

NATIONAL RETAIL PROPERTIES, INC.

Form 424B5

September 06, 2017

Table of Contents

Filed pursuant to Rule 424(b)(5)  
Registration No. 333-202237

**This preliminary prospectus supplement relates to an effective shelf registration statement under the Securities Act of 1933, as amended, but is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED SEPTEMBER 6, 2017**

**PROSPECTUS SUPPLEMENT**

**(To Prospectus dated February 23, 2015)**

\$

% Notes due

We are offering \$ aggregate principal amount of percent ( %) notes due . The notes will have the following terms:

Interest on the notes will be payable semi-annually on and commencing , 2018.

The notes mature on , . The notes are redeemable in whole or in part at any time or from time to time at the applicable redemption price described in the section of this prospectus supplement entitled Description of Notes Optional Redemption.

There is no sinking fund.

The notes will be our senior unsecured obligations and will rank equally with all of our other senior indebtedness from time to time outstanding. However, the notes will be effectively subordinated to our mortgage debt and other secured indebtedness (to the extent of the value of the assets securing such debt) and will be structurally subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the value of the assets of those subsidiaries).

The notes are a new series of securities with no established trading market. The notes will not be listed on any securities exchange or automated quotation system.

**Investing in the notes involves risks. See Risk Factors beginning on page S-3 of this prospectus supplement and beginning on page 6 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, which is incorporated herein by reference.**

	Per Note	Total
Public Offering Price(1)	%	\$
Underwriting Discount	%	\$
Proceeds to National Retail Properties, Inc. (before expenses)(1)	%	\$

(1) Plus accrued interest, if any, from \_\_\_\_\_, 2017 if settlement occurs after that date.

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

We expect that delivery of the notes will be made to investors through the book-entry delivery system of The Depository Trust Company for the accounts of its participants, including Clearstream Banking S.A. and Euroclear Bank SA/NV, as operator for the Euroclear System, against payment in New York, New York on or about \_\_\_\_\_, 2017.

*Joint Book-Running Managers*

**BofA Merrill Lynch  
Jefferies**

**Citigroup**

**Wells Fargo Securities  
RBC Capital Markets  
US Bancorp**

**SunTrust Robinson Humphrey**

**The date of this prospectus supplement is**

**, 2017.**

**Table of Contents**

**TABLE OF CONTENTS**

**Prospectus Supplement**

	<b>Page</b>
<u>About This Prospectus Supplement</u>	S-i
<u>Forward-Looking Statements</u>	S-ii
<u>Summary</u>	S-1
<u>Risk Factors</u>	S-3
<u>Use of Proceeds</u>	S-5
<u>Ratio of Earnings to Fixed Charges</u>	S-6
<u>Description of Notes</u>	S-7
<u>Additional Material Federal Income Tax Considerations</u>	S-17
<u>Underwriting</u>	S-26
<u>Legal Matters</u>	S-29
<u>Experts</u>	S-29
<u>Where You Can Find More Information</u>	S-29

**Prospectus**

<u>About This Prospectus</u>	1
<u>Forward-Looking Statements</u>	2
<u>Prospectus Summary</u>	3
<u>Risk Factors</u>	4
<u>Use of Proceeds</u>	4
<u>Description of Debt Securities</u>	5
<u>Description of Preferred Stock</u>	16
<u>Description of Depositary Shares</u>	23
<u>Description of Common Stock</u>	26
<u>Description of Warrants</u>	30
<u>Material Federal Income Tax Considerations</u>	31
<u>Plan of Distribution</u>	51
<u>Legal Matters</u>	52
<u>Experts</u>	52
<u>Where You Can Find More Information</u>	52

**Table of Contents**

**ABOUT THIS PROSPECTUS SUPPLEMENT**

You should rely only on the information contained in or incorporated by reference into this prospectus supplement, the accompanying prospectus and any free writing prospectus we may authorize to be delivered to you. We have not, and the underwriters have not, authorized anyone to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. We and the underwriters are offering to sell, and seeking offers to buy, the securities only in jurisdictions where offers and sales are permitted. You should not assume that the information appearing in this prospectus supplement, the accompanying prospectus, any free writing prospectus or the documents incorporated by reference is accurate as of any date other than their respective dates or on the date or dates that are specified in these documents. Our business, financial condition, results of operations and prospects may have changed since those dates.

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and adds to, updates and changes information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information, some of which may not apply to this offering. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or any document incorporated by reference filed with the Securities and Exchange Commission (the "SEC") prior to the date of this prospectus supplement, the information in this prospectus supplement shall control. In addition, to the extent that any information in a document incorporated by reference that is filed with the SEC after the date of this prospectus supplement differs or varies from the information contained in this prospectus supplement, the accompanying prospectus or any document incorporated by reference herein or therein that was filed with the SEC prior to the date of this prospectus supplement, the information in such later filed document shall control.

In this prospectus supplement, the words "we," "our," "ours" and "us" refer to National Retail Properties, Inc. and its subsidiaries and joint ventures, unless the context indicates otherwise.

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

Statements contained in this prospectus supplement and the accompanying prospectus, including the documents that are incorporated by reference, that are not historical facts are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). Also, when we use any of the words anticipate, assume, believe, estimate, expect, intend or similar expressions, we are making forward-looking statements. These forward-looking statements are not guaranteed and are based on our present intentions and on our present expectations and assumptions. These statements, intentions, expectations and assumptions involve risks and uncertainties, some of which are beyond our control, that could cause actual results or events to differ materially from those we anticipate or project, such as:

changes in financial and economic conditions may have an adverse impact on our tenants, and commercial real estate in general;

our ability to obtain debt or equity capital on favorable terms, if at all;

loss of rent from tenants would reduce our cash flow;

a significant portion of the source of our annual base rent is heavily concentrated in specific industry classifications, tenants and in specific geographic locations;

owning real estate and indirect interests in real estate involves inherent risks;

real estate investments are illiquid;

costs of complying with changes in governmental laws and regulations may adversely affect our results of operations;

we may be subject to known or unknown environmental liabilities and hazardous materials on our properties;

our ability to successfully execute acquisition or development strategies;

our ability to dispose of properties consistent with our operating strategy;

we may suffer a loss in the event of a default of or bankruptcy of a borrower or a tenant;

certain provisions of our leases or loan agreements may be unenforceable;

property ownership through joint ventures and partnerships could limit our control of those investments;

competition from numerous other real estate investment trusts ( REITs ), commercial developers, real estate limited partnerships and other investors may impede our ability to grow;

the loss of key management personnel could adversely affect performance and the value of our securities;

uninsured losses may adversely affect our operating results and asset values;

acts of violence, terrorist attacks or war may adversely affect the markets in which we operate and our results of operations;

vacant properties or bankrupt tenants or borrowers could adversely affect our business or financial condition;

the amount of debt we have and the restrictions imposed by that debt could adversely affect our business and financial condition;

we are obligated to comply with financial and other covenants in our debt instruments that could restrict our operating activities, and the failure to comply with such covenants could result in defaults that accelerate the payment of such debt;

**Table of Contents**

the market value of our equity and debt securities are subject to various factors that may cause significant fluctuations or volatility;

our failure to qualify as a REIT for federal income tax purposes could result in significant tax liability;

even if we remain qualified as a REIT, we could face other tax liabilities that adversely affect operating results and reduce cash flow;

adverse legislative or regulatory tax changes could reduce our earnings, cash flow and the market value of our securities;

compliance with REIT requirements, including distribution requirements, may limit our flexibility and negatively affect our operating decisions;

changes in accounting pronouncements could adversely impact our or our tenants' reported financial performance;

our failure to maintain effective internal control over financial reporting could have a material adverse effect on our business, operating results and the market value of our securities;

our ability to pay dividends in the future is subject to many factors;

cybersecurity risks and cyber incidents could adversely affect our business and disrupt operations and expose us to liabilities to tenants, employees, capital providers, and other third parties; and

future investment in international markets could subject us to additional risks, including foreign currency exchange rate fluctuations, operational risks due to local economic and political conditions and laws and policies of the U.S. affecting foreign investment.

