taxable U.S. shareholder, but also such holder s ownership of our common shares and any other options (including share purchase rights) to acquire any of the foregoing. The holder of preferred shares also must take into account any such securities (including options) which are considered to be owned by such holder by reason of the constructive ownership rules set forth in Sections 318 and 302(c) of the Code.

If a particular taxable U.S. shareholder of preferred shares owns (actually or constructively) none of our common shares or an insubstantial percentage of our outstanding common shares, then based upon current law, it is probable that the redemption of preferred shares from such a holder would be considered not essentially equivalent to a dividend. However, whether a dividend is not essentially equivalent to a dividend depends on all of the facts and circumstances, and a taxable U.S. shareholder of preferred shares intending to rely on any of these tests at the time of redemption should consult the holder s own tax advisor to determine their application to the holder s particular situation. If the redemption does not meet any of the tests under Section 302 of the Code, then the redemption proceeds received from the preferred shares will be treated as a distribution on the preferred shares. If the redemption is taxed as a dividend, the taxable U.S. shareholder s adjusted tax basis in the preferred shares will be transferred to any other shares held by the holder. If the holder of preferred shares owns none of our other shares, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

The Treasury is considering other methods for basis recovery, and new regulations addressing this treatment recently were proposed. There can be no assurance, however, that the proposed regulations will be adopted or that they will be adopted in the form currently proposed, and the existing methods for recovering adjusted tax basis continue to apply. We urge you to consult your tax advisor concerning the treatment of a cash redemption of our preferred shares.

Redemption or Conversion of Preferred Shares to Common Shares. Assuming that preferred shares will not be redeemed or converted at a time when there are distributions in arrears, in general, no gain or loss will be recognized for federal income tax purposes upon the redemption or conversion of our preferred shares at the option of the holder solely into common shares. The basis that a taxable U.S. shareholder will have for tax

Table of Contents

purposes in the common shares received will be equal to the adjusted basis the holder had in the preferred shares so redeemed or converted and, provided that the preferred shares were held as a capital asset, the holding period for the common shares received will include the holding period for the preferred shares redeemed or converted. A holder, however, will generally recognize gain or loss on the receipt of cash in lieu of a fractional common share in an amount equal to the difference between the amount of cash received and the holder s adjusted basis in such fractional share.

If a redemption or conversion occurs when there is a dividend arrearage on the preferred shares and the fair market value of the common shares exceeds the issue price of the preferred shares, a portion of the common shares received might be treated as a dividend distribution taxable as ordinary income.

Adjustments to Conversion Price. Under Section 305 of the Code, holders of preferred shares may be deemed to have received a constructive distribution of shares that is taxable as a dividend where the conversion ratio is adjusted to reflect a cash or property distribution with respect to the common shares into which it is convertible. An adjustment to the conversion price made pursuant to a *bona fide*, reasonable adjustment formula that has the effect of preventing dilution of the interest of the holders, however, will generally not be considered to result in a constructive distribution of shares. Certain of the possible adjustments that may be provided in issuances of our preferred shares may not qualify as being pursuant to a *bona fide*, reasonable adjustment formula. In such a case, if a nonqualifying adjustment were made, the holders of preferred shares might be deemed to have received a taxable stock dividend.

Passive Activity and Investment Income Limitations. Distributions from us and gain from the disposition of our common or preferred shares will not be treated as passive activity income and, therefore, taxable U.S. shareholders will not be able to apply any passive activity losses against such income. Dividends from us (to the extent they do not constitute a return of capital or capital gain dividends) and, on an elective basis, capital gain dividends and gain from the disposition of common or preferred shares generally will be treated as investment income for purposes of the investment income limitation.

Current Tax Rates. The maximum tax rate on the long-term capital gains of domestic non-corporate taxpayers is 15% for taxable years beginning on or before December 31, 2010. The tax rate on qualified dividend income is the same as the maximum capital gains rate, and is substantially lower than the maximum rate on ordinary income. Because, as a REIT, we are not generally subject to tax on the portion of our REIT taxable income or capital gains distributed to our shareholders, our distributions are not generally eligible for the tax rate on qualified dividend income. As a result, our ordinary REIT distributions are taxed at the higher tax rates applicable to ordinary income. However, with respect to non-corporate taxpayers, the 15% rate does generally apply to:

- a shareholder s long-term capital gain, if any, recognized on the disposition of our shares;
- distributions we designate as long-term capital gain dividends (except to the extent attributable to real estate depreciation, in which case the 25% tax rate applies);
- distributions attributable to dividends we receive from non-REIT corporations (including our taxable REIT subsidiaries); and
- distributions to the extent attributable to income upon which we have paid corporate tax (for example, the tax we would pay if we distributed less than all of our taxable REIT income).