You should not place undue reliance on these forward-looking statements, as events described or implied in such statements may not occur. Except as required by law, we undertake no obligation to update or revise any forward-looking statements as a result of new information, future events or otherwise.

**Table of Contents**

**SUMMARY**

*The following summary is qualified in its entirety by the more detailed information and consolidated financial statements (including the notes thereto) contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read this entire prospectus supplement and the accompanying prospectus, including the information incorporated by reference herein and therein, before making an investment decision.*

**The Company**

We acquire, own, invest in and develop properties that are leased primarily to retail tenants under long-term net leases and primarily held for investment. As of June 30, 2017, we owned 2,675 properties, with an aggregate gross leasable area of approximately 28.1 million square feet, located in 48 states, with a weighted average remaining lease term of 11.5 years. Approximately 99% of our properties were leased as of June 30, 2017.

We are a fully integrated REIT for U.S. federal tax purposes, formed in 1984.

Our executive offices are located at 450 South Orange Avenue, Suite 900, Orlando, Florida 32801, and our telephone number is (407) 265-7348.

**The Offering**

*The following is a brief summary of certain terms of this offering. For a more complete description of the terms of the notes, see Description of Notes in this prospectus supplement and Description of Debt Securities in the accompanying prospectus.*

Issuer	National Retail Properties, Inc.
Notes Offered	\$      aggregate principal amount of      % Notes due      .
Maturity	The notes will mature on      ,      , unless previously redeemed in accordance with their terms prior to such date.
Interest Rate and Payment Dates	The notes will bear interest at a rate of      % per year. Interest will be payable semi-annually on      and      , commencing      , 2018.
Ranking of Notes	The notes will be our senior unsecured obligations and will rank equally with all of our other senior unsecured indebtedness from time to time outstanding. However, the notes will be effectively subordinated to our mortgage debt and other secured indebtedness (to the extent of the value of the assets securing such debt). The notes will also be structurally



subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the value of the assets of those subsidiaries).

Indebtedness

As of June 30, 2017, we had approximately \$2.5 billion of outstanding indebtedness, of which \$13.7 million was secured indebtedness.

S-1

**Table of Contents**

Optional Redemption	We may redeem the notes prior to _____, (the Par Call Date ) (which is the date that is _____ months prior to their maturity date), at any time in whole or from time to time in part, at the redemption price set forth in the section of this prospectus supplement entitled Description of Notes Optional Redemption; provided, however, that if we redeem the notes on or after the Par Call Date, the redemption price will equal 100% of the principal amount of the notes to be redeemed, plus accrued interest and unpaid interest thereon to, but not including, the redemption date.
Covenants	We will issue the notes under an indenture with U.S. Bank National Association, as successor trustee. The indenture will, among other things, restrict our ability, and the ability of our subsidiaries, to:  incur debt without meeting certain financial tests; and  secure debt with our assets and the assets of our subsidiaries.  For more details, see Description of Notes Certain Covenants in this prospectus supplement.
Use of Proceeds	We intend to use the net proceeds from this offering to repay all of the outstanding indebtedness under our credit facility. In addition, we intend to use the remainder of the net proceeds from this offering, if any, to fund future property acquisitions and for general corporate purposes. See Use of Proceeds in this prospectus supplement.
Sinking Fund	The notes will not have the benefit of a sinking fund.
Risk Factors	You should carefully read Risk Factors beginning on page S-4 of this prospectus supplement, as well as the risk factors beginning on page 6 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, which is incorporated by reference herein, for certain considerations relevant to an investment in the notes.
Material Federal Income Tax Considerations	Prospective investors are urged to consult their tax advisors with respect to the federal, state, local and foreign tax consequences of purchasing, owning and disposing of the notes. See Additional Material Federal Income Tax Considerations in this prospectus supplement and Material Federal Income Tax Considerations in the accompanying prospectus.

S-2

**Table of Contents**

**RISK FACTORS**

*In addition to the other information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus, including Risk Factors beginning on page 6 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, you should carefully review the following risk factors in determining whether to purchase the notes.*

***An adverse credit rating of the notes may cause their trading price to fall.***

A rating assigned to the notes reflects the applicable rating agency's assessment of the likelihood that the holders of the notes will receive the payments of interest and principal required to be made. A rating reflects only the view of a rating agency and is not a recommendation to buy, sell or hold the notes. Any rating can be revised upward or downward or withdrawn at any time by a rating agency if it decides the circumstances warrant that change. A rating agency rating the notes may assign a rating that is lower than the ratings assigned to our other debt. If rating agencies assign a lower-than-expected rating or reduce, or indicate that they may reduce, their ratings in the future, the trading price of the notes could significantly decline.

***We may incur additional debt and may not be able to repay our obligations under the notes.***

It is our current policy to maintain a ratio of total indebtedness to total assets (before accumulated depreciation) of not more than 60%. However, this policy is subject to reevaluation and modification by our board of directors without the approval of our security holders. If our board of directors modifies this policy to permit a higher degree of leverage and we incur additional indebtedness, debt service requirements would increase accordingly. Such an increase could adversely affect our financial condition and results of operations, as well as our ability to pay principal and interest on the notes. In addition, increased leverage could increase the risk that we may default on our other debt obligations.

We are subject to the risks associated with debt financing. These risks include our possible inability to generate cash through our operating activities sufficient to meet our required payments of principal and interest and that rising interest rates may cause the rate on our variable rate indebtedness to rise. In addition, we may not be able to repay or refinance existing indebtedness, which generally will not have been fully amortized at maturity, on favorable terms. In the event that we are unable to refinance our indebtedness on favorable terms, we may be forced to resort to alternatives that may adversely affect our ability to generate cash to pay our debt service obligations, including payments on the notes, such as disposing of properties on disadvantageous terms (which may also result in losses) and accepting financing on unfavorable terms.

***The effective and structural subordination of the notes may limit our ability to satisfy our obligations under the notes.***

The notes will be our senior unsecured obligations and will rank equally with all of our other senior indebtedness outstanding from time to time. However, the notes will be effectively subordinated to our mortgage debt and other secured indebtedness (to the extent of the value of the collateral securing such indebtedness). As of June 30, 2017, we had outstanding \$13.7 million of secured indebtedness. The provisions of the indenture governing the notes do not prohibit us from incurring additional secured indebtedness in the future, provided that certain conditions are satisfied. Consequently, in the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to us, the holders of any secured indebtedness will be entitled to proceed directly against the collateral that secures such secured indebtedness. Therefore, such collateral will not be available for satisfaction of any amounts owed under our unsecured indebtedness, including the notes, until such secured indebtedness is satisfied in full. The notes will also be structurally subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the value

of the assets of those subsidiaries), including any equity interests in such subsidiaries that are held by persons other than us or our subsidiaries. See Description of Notes Ranking in this prospectus supplement.

S-3

**Table of Contents**

***There is currently no trading market for the notes, and an active liquid trading market for the notes may not develop or, if it develops, be maintained.***

The notes are a new issue of securities with no established trading market. The notes will not be listed on any securities exchange or on any automated dealer quotation system. Although the underwriters have advised us that they intend to make a market in the notes, they are not obligated to do so and may discontinue any market-making at any time without notice. Accordingly, an active public trading market may not develop for the notes and, even if one develops, may not be maintained. If an active public trading market for the notes does not develop or is not maintained, the market price and liquidity of the notes is likely to be adversely affected, and holders may not be able to sell their notes at desired times and prices or at all. If any of the notes are traded after their purchase, they may trade at a discount, which could be substantial, from their purchase price.

The liquidity of the trading market, if any, and future trading prices of the notes will depend on many factors, including, among other things, the market price of our common stock, prevailing interest rates, our financial condition, results of operations, business, prospects and credit quality relative to our competitors, the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in any of these factors, some of which are beyond our control. In addition, market volatility or events or developments in the credit markets could materially and adversely affect the market value of the notes, regardless of our financial condition, results of operations, business, prospects or credit quality.

***An increase in interest rates could result in a decrease in the market value of the notes.***

In general, as market interest rates rise, notes bearing interest at a fixed rate generally decline in value. Consequently, if you purchase these notes and market interest rates increase, the market value of your notes may decline. We cannot predict the future level of market interest rates.

**Table of Contents**

**USE OF PROCEEDS**

We estimate that the net proceeds from this offering will be approximately \$       million, after deducting the underwriting discount and other estimated expenses of this offering payable by us. We intend to use the net proceeds from this offering to repay all of the outstanding indebtedness under our credit facility. In addition, we intend to use the remainder of the net proceeds from this offering, if any, to fund future property acquisitions and for general corporate purposes. Pending application of the net proceeds, we intend to invest the net proceeds in short-term, income-producing investments.

Borrowings under our credit facility were \$175.0 million as of September 5, 2017, and currently accrue interest at a rate of 2.156%. The credit facility matures on January 31, 2019, unless we exercise our option to extend the termination date by one year. Affiliates of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, RBC Capital Markets, LLC, SunTrust Robinson Humphrey, Inc., U.S. Bancorp Investments, Inc. and certain of the other underwriters in this offering are lenders and/or agents under our credit facility and will receive their proportionate share of the amount repaid under the credit facility with the net proceeds from this offering.

Table of Contents**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our historical ratio of earnings to fixed charges for the periods indicated:

	<b>Six Months Ended June 30, 2017(A)</b>	<b>2016</b>	<b>Year Ended December 31,</b>			
			<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
Ratio of Earnings to Fixed Charges	3.38x	3.43x	3.23x	3.18x	2.77x	2.45x

(A) Ratio of earnings to fixed charges excluding the effect of \$7.4 million in retirement severance costs would have been 3.52x. Retirement severance costs relate primarily to Craig Macnab's retirement as our chief executive officer on April 28, 2017.

For the purpose of computing these ratios, earnings have been calculated by taking pre-tax income from continuing operations before adjustment for income from equity investees and adding fixed charges, distributed income of equity investees and subtracting capitalized interest. Fixed charges consist of the sum of interest costs, whether expensed or capitalized, and amortized premiums, discounts and capitalized expenses related to indebtedness.



---

**Table of Contents**

**DESCRIPTION OF NOTES**

*The following description of the particular terms of the notes offered hereby supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the debt securities set forth in the accompanying prospectus under "Description of Debt Securities," to which reference is hereby made.*

**General**

The notes constitute a separate series of debt securities (which are more fully described in the accompanying prospectus) to be issued under an Indenture, dated as of March 25, 1998 (the "Original Indenture"), as supplemented by a Sixteenth Supplemental Indenture (the "Supplemental Indenture" and together with the Original Indenture, the "Indenture"), between us and U.S. Bank National Association, as successor trustee (the "Trustee"). The Original Indenture has been filed with the SEC as an exhibit to the Registration Statement of which this prospectus supplement is a part and is available for inspection at our offices or at the SEC's Internet site at <http://www.sec.gov>. The Indenture is subject to, and governed by, the Trust Indenture Act of 1939, as amended. The statements made hereunder relating to the Indenture and the notes to be issued thereunder are summaries of certain provisions thereof, do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Indenture and the notes. You should carefully read the Indenture and the notes as they, and not this prospectus supplement and accompanying prospectus, govern your rights as a noteholder.

All capitalized terms used but not defined herein shall have the respective meanings set forth in the Indenture.

The notes initially will be limited to an aggregate principal amount of \$ \_\_\_\_\_ million. We may re-open this series of notes in the future to issue additional notes having the same terms and conditions, except for any difference in the issue date, issue price and, if applicable, the initial interest payment date, and with the same CUSIP number as the notes offered hereby so long as such additional notes are fungible for U.S. federal income tax purposes with the notes offered hereby. The notes offered by this prospectus supplement and any additional notes would rank equally and ratably in right of payment and would be treated as a single series of debt securities for all purposes under the Indenture.

The notes will be issued only in fully registered form in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

**Ranking**

The notes will be our direct, senior unsecured obligations and will rank equally with all of our other unsubordinated indebtedness from time to time outstanding. However, the notes will be effectively subordinated to our mortgage debt and other secured indebtedness (to the extent of the value of the assets securing such debt) and will be structurally subordinated to the indebtedness and other liabilities of our subsidiaries (to the extent of the value of the assets of those subsidiaries). Accordingly, such indebtedness must be satisfied in full before holders of the notes will be able to realize any value from encumbered or indirectly-held properties.

As of June 30, 2017, on a pro forma basis after giving effect to this offering and the application of the proceeds therefrom, we would have had approximately \$ \_\_\_\_\_ billion of outstanding indebtedness, of which approximately \$13.7 million would have been secured by five of our properties with a book value of \$21.2 million. We may incur additional indebtedness, including secured indebtedness, subject to the provisions described below under "Certain Covenants - Limitations on Incurrence of Indebtedness."