In general, to qualify for the reduced tax rate on qualified dividend income, a shareholder must hold our shares for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our shares become ex-dividend.

Table of Contents

Without legislation, for non-corporate taxpayers the maximum tax rate on long-term capital gains will increase to 20% in 2011, and qualified dividend income will no longer be taxed at a preferential rate compared to ordinary income.

Information Reporting and Backup Withholding. Taxable U.S. shareholders that are exempt recipients (such as corporations) generally will not be subject to U.S. backup withholding and related information reporting on payments of dividends on, and the proceeds from the disposition of, our common or preferred shares unless, when required, they fail to demonstrate their status as exempt recipients. In general, we will report to our other shareholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a shareholder (other than an exempt recipient) may be subject to backup withholding (currently at the rate of 28%) with respect to dividends unless such holder provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules. A shareholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status to us. Backup withholding is not an additional tax and may be credited against a shareholder s regular U.S. federal income tax liability or refunded by the IRS.

Taxation of Tax-Exempt U.S. Shareholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts and annuities (exempt organizations), generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income (UBTI). While many investments in real estate generate UBTI, the IRS has issued a published ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI, provided that the exempt employee pension trust does not otherwise use the shares of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to exempt organizations generally should not constitute UBTI. However, if an exempt organization were to finance its acquisition of shares with debt, a portion of the income that they receive from us would constitute UBTI pursuant to the debt-financed property rules. Furthermore, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under paragraphs (7), (9), (17), and (20), respectively, of Code Section 501(c) are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our shares is required to treat a percentage of the dividends that it receives from us as UBTI (the UBTI Percentage). The UBTI Percentage is equal to the gross income we derive from an unrelated trade or business (determined as if we were a pension trust) divided by our total gross income for the year in which we pay the dividends. The UBTI rule applies to a pension trust holding more than 10% of our shares only if:

- the UBTI Percentage is at least 5%;
- we qualify as a REIT by reason of the modification of the 5/50 Rule that allows the beneficiaries of the pension trust to be treated as holding our shares in proportion to their actuarial interests in the pension trust; and
- we are a pension-held REIT (i.e., either (1) one pension trust owns more than 25% of the value of our shares or (2) a group of pension trusts individually holding more than 10% of the value of our shares collectively owns more than 50% of the value of our shares).

Tax-exempt entities will be subject to the rules described above, under the heading Taxation of Taxable U.S. Shareholders concerning the inclusion of our designated undistributed net capital gains in the income of

Table of Contents

our shareholders. Thus, such entities will, after satisfying filing requirements, be allowed a credit or refund of the tax deemed paid by such entities in respect of such includible gains.

Taxation of Non-U.S. Shareholders

The rules governing U.S. federal income taxation of non-U.S. shareholders (defined below) are complex. This section is only a summary of such rules. We urge non-U.S. shareholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of common or preferred shares, including any reporting requirements. As used herein, the term non-U.S. shareholder means any beneficial owner of our shares (other than a partnership or entity that is treated as a partnership for U.S. federal income tax purposes) that is not a taxable U.S. shareholder or exempt organization.

Ordinary Dividends. A non-U.S. shareholder that receives a distribution that is not attributable to gain from our sale or exchange of U.S. real property interests (as defined below) and that we do not designate as a capital gain dividend or retained capital gain will recognize ordinary income to the extent that we pay such distribution out of our current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution ordinarily will apply to such distribution unless an applicable tax treaty reduces or eliminates the tax. Under some treaties, however, rates below 30% that are applicable to ordinary income dividends from U.S. corporations may not apply to ordinary income dividends from a REIT or may apply only if the REIT meets certain additional conditions. If a distribution is treated as effectively connected with the non-U.S. shareholder s conduct of a U.S. trade or business, however, the non-U.S. shareholder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as taxable U.S. shareholders are taxed with respect to such distributions (and also may be subject to the 30% branch profits tax in the case of a non-U.S. shareholder that is a non-U.S. corporation unless the rate is reduced or eliminated by an applicable income tax treaty). We plan to withhold U.S. income tax at the rate of 30% on the gross amount of any such distribution paid to a non-U.S. shareholder unless (i) a lower treaty rate applies and the non-U.S. shareholder timely provides an IRS Form W-8BEN to us evidencing eligibility for that reduced rate, (ii) the non-U.S. shareholder timely provides an IRS Form W-8ECI to us claiming that the distribution is effectively connected income, or (iii) the non-U.S. shareholder holds shares through a qualified intermediary that has elected to perform any necessary withholding itself.

Return of Capital. A non-U.S. shareholder will not incur tax on a distribution to the extent it exceeds our current and accumulated earnings and profits if such distribution does not exceed the adjusted basis of its common or preferred shares. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such shares. A non-U.S. shareholder will be subject to tax to the extent a distribution exceeds both our current and accumulated earnings and profits and the adjusted basis of its common or preferred shares, if the non-U.S. shareholder otherwise would be subject to tax on gain from the sale or disposition of its shares, as described below. Because we generally cannot determine at the time we make a distribution whether or not the distribution will exceed our current and accumulated earnings and profits, we normally will withhold tax on the entire amount of any distribution just as we would withhold on an ordinary dividend. However, a non-U.S. shareholder may obtain a refund of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

Capital Gain Dividends. Provided that a particular class of our shares is regularly traded on an established securities market in the United States, and the non-U.S. shareholder does not own more than 5% of the shares of such class at any time during the one-year period preceding the distribution, then amounts distributed with respect to those shares that are designated as capital gains from our sale or exchange of U.S. real property interests (defined below) are treated as ordinary dividends taxable as described above under Ordinary Dividends.

If the foregoing exceptions do not apply, for example because the non-U.S. shareholder owns more than 5% of the relevant class of our shares, the non-U.S. shareholder will incur tax on distributions that are attributable to gain from our sale or exchange of U.S. real property interests under the provisions of the Foreign Investment in

Table of Contents

Real Property Tax Act of 1980 (FIRPTA). The term U.S. real property interests includes certain interests in real property and stock in corporations at least 50% of whose assets consists of interests in real property, but excludes mortgage loans and mortgage-backed securities. Under FIRPTA, a non-U.S. shareholder is taxed on distributions attributable to gain from sales of U.S. real property interests as if such gain were effectively connected with a U.S. business of the non-U.S. shareholder. A non-U.S. shareholder thus would be taxed on such a distribution at the normal capital gain rates applicable to taxable U.S. shareholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual). A corporate non-U.S. shareholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on distributions subject to FIRPTA. We must withhold 35% of any distribution that we could designate as a capital gain dividend. However, if we make a distribution and later designate it as a capital gain dividend, then (although such distribution may be taxable to a non-U.S. shareholder) it is not subject to withholding under FIRPTA. Instead, we must make-up the 35% FIRPTA withholding from distributions made after the designation, until the amount of distributions withheld at 35% equals the amount of the distribution designated as a capital gain dividend. A non-U.S. shareholder may receive a credit against its FIRPTA tax liability for the amount we withhold.

Distributions to a non-U.S. shareholder that we designate at the time of distribution as capital gain dividends which are not attributable to or treated as attributable to our disposition of a U.S. real property interest generally will not be subject to U.S. federal income taxation, except as described below under Sale of Shares.

Sale of Shares. A non-U.S. shareholder generally will not incur tax under FIRPTA on gain from the sale of its common or preferred shares as long as we are a domestically controlled REIT. A domestically controlled REIT is a REIT in which at all times during a specified testing period non-U.S. persons held, directly or indirectly, less than 50% in value of our shares. We anticipate that we will continue to be a domestically controlled REIT, but there is no assurance that we will continue to be so. In addition, a non-U.S. shareholder that owns, actually or constructively, 5% or less of a class of our of outstanding shares at all times during a specified testing period will not incur tax under FIRPTA on a sale of such shares if the shares are regularly traded on an established securities market. If neither of these exceptions were to apply, (i) the gain on the sale of the common or preferred shares would be taxed under FIRPTA, in which case a non-U.S. shareholder would be required to file a U.S. federal income tax return and would be taxed in the same manner as taxable U.S. shareholders with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals), and (ii) if the shares sold were not regularly traded on an established securities market or we were not a domestically-controlled REIT, the purchaser of the shares may be required to withhold and remit to the IRS 10% of the purchase price. Additionally, a corporate non-U.S. shareholder may also be subject to the 30% branch profits tax on gains from the sale of shares taxed under FIRPTA.