**Principal and Interest**

The notes will bear interest at \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum and will mature on \_\_\_\_\_, \_\_\_\_\_. The notes will bear interest from, and including, \_\_\_\_\_, 2017 or from, and including, the immediately

S-7

---

**Table of Contents**

preceding Interest Payment Date (as defined below) to which interest has been paid, payable semi-annually in arrears on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 2018 (each, an Interest Payment Date), to the persons in whose name the applicable notes are registered in the Security Register on the preceding \_\_\_\_\_ or \_\_\_\_\_ (whether or not a Business Day, as defined below), as the case may be (each, a Regular Record Date). Interest on the notes will be computed on the basis of a 360-day year of twelve 30-day months.

If any Interest Payment Date or Stated Maturity falls on a day that is not a Business Day, the required payment shall be made on the next Business Day as if it were made on the date such payment was due and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity, as the case may be. Business Day means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banks in the City of New York, New York or in the City of St. Paul, Minnesota are authorized or required by law, regulation or executive order to close.

The principal of and interest on the notes will be payable at the corporate trust office of the agent of the Trustee (the Paying Agent), currently located at 111 Fillmore Avenue East, St. Paul, MN 55107, *provided* that, at our option, subject to certain conditions, payment of principal and interest may be made by check mailed to the address of the Person entitled thereto as it appears in the Security Register or by wire transfer of funds to such Person at an account maintained within the United States.

**Optional Redemption**

We may redeem the notes prior to the Par Call Date, at any time in whole or from time to time in part, at a redemption price equal to the greater of (i) 100% of the principal amount of the notes being redeemed plus accrued and unpaid interest thereon to, but not including, the redemption date; and (ii) the Make-Whole Amount, if any, with respect to such notes; provided, however, that if we redeem the notes on or after the Par Call Date, the redemption price will equal 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest thereon to, but not including, the redemption date (the Redemption Price).

If notice has been given as provided in the Indenture and funds for the redemption of any notes called for redemption shall have been made available on the redemption date referred to in such notice, such notes will cease to bear interest on the date fixed for such redemption specified in such notice and the only right of the Holders of the notes will be to receive payment of the Redemption Price.

Notice of any optional redemption of any notes will be given to Holders at their addresses, as shown in the Security Register, not less than 15 days nor more than 60 days prior to the date fixed for redemption. The notice of redemption will specify, among other items, the Redemption Price and the principal amount of the notes held by such Holder to be redeemed.

If we redeem less than all the notes, we will notify the Trustee at least 45 days prior to the giving of the redemption notice (or such shorter period as is satisfactory to the Trustee) of the aggregate principal amount of notes to be redeemed and their redemption date. The Trustee shall select, in such manner as it shall deem fair and appropriate, notes to be redeemed in whole or in part. Notes may be redeemed in part in the minimum authorized denomination for notes or in any integral multiple thereof.

Make-Whole Amount means, in connection with any optional redemption or accelerated payment of any note, the aggregate present value as of the redemption date of the remaining scheduled payments of principal and interest (exclusive of interest accrued to the date of redemption or accelerated payment) on the notes to be redeemed, assuming that such notes matured on the Par Call Date, determined by discounting, on a semi-annual basis, such

principal and interest at the Reinvestment Rate (determined on the third Business Day preceding the date such notice of redemption is given or declaration of acceleration is made).

Reinvestment Rate means            percent (    %) plus the arithmetic mean of the yields under the respective headings  
This Week and Last Week published in the Statistical Release under the caption

S-8

## **Table of Contents**

Treasury Constant Maturities for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity (assuming for this purpose that such notes matured on the Par Call Date), as of the payment date of the principal being redeemed or paid. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence, and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For such purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used.

Statistical Release means the statistical release designated H.15(519) or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination of the Make-Whole Amount, then such other reasonably comparable index as we shall designate.

## **Certain Covenants**

***Limitations on Incurrence of Indebtedness.*** We will not, and will not permit any Subsidiary (as defined below) to, incur any Indebtedness (as defined below) if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all of our outstanding Indebtedness and our Subsidiaries' outstanding Indebtedness (determined on a consolidated basis in accordance with GAAP) is greater than 60% of the sum of (without duplication) (i) our Total Assets (as defined below) and those of our Subsidiaries, as of the end of the calendar quarter covered in our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by us or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

In addition to the foregoing limitation on the incurrence of Indebtedness, we will not, and will not permit any Subsidiary to, incur any Indebtedness secured by any Encumbrance (as defined below) upon any of our properties or the properties of any Subsidiary if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all of our outstanding Indebtedness and our Subsidiaries' outstanding Indebtedness (determined on a consolidated basis in accordance with GAAP) which is secured by any Encumbrance on our properties or any Subsidiary is greater than 40% of the sum of (without duplication) (i) our Total Assets, and those of our Subsidiaries, as of the end of the calendar quarter covered in our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by us or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

We and our Subsidiaries will not at any time own Total Unencumbered Assets (as defined below) equal to less than 150% of the aggregate outstanding principal amount of Unsecured Indebtedness (as defined below) on a consolidated basis.

In addition to the foregoing limitations on the incurrence of Indebtedness, we will not, and will not permit any Subsidiary to, incur any Indebtedness if the ratio of Consolidated Income Available for Debt Service (as

S-9

---

**Table of Contents**

defined below) to the Annual Debt Service Charge (as defined below) for the four consecutive fiscal quarters most recently ended prior to the date on which such additional Indebtedness is to be incurred shall have been less than 1.5:1 on a pro forma basis after giving effect thereto and to the application of the proceeds therefrom, and calculated on the assumption that (i) such Indebtedness and any other Indebtedness incurred by us and our Subsidiaries since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Indebtedness, had occurred at the beginning of such period; (ii) the repayment or retirement of any other Indebtedness by us and our Subsidiaries since the first day of such four-quarter period had been repaid or retired at the beginning of such period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance of such Indebtedness during such period); (iii) in the case of Acquired Indebtedness (as defined below) or Indebtedness incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition being included in such pro forma calculation; and (iv) in the case of any acquisition or disposition by us or our Subsidiaries of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Indebtedness had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

***Provision of Financial Information.*** Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will, within 15 days after each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the SEC if we were so subject, (1) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders, copies of the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, if we were subject to such Sections, and (2) file with the Trustee copies of the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, if we were subject to such Sections, and (3) promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder.

***Waiver of Certain Covenants.*** We may omit to comply with any term, provision or condition of the foregoing covenants, and with any other term, provision or condition with respect to the notes, as the case may be (except any such term, provision or condition which could not be amended without the consent of all Holders of notes), if before or after the time for such compliance the Holders of at least a majority in principal amount of all of the outstanding notes, as the case may be, by act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition. Except to the extent so expressly waived, and until such waiver shall become effective, our obligations and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

As used herein, and in the Indenture:

***Acquired Indebtedness*** means Indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

***Annual Debt Service Charge*** for any period means the aggregate interest expense for such period in respect of, and the amortization during such period of any original issue discount of, Indebtedness of us and our Subsidiaries and the amount of dividends which are payable during such period in respect of any Disqualified Stock.

*Capital Stock* means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participations or other ownership interests (however designated) of such Person and any rights (other

S-10



**Table of Contents**

than debt securities convertible into or exchangeable for corporate stock), warrants or options to purchase any thereof.