A non-U.S. shareholder will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. shareholder s U.S. trade or business, in which case the non-U.S. shareholder will be subject to the same treatment as taxable U.S. shareholders with respect to such gain, or (2) the non-U.S. shareholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year, in which case the non-U.S. shareholder will incur a 30% tax on his capital gains. Capital gains dividends not subject to FIRPTA will be subject to similar rules. A non-U.S. shareholder that is treated as a corporation for U.S. federal income tax purposes and has effectively connected income (as described in the first point above) may also, under certain circumstances, be subject to an additional branch profits tax, which is generally imposed on a foreign corporation on the deemed repatriation from the United States of effectively connected earnings and profits, at a 30% rate, unless the rate is reduced or eliminated by an applicable income tax treaty.

Wash Sales. In general, special wash sale rules apply if a shareholder owning more than 5% of our common or preferred shares avoids a taxable distribution of gain recognized from the sale or exchange of U.S. real property interests by selling our shares before the ex-dividend date of the distribution and then, within a designated period, enters into an option or contract to acquire shares of the same or a substantially identical class of our shares. If a wash sale occurs, then the seller/repurchaser will be treated as having gain recognized from the

Table of Contents

sale or exchange of U.S. real property interests in the same amount as if the avoided distribution had actually been received. Non-U.S. shareholders should consult their own tax advisors on the special wash sale rules that apply to non-U.S. shareholders.

Information Reporting and Backup Withholding. We must report annually to the IRS and to each non-U.S. shareholder the amount of distributions paid to such holder and the tax withheld with respect to such distributions, regardless of whether withholding was required. Copies of the information returns reporting such distributions and withholding may also be made available to the tax authorities in the country in which the non-U.S. shareholder resides under the provisions of an applicable income tax treaty.

Backup withholding (currently at the rate of 28%) and additional information reporting will generally not apply to distributions to a non-U.S. shareholder provided that the non-U.S. shareholder certifies under penalty of perjury that the shareholder is a non-U.S. shareholder, or otherwise establishes an exemption. As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of common or preferred shares effected at a foreign office of a foreign broker. Information reporting (but not backup withholding) will apply, however, to a payment of the proceeds of a sale of common or preferred shares by a foreign office of a broker that:

- is a U.S. person;
- derives 50% or more of its gross income for a specified three-year period from the conduct of a trade or business in the U.S.;
- is a controlled foreign corporation (generally, a foreign corporation controlled by stockholders that are United States persons) for U.S. tax purposes; or
- that is a foreign partnership, if at any time during its tax year more than 50% of its income or capital interests are held by U.S. persons or if it is engaged in the conduct of a trade or business in the U.S.,

unless the broker has documentary evidence in its records that the holder or beneficial owner is a non-U.S. shareholder and certain other conditions are met, or the shareholder otherwise establishes an exemption. Payment of the proceeds of a sale of common or preferred shares effected at a U.S. office of a broker is subject to both backup withholding and information reporting unless the shareholder certifies under penalty of perjury that the shareholder is a non-U.S. shareholder, or otherwise establishes an exemption. Backup withholding is not an additional tax, and may be credited against a non-U.S. shareholder s U.S. federal income tax liability or refunded to the extent excess amounts are withheld, provided that the required information is supplied to the IRS.

Other Tax Considerations

State and Local Taxes. We and/or you may be subject to state and local tax in various states and localities, including those states and localities in which we or you transact business, own property or reside. The state and local tax treatment in such jurisdictions may differ from the federal income tax treatment described above. Consequently, you should consult your own tax advisor regarding the effect of state and local tax laws upon an investment in our securities.

Table of Contents

PLAN OF DISTRIBUTION

We may sell the securities being offered by this prospectus in one or more of the following ways from time to time: (1) through underwriters or dealers; (2) through agents; (3) in at the market offerings to or through a market maker or into an existing trading market or securities exchange or otherwise; (4) directly to purchasers or shareholders, (5) through a combination of any of these methods of sale or (6) through any other legally available means. In addition, the sales will be made at market prices prevailing at the time of sale, at prices related to such prevailing market prices, at a fixed price or prices, which may be changed or at negotiated prices. We will identify any underwriter, dealer or agent involved in the offer and sale of securities, and any applicable commissions, discounts and other items constituting compensation to such underwriters, dealers or agents, in a prospectus supplement.

The methods by which we may distribute securities include:

- a block trade (which may involve crosses) in which the dealer so engaged will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a dealer as principal and resale by such dealer for its account pursuant to this prospectus or any prospectus supplement;
- ordinary broker transactions and transactions in which the broker solicits purchasers; or
- any other legally available means.

Unless we say otherwise in a prospectus supplement, the obligations of any underwriters to purchase securities will be subject to certain conditions and the underwriters will be obligated to purchase all of the applicable securities if any are purchased. If a dealer is used in a sale, we may sell the securities to the dealer as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

In connection with the sale of securities, underwriters or agents may receive compensation (in the form of discounts, concessions or commissions) from us or from purchasers of securities for whom they may act as agents. Underwriters may sell securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions, that may be in excess of those customary in the types of transactions involved, from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of securities may be deemed to be underwriters as that term is defined in the Securities Act, and any discounts or commissions received by them from us and any profits on the resale of the securities by them may be deemed to be underwriting discounts and commissions under the Securities Act. We will identify any such underwriter or agent, and we will describe any such compensation we pay, in the related prospectus supplement.

Underwriters, dealers and agents may be entitled, under agreements with us, to indemnification against and contribution toward certain civil liabilities, including liabilities under the Securities Act.

If we tell you in a prospectus supplement, we will authorize agents and underwriters to solicit offers by certain specified institutions or other persons to purchase securities at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Institutions with whom such contracts may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions, and other institutions but shall in all cases be subject to our approval. Such contracts will be subject only to those conditions set forth in the prospectus supplement and the prospectus supplement will set forth the commission

Table of Contents

payable for solicitation of such contracts. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the securities shall not be prohibited at the time of delivery under the laws of the jurisdiction to which the purchaser is subject. The underwriters and other agents will not have any responsibility in respect of the validity or performance of such contracts.

The securities may or may not be listed on a national securities exchange or traded in the over-the-counter market (other than the common shares, which are quoted on the New York Stock Exchange). No assurance can be given as to the liquidity of the trading market for any such securities.

If underwriters or dealers are used in the sale, until the distribution of the securities is completed, SEC rules may limit the ability of any such underwriters and selling group members to bid for and purchase the securities. As an exception to these rules, representatives of any underwriters are permitted to engage in certain transactions that stabilize the price of the securities. Such transactions may consist of bids or purchases for the purpose of pegging, fixing or maintaining the price of the securities. If the underwriters create a short position in the securities in connection with the offerings (in other words, if they sell more securities than are set forth on the cover page of the prospectus supplement) the representatives of the underwriters may reduce that short position by purchasing securities in the open market. The representatives of the underwriters may also elect to reduce any short position by exercising all or part of any over-allotment option described in the prospectus supplement. The representatives of the underwriters may also impose a penalty bid on certain underwriters and selling group members. This means that if the representatives purchase securities in the open market to reduce the underwriters short position or to stabilize the price of the securities, they may reclaim the amount of the selling concession from the underwriters and selling group members who sold those securities as part of the offering. In general, purchases of a security for the purpose of stabilization or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchases. The imposition of a penalty bid might also have an effect on the price of the securities to the extent that it discourages resales of the securities. We make no representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the securities. In addition, the representatives of any underwriters may determine not to engage in such transactions and such transactions, once commenced, may be discontinued without notice.

Certain of the underwriters or agents and their affiliates may engage in transactions with and perform services for us or our affiliates in the ordinary course of their respective businesses.

Table of Contents

LEGAL MATTERS

The validity of the offered securities and the accuracy of the discussion under Material Federal Income Tax Considerations will be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, Washington D.C. If any portion of the offered securities is distributed in an underwritten offering or through agents, certain legal matters may be passed upon for any agents or underwriters by counsel for such agents or underwriters identified in the applicable prospectus supplement.