*Consolidated Income Available for Debt Service* for any period means Earnings from Operations (as defined below) of ours and our Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (i) interest on Indebtedness of us and our Subsidiaries, (ii) provision for taxes of us and our Subsidiaries based on income, (iii) amortization of debt discount, (iv) provisions for gains and losses on properties and property depreciation and amortization, (v) the effect of any noncash charge resulting from a change in accounting principles in determining Earnings from Operations for such period and (vi) amortization of deferred charges.

*Disqualified Stock* means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for common stock), (ii) is convertible into or exchangeable or exercisable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or the redemption price of which may, at the option of such Person, be paid in Capital Stock which is not Disqualified Stock), in each case on or prior to the Stated Maturity of the notes.

*Earnings from Operations* for any period means net earnings excluding gains and losses on sales of investments, extraordinary items and property valuation losses, net as reflected in the financial statements of us and our Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

*Encumbrance* means any mortgage, lien, charge, pledge or security interest of any kind.

*GAAP* means generally accepted accounting principles as used in the United States applied on a consistent basis as in effect from time to time; provided that solely for purposes of any calculation required by the financial covenants contained in the Indenture, *GAAP* shall mean generally accepted accounting principles as used in the United States on the date of the Indenture, applied on a consistent basis.

*Indebtedness* of us or our Subsidiaries means any indebtedness of us or our Subsidiaries, whether or not contingent, in respect of (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments whether or not such indebtedness is secured by any Encumbrance existing on property owned by us or any Subsidiary of ours, (ii) indebtedness for borrowed money of a Person other than us or our Subsidiaries which is secured by any Encumbrance existing on property owned by us or our Subsidiaries, to the extent of the lesser of (x) the amount of indebtedness so secured and (y) the fair market value (as determined in good faith by our Board of Directors) of the property subject to such Encumbrance, (iii) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement, (iv) the principal amount of all obligations of us or our Subsidiaries with respect to redemption, repayment or other repurchase of any Disqualified Stock or (v) any lease of property by us or any Subsidiary as lessee which is reflected on our consolidated balance sheet as a capitalized lease in accordance with GAAP, and also includes, to the extent not otherwise included, any obligation by us or our Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Indebtedness of another Person (other than us or our Subsidiaries) (it being understood that Indebtedness shall be deemed to be incurred by us or our Subsidiaries whenever we or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof).

*Subsidiary* means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests of which are owned,

S-11

## **Table of Contents**

directly or indirectly, by such Person. For the purposes of this definition, *voting equity securities* means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

*Total Assets* as of any date means the sum of (i) the Undepreciated Real Estate Assets and (ii) all other assets of us and our Subsidiaries determined on a consolidated basis in accordance with GAAP (but excluding accounts receivable and intangibles).

*Total Unencumbered Assets* means the sum of (i) those Undepreciated Real Estate Assets not subject to an Encumbrance for borrowed money and (ii) all other assets of us and our Subsidiaries not subject to an Encumbrance for borrowed money determined on a consolidated basis in accordance with GAAP (but excluding accounts receivable and intangibles); *provided, however*, that, in determining Total Unencumbered Assets as a percentage of outstanding Unsecured Indebtedness for purposes of the covenant requiring us and our subsidiaries to maintain Total Unencumbered Assets equal to at least 150% of the aggregate outstanding principal amount of Unsecured Indebtedness on a consolidated basis, all investments in unconsolidated joint ventures, unconsolidated limited partnerships, unconsolidated limited liability companies and other Persons that are not consolidated for financial reporting purposes in accordance with GAAP shall be excluded from Total Unencumbered Assets.

*Undepreciated Real Estate Assets* as of any date means the cost (original cost plus capital improvements) of real estate assets of us and our Subsidiaries on such date, before depreciation and amortization, determined on a consolidated basis in accordance with GAAP.

*Unsecured Indebtedness* means Indebtedness which is not secured by any Encumbrance upon any of our properties or those of any Subsidiary.

See *Description of Debt Securities - Certain Covenants* in the accompanying prospectus for a description of additional covenants applicable to us.

## **Events of Default**

The Indenture provides that the following events are *Events of Default* with respect to the notes:

default in the payment of any interest on any notes when such interest becomes due and payable that continues for a period of 30 days;

default in the payment of the principal of (or Make-Whole Amount, if any, on) any notes when due and payable;

our default in the performance, or breach, of any other covenant or warranty in the Indenture with respect to the notes and continuance of such default or breach for a period of 60 days after written notice as provided in the Indenture;

default under any bond, debenture, note, 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 (or by any Subsidiary, the repayment of which we have guaranteed or for which we are directly responsible or liable as obligor or guarantor), having an aggregate principal amount outstanding of at least \$25,000,000, whether such Indebtedness now exists or shall hereafter be created, which default shall have 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, without such Indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after written notice to us as provided in the Indenture; provided, however, that for so long as any of the securities issued pursuant to any supplemental indenture to the Original Indenture that preceded the Twelfth Supplemental Indenture are outstanding, the reference to \$25,000,000 in this paragraph is replaced by \$10,000,000;

S-12

## **Table of Contents**

the entry by a court of competent jurisdiction of one or more judgments, orders or decrees against us or any Subsidiary in an aggregate amount (excluding amounts covered by insurance) in excess of \$10,000,000 and such judgments, orders or decrees remain undischarged, unstayed and unsatisfied in an aggregate amount (excluding amounts covered by insurance) in excess of \$10,000,000 for a period of 30 consecutive days; provided, however, that upon cancellation by the Trustee of all securities issued pursuant to each of the supplemental indentures to the Original Indenture that precede the Twelfth Supplemental Indenture, this provision shall cease to exist and will no longer be deemed to constitute an Event of Default; and

certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of us or any Significant Subsidiary. The Term Significant Subsidiary has the meaning ascribed to such term in Regulation S-X promulgated under the Securities Act.

If an Event of Default specified in the last bullet point above, relating to us or any Significant Subsidiary occurs, the principal amount of and the Make-Whole Amount on all outstanding notes shall become due and payable without any declaration or other act on the part of the Trustee or of the Holders.

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

The provisions of Article XIV of the Indenture relating to defeasance and covenant defeasance, which are described under Description of Debt Securities Discharge, Defeasance and Covenant Defeasance in the accompanying prospectus, will apply to the notes. Each of the covenants described under Certain Covenants in this prospectus supplement and Description of Debt Securities Certain Covenants in the accompanying prospectus will be subject to covenant defeasance.

## **The Trustee**

U.S. Bank National Association is the trustee under the Indenture and is a lender under our credit facility. Certain of its affiliates have engaged and in the future may engage in joint investments, investment banking transactions and in general financing and commercial banking transactions with, and the provision of services to, us and our affiliates in the ordinary course of business. U.S. Bancorp Investments, Inc., one of the underwriters, is an affiliate of the Trustee.

## **Book-Entry System**

The notes will be issued in the form of one or more fully registered global notes ( Global Securities ) which will be deposited with, or on behalf of, The Depository Trust Company ( DTC ), and registered in the name of DTC's nominee, Cede & Co. Except under the circumstances described below, the notes will not be issuable in definitive form. Unless and until it is exchanged in whole or in part for the individual notes represented thereby, a Global Security may not be transferred except as a whole by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any nominee of DTC to a successor depository or any nominee of such successor.

DTC has advised us of the following information regarding DTC: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants ( Participants ) deposit with DTC. DTC also facilitates the settlement among its Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in its Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants of DTC ( Direct Participants ) include securities brokers and dealers

(including the underwriters), banks, trust companies,

S-13

## **Table of Contents**

clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation or DTCC. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC System is also available to others such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant of DTC, either directly or indirectly ( Indirect Participants ). The rules applicable to DTC and its Participants are on file with the SEC.

Purchases of Global Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the securities on DTC's records. The ownership interest of each actual purchaser of each Global Security ( Beneficial Owner ) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Global Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Global Securities, except in the event that use of the book-entry system for the Global Securities is discontinued.

To facilitate subsequent transfers, all Global Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Global Securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Global Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Global Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Neither DTC nor Cede & Co. will consent or vote with respect to the Global Securities. Under its usual procedures, DTC mails an Omnibus Proxy to us as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Global Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy). Principal and interest payments on the Global Securities will be made to Cede & Co., as nominee of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from us or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of such Participant and not of DTC, the Trustee or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. is our responsibility or the responsibility of the Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Global Securities at any time by giving reasonable notice to us or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, definitive certificates are required to be printed and delivered.

We may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, definitive certificates will be printed and delivered. Notes so issued in definitive form will

be issued as registered notes in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

S-14



## **Table of Contents**

**Clearstream.** Clearstream Banking S.A. ( Clearstream ), is incorporated under the laws of Luxembourg as a professional depository. Clearstream holds securities for its participating organizations ( Clearstream Participants ) and facilitates the clearance and settlement of securities transactions between Clearstream Participants through electronic book-entry changes in accounts of Clearstream Participants, thereby eliminating the need for physical movement of certificates. Clearstream provides Clearstream Participants with, among other things, services for safekeeping, administration, clearance and establishment of internationally traded securities and securities lending and borrowing. Clearstream interfaces with domestic markets in several countries. As a professional depository, Clearstream is subject to regulation by the Luxembourg Monetary Institute. Clearstream Participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, and may include the underwriters. Indirect access to Clearstream is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream Participant either directly or indirectly.

Distributions with respect to notes held beneficially through Clearstream will be credited to cash accounts of Clearstream Participants in accordance with its rules and procedures to the extent received by DTC for Clearstream.

**Euroclear.** Euroclear System ( Euroclear ) was created in 1968 to hold securities for participants of Euroclear ( Euroclear Participants ) and to clear and settle transactions between Euroclear Participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. Euroclear includes various other services, including securities lending and borrowing and interfaces with domestic markets in several markets in several countries. Euroclear is operated by Euroclear Bank SA/NV (the Euroclear Operator ), under contract with Euro-clear Clearance Systems S.C., a Belgian cooperative corporation (the Cooperative ). All operations are conducted by the Euroclear Operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear Operator, not the Cooperative. The Cooperative establishes policy for Euroclear on behalf of Euroclear Participants. Euroclear Participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include the underwriters. Indirect access to Euroclear is also available to other firms that clear through or maintain a custodial relationship with a Euroclear Participant, either directly or indirectly.

The Euroclear Operator is regulated and examined by the Belgian Banking Commission.

Links have been established among DTC, Clearstream and Euroclear to facilitate the initial issuance of the notes sold outside of the United States and cross-market transfers of the notes associated with secondary market trading.

Although DTC, Clearstream and Euroclear have agreed to the procedures provided below in order to facilitate transfers, they are under no obligation to perform these procedures, and these procedures may be modified or discontinued at any time.

The information in this section concerning DTC, Clearstream and Euroclear and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy of this information.

## **Same-Day Settlement and Payment**

All payments of principal and interest in respect of the notes will be made by us in immediately available funds.

The notes will trade in DTC's Same-Day Funds Settlement System until maturity or until the notes are issued in certificated form, and secondary market trading activity in the notes will therefore be required by DTC

S-15

**Table of Contents**

to settle in immediately available funds. No assurance can be given as to the effect, if any, of settlement in immediately available funds on trading activity in the notes.

**Governing Law**

The Indenture will be governed by and shall be construed in accordance with the laws of the State of New York.

**No Personal Liability**

No past, present or future stockholder, employee, officer or director of ours or any successor thereof shall have any liability for any obligation, covenant or agreement of ours contained under the notes or the Indenture. Each Holder of notes by accepting such notes waives and releases all such liability. The waiver and release are part of the consideration for the issue of the notes.

S-16

**Table of Contents**

**ADDITIONAL MATERIAL FEDERAL INCOME TAX CONSIDERATIONS**

For a discussion of the material federal income tax issues that you may consider relevant relating to our taxation as a REIT, see **Material Federal Income Tax Considerations** beginning on page 30 of the accompanying prospectus, as modified by the discussion below under **Recent Legislation Affecting Taxation of Our Company**. For a general discussion of the material U.S. federal income tax considerations applicable to the acquisition, ownership and disposition of the notes, see below under **Taxation of Holders of the Notes**. These discussions apply only to initial beneficial owners of the notes who purchase notes in this offering at their issue price (as defined below) and who hold the notes as capital assets (generally property held for investment) within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the **Code**). These discussions are based on the Code, income tax regulations promulgated thereunder, judicial decisions, published positions of the Internal Revenue Service (**IRS**) and other applicable authorities, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect. These discussions are general in nature and are not exhaustive of all possible tax considerations, nor do they address any state, local or foreign tax considerations or any U.S. tax considerations (e.g., estate, generation-skipping, or gift tax) other than U.S. federal income tax considerations, that may be applicable to particular holders. These discussions do not address all the tax consequences that may be relevant to specific holders in light of their particular circumstances (including holders that are directly or indirectly related to us) or to holders subject to special treatment under the Code, such as financial institutions, brokers, dealers in securities and commodities, insurance companies, certain former U.S. citizens or long-term residents, regulated investment companies, real estate investment trusts, tax-exempt organizations, controlled foreign corporations, passive foreign investment companies, persons subject to the alternative minimum tax, U.S. persons whose functional currency is not the U.S. dollar, persons that are, or that hold their notes through, partnerships or other pass-through entities, or persons that hold notes as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes. Except as specifically provided below with respect to Non-U.S. Holders (as defined below), these discussions are limited to beneficial owners of notes that are U.S. Holders.

**PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE NOTES.**

**Recent Legislation and Regulations Affecting Taxation of Our Company**

This discussion supplements and updates the discussion contained in the prospectus under the heading **Material Federal Income Tax Considerations**, and supersedes such discussion to the extent inconsistent with such discussion. As supplemented and updated by this summary, investors should review the discussion in the prospectus under the heading **Material Federal Income Tax Considerations** for a more detailed summary of the federal income tax consequences of our election to be subject to federal income tax as a REIT.