EXPERTS

The financial statements and management s assessment of the effectiveness of internal control over financial reporting incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing in giving said reports.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public at the SEC s website at *www.sec.gov*. You may also read and copy any document we file at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operating rules and procedures for the Public Reference Room. Reports, proxy statements and other information concerning Federal Realty Investment Trust may also be inspected at the offices of the New York Stock Exchange, which are currently located at 20 Broad Street, New York, NY 10005.

The SEC allows us to incorporate by reference the information we file with them, which means we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and all information that we will later file with the SEC will automatically update and supersede this information. Any statement contained in this prospectus or a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to have been modified or superseded to the extent that a statement contained in this prospectus, or in any subsequently filed document that also is or is deemed to be incorporated by reference in this prospectus, modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. We incorporate by reference the documents listed below as well as any future documents that are deemed to be filed with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act (File No. 1-07533) from the date of this prospectus until the termination of the offering of the securities described in this prospectus or the expiration of the registration statement.

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on February 26, 2009;

Our Definitive Proxy Statement for our 2009 Annual Meeting of Shareholders, filed with the SEC on March 26, 2009;

Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2009, filed with the SEC on May 6, 2009;

Our Current Report on Form 8-K dated January 1, 2009, filed with the SEC on January 5, 2009;

Our Current Report on Form 8-K date February 17, 2009, filed with the SEC on February 20, 2009;

Our Current Report on Form 8-K dated March 16, 2009, filed with the SEC on March 19, 2009;

Table of Contents

Our Current Report on Form 8-K dated May 6, 2009, filed with the SEC on May 11, 2009;

Our Current Report on Form 8-K dated May 26, 2009, filed with the SEC on May 27, 2009;

Our Current Report on Form 8-K dated June 4, 2009, filed with the SEC on June 5, 2009;

Description of our common shares contained in the Registration Statement on Form 8-A/A, filed June 6, 2002; and

Description of our Common Share Purchase Rights included in the Registration Statement on Form 8-A/A, filed March 11, 1999, in the First Amendment to Amended and Restated Rights Agreement, dated as of November 23, 2003 and filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2003, and in the Second Amendment to Amended and Restated Rights Agreement, dated as of March 16, 2009 and filed as an exhibit to our Current Report on Form 8-K filed on March 19, 2009, each between us and American Stock Transfer & Trust Company.

We have filed with the SEC a registration statement, of which this prospectus is a part, with respect to the securities to be offered by this prospectus. This prospectus and any accompanying prospectus supplement do not contain all of the information set forth in the registration statement and its exhibits and schedules, certain parts of which are omitted as permitted by the rules and regulations of the SEC. For further information with respect to us or the securities offered by this prospectus, please review the registration statement and its exhibits and schedules. Statements contained in this prospectus and any accompanying prospectus supplement regarding the contents of any contract or other document are not necessarily complete and, in each instance, we refer you to the copy of the contract or document filed as an exhibit to the registration statement. Each of these statements is qualified in its entirety by this reference.

Copies of our SEC filings are available at no cost at our website, *www.federalrealty.com*. In addition, you may request a copy of any report or document incorporated by reference in this prospectus, except the exhibits, unless such exhibits are specifically incorporated by reference in this prospectus or in those documents, at no cost. Any such request may be made by writing or by telephone and shall be directed to the following address:

Federal Realty Investment Trust

1626 East Jefferson Street

Rockville, Maryland 20852

Attention: Investor Relations

(301) 998-8100

You should rely only on the information in our prospectus, any prospectus supplement and the documents that are incorporated by reference. We have not authorized anyone else to provide you with different information. We are not offering these securities in any state where the offer is prohibited by law. You should not assume that the information in this prospectus, any prospectus supplement or any incorporated document is accurate as of any date other than the date of the document.

Table of Contents

$150,000,000

5.95% Notes due 2014

PROSPECTUS SUPPLEMENT

J.P. Morgan

Wells Fargo Securities

Citi

PNC Capital Markets LLC

Morgan Keegan & Company, Inc.

SunTrust Robinson Humphrey

Capital One Southcoast

U.S. Bancorp Investments, Inc.

August 10, 2009