***Path Act Modification of Certain Rules Applicable to REITs***

On December 18, 2015, President Obama signed into law the Consolidated Appropriations Act, 2016, an omnibus spending bill, with a division referred to as the Protecting Americans from Tax Hikes Act of 2015 (the **PATH Act**). The PATH Act modified a number of important rules regarding the taxation of REITs and their shareholders, including, among others, the following rules described below. The rules in the PATH Act were enacted with different effective dates, some of which are retroactive. Prospective investors are urged to consult their tax advisors regarding the implications of the PATH Act.

***Reduction in Built-in Gains Period.*** For taxable years beginning in 2015 and later, the built-in gains period (i.e., the period during which gains from the sale or disposition of property acquired by a REIT from a C corporation in a tax-free merger or other carryover basis transaction is subject to C corporation tax) is reduced from ten years to five years. Subsequent to the enactment of the PATH Act the IRS enacted temporary Treasury

S-17

**Table of Contents**

regulations that extended the built-in gains period with respect to REITs from five years back to 10 years, applicable to acquisitions of assets in which a REIT's basis in an asset is determined by reference to the basis of the assets in the hands of the transferor C corporation that occur on or after August 8, 2016 and on or before February 17, 2017. Pursuant to recently finalized Treasury regulations, the five-year recognition period applies to transactions that occur after February 17, 2017, and taxpayers may also apply the five-year recognition period to transactions that occurred on or after August 8, 2016 and on or before February 17, 2017.

***Reduction in Permissible Holdings of the Securities of Taxable REIT Subsidiaries.*** For taxable years beginning after 2017, the percentage of our total assets that may be represented by securities of one or more taxable REIT subsidiaries is reduced from 25% to 20%.

***Prohibited Transaction Safe Harbors.*** We are subject to a 100% tax on net income from prohibited transactions, i.e., sales of dealer property (other than foreclosure property). These rules also contain safe harbors under which certain sales of real estate assets will not be treated as prohibited transactions. Included among the requirements for the pre-PATH Act safe harbors is that (I) we do not make more than seven sales of property (subject to specified exceptions) during the taxable year at issue, (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than excepted property) sold during the taxable year does not exceed 10% of the aggregate bases in our assets as of the beginning of the taxable year, or (III) the fair market value of property (other than excepted property) sold during the taxable year does not exceed 10% of the fair market value of our total assets as of the beginning of the taxable year. If we rely on clause (II) or (III), substantially all of the marketing and certain development expenditures with respect to the properties sold must be made through an independent contractor. The PATH Act made the following changes to these safe harbors:

For taxable years beginning after December 18, 2015, clauses (II) and (III) are liberalized to permit us to sell properties with an aggregate adjusted basis (or fair market value) of up to 20% of the aggregate bases in (or fair market value of) our assets as long as the 10% standard is satisfied on average over the three-year period comprised of the taxable year at issue and the two immediately preceding taxable years.

For taxable years beginning after 2015, if we rely on clauses (II) or (III), marketing and development expenditures made through a taxable REIT subsidiary, as well as those made through an independent contractor, are included in the substantially all test described above.

***TRS Operation of Foreclosure Property.*** For taxable years beginning after 2015, a taxable REIT subsidiary may operate property on which we have made a foreclosure property election without loss of foreclosure property status.

***Modification to Preferential Dividend Rules.*** For distributions in taxable years beginning after 2014, the preferential dividend rules do not apply to publicly offered REITs. A publicly offered REIT means a REIT that is required to file annual and periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934. We are a publicly offered REIT.

***Limitations on Designation of Dividends by REITs.*** The aggregate amount of dividends that we may designate as qualified dividend income or as capital gain dividends with respect to any taxable year beginning after 2015 cannot exceed the dividends actually paid by us during such year. In addition, the Secretary of the Treasury is authorized to prescribe regulations or other guidance requiring proportionality of the designation of particular types of dividends.

***Debt Instruments of Publicly Offered REITs and Mortgages Treated as Real Estate Assets.*** The PATH Act provides that debt instruments issued by publicly offered REITs (as defined above) are treated as real estate assets for purposes of the 75% asset test. Income from such debt instruments is qualifying income for purposes of

S-18

---

**Table of Contents**

the 95% gross income test, but is not qualifying income for purposes of the 75% gross income test unless they would otherwise be treated as real estate assets. Under a new asset test, not more than 25% of the value of our assets can consist of debt instruments of publicly offered REITs unless they would otherwise be treated as real estate assets. These provisions are effective for taxable years beginning after 2015.

***Asset and Income Test Clarification Regarding Ancillary Personal Property.*** Rent attributable to personal property which is leased under, or in connection with, a lease of real property, is treated as rents from real property for purposes of the 95% and 75% gross income tests if the rent attributable to the personal property for the taxable year does not exceed 15% of the total rent for the year for such real and personal property. The PATH Act extends this treatment to the 75% asset test by providing that, for taxable years beginning after 2015, personal property leased in connection with a lease of real property is treated as a real estate asset for purposes of the 75% asset test to the extent that rent attributable to such personal property meets the 15% test described above. In addition, for taxable years beginning after 2015, debt secured by a mortgage on both real and personal property qualifies as a real estate asset for purposes of the 75% asset test, and interest on such debt is qualifying income for purposes of both the 95% and 75% gross income tests, if the fair market value of the personal property securing the debt does not exceed 15% of the total fair market value of all property securing the debt.

***Hedging Provisions.*** Income from hedging transactions that hedge certain REIT liabilities and currency risks is disregarded in applying the gross income tests. The PATH Act provides that for taxable years beginning after 2015, certain income from hedging transactions entered into to hedge existing hedging positions after any portion of the hedged indebtedness or property is disposed of will also be disregarded for purposes of the 95% and 75% gross income tests.

***Modification of REIT Earnings and Profits Calculation.*** The PATH Act modified the special earnings and profits rules in the Code to ensure that shareholders, for taxable years after 2015, will not be treated as receiving taxable dividends from us that exceed our earnings and profits.

***Treatment of Certain Services Provided by Taxable REIT Subsidiaries.*** For taxable years beginning after 2015, a 100% excise tax is imposed on redetermined TRS service income, which is income of a taxable REIT subsidiary attributable to services provided to, or on behalf of, us and which would otherwise be increased on distribution, apportionment, or allocation under the Code (i.e., as a result of a determination that the income was not arm's length), except to the extent income is attributable to services provided to a tenant (which were already subject to the 100% excise tax).

***Exceptions from FIRPTA for Certain REIT Stock Gains and Distributions.*** On or after December 18, 2015, the disposition of stock of a publicly traded REIT is not treated, under the Foreign Investment in Real Property Tax Act ( FIRPTA ), as a United States real property interest in the hands of a person who has not held more than 10% (increased from 5% under prior law) of the stock of such REIT during the applicable testing period. Similarly, on or after December 18, 2015, a distribution by a publicly traded REIT is not treated, under FIRPTA, as gain from the disposition of a United States real property interest for a person who has not held more than 10% (increased from 5% under prior law) of the stock of such REIT during the applicable testing period.

Stock of a REIT held (directly or through partnerships) by a qualified shareholder will not be a United States real property interest, and capital gain dividends from such a REIT will not be treated as gain from the sale of a United States real property interest, unless a person (other than a qualified shareholder) that holds an interest (other than an interest solely as a creditor) in such qualified shareholder owns, taking into account applicable constructive ownership rules, more than 10% of the stock of the REIT (an applicable investor ). If the qualified shareholder has such an applicable investor, gains and REIT distributions allocable to the portion of REIT stock held by the qualified



shareholder indirectly owned through the qualified shareholder by the applicable investor will be treated as gains from the sale of United States real property interests. For these purposes, a qualified shareholder is a foreign person which is in a treaty jurisdiction and satisfies certain publicly traded requirements, is a qualified collective investment vehicle, and maintains records on the identity of certain 5%

S-19

**Table of Contents**

owners. A qualified collective investment vehicle is a foreign person that is eligible for a reduced withholding rate with respect to ordinary REIT dividends even if such person holds more than 10% of the REIT's stock, a publicly traded partnership that is a withholding foreign partnership that would be a United States real property holding corporation if it were a United States corporation, or is designated as a qualified collective investment vehicle by the Secretary of the Treasury and is either fiscally transparent within the meaning of the Code or required to include dividends in its gross income but entitled to a deduction for distributions to its investors. Finally, capital gain dividends and non-dividend redemption and liquidating distributions to a qualified shareholder that are not allocable to an applicable investor will be treated as ordinary dividends. These changes apply to dispositions and distributions on or after December 18, 2015.

***Determination of Domestically Controlled REIT Status.*** In determining whether we are domestically controlled for purposes of the exception to FIRPTA for dispositions of domestically controlled REIT stock, we may presume that holders of less than 5% of a class of stock regularly traded on an established securities market in the United States are U.S. persons throughout the testing period, except to the extent that we have actual knowledge to the contrary. In addition, the PATH Act provides that any stock in a REIT held by another REIT that is publicly traded will be treated as held by a non-U.S. person unless the other REIT is domestically controlled, in which case the stock will be treated as held by a U.S. person. Finally, any stock in a REIT held by another REIT that is not publicly traded will only be treated as held by a U.S. person to the extent that U.S. persons hold (or are treated as holding under the new rules) the other REIT's stock. These provisions were effective as of December 18, 2015.

***FIRPTA Exception for Interests Held by Foreign Retirement or Pension Funds.*** Qualified foreign pension funds and entities that are wholly owned by a qualified foreign pension fund are exempted from FIRPTA and FIRPTA withholding. For these purposes, a qualified foreign pension fund is any trust, corporation, or other organization or arrangement if (i) it was created or organized under foreign law, (ii) it was established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, (iii) it does not have a single participant or beneficiary with a right to more than 5% of its assets or income, (iv) it is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and (v) under the laws of the country in which it is established or operates, either contributions to such fund which would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such fund or taxed at a reduced rate, or taxation of any investment income of such fund is deferred or such income is taxed at a reduced rate. This provision is effective for dispositions and distributions occurring after December 18, 2015.

***Increase in Rate of FIRPTA Withholding.*** For sales of United States real property interests occurring after February 16, 2016, the FIRPTA withholding rate for dispositions of United States real property interests and certain distributions increases from 10% to 15%.

***Bipartisan Budget Act Alteration of Rules Concerning Liability for Partnership Audit Adjustments***

On November 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015 (the Budget Act). Among other things, the Budget Act changed the rules applicable to federal income tax audits of partnerships (including partnerships in which we are a partner) and the collection of any tax resulting from such audits or other tax proceedings. Under the new rules, the partnership itself must pay any imputed underpayments, consisting of delinquent taxes, interest, and penalties deemed to arise out of an audit of the partnership, unless certain alternative methods are available and the partnership elects to utilize them.

The new rule generally does not apply to audits of taxable years beginning before January 1, 2018.

S-20

## **Table of Contents**

The Treasury has recently issued proposed regulations providing details of the new audit provisions. However, the timing and content of final regulations remains uncertain. Therefore, it is not clear at this time what effect this new legislation will have on us or our partnerships. However, it is possible that in the future, we and/or any partnership in which we are a partner could be subject to, or otherwise bear the economic burden of, federal income tax, interest, and penalties resulting from a federal income tax audit as a result of the changes enacted by the Budget Act.

### ***Revenue Procedure Issued Concerning Elective Cash/Share Dividends***

The IRS recently issued a revenue procedure applicable to publicly offered REITs that will treat distributions that, at the election of each shareholder, are paid partly in cash and partly in shares as dividends that satisfy the REIT annual distribution requirement and qualify for the dividends paid deduction for federal income tax purposes. We have no current intention to make such an elective cash/shares distribution, but in the event of such a distribution we expect to structure it so as to comply with the revenue procedure.

### **Taxation of Holders of the Notes**

For purposes of this discussion, a U.S. Holder means a beneficial owner of a note that, for U.S. federal income tax purposes, is

a citizen or individual resident of the United States;

a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or

a trust if (a) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust, or (b) it has a valid election in place to be treated as a United States person.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes is a holder of a note, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships that hold notes (and partners in such partnerships) should consult their tax advisors as to the particular U.S. federal income tax consequences applicable to them.

A Non-U.S. Holder means any beneficial owner of a note that is neither a U.S. Holder nor an entity or arrangement treated as a partnership for U.S. federal income tax purposes.

### ***U.S. Holders***

***Stated Interest on the Notes.*** A U.S. Holder generally will be required to include stated interest earned on the notes as ordinary income when received or accrued in accordance with the U.S. Holder's regular method of tax accounting to the extent such interest is qualified stated interest. Stated interest is qualified stated interest if it is unconditionally

payable in cash at least annually. The stated interest on the notes will be qualified stated interest.

***OID and Issue Price of the Notes.*** A debt instrument generally has original issue discount, or OID, if its stated redemption price at maturity exceeds its issue price by an amount that is equal to or greater than a statutory *de minimis* amount. A debt instrument's stated redemption price at maturity includes all principal and interest payable over the term of the debt instrument, other than qualified stated interest. The issue price of the notes will be the first price at which a substantial amount of the notes are sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers).

**Table of Contents**

If the notes are treated as issued with OID under the rules described above, a U.S. Holder generally will be required to include such OID in income over the term of the notes in accordance with a constant-yield-to-maturity method, regardless of whether the U.S. Holder is a cash or accrual method taxpayer, and regardless of whether and when the U.S. Holder receives cash payments of interest on the notes (other than cash attributable to qualified stated interest). Accordingly, a U.S. Holder could be treated as receiving interest income in advance of a corresponding receipt of cash. Any OID that a U.S. Holder includes in income will increase the U.S. Holder's tax basis in its notes. A U.S. Holder generally will not be required to include separately in income cash payments received on the notes to the extent that such payments constitute payments of previously accrued OID or payments of principal, and such payments will reduce the U.S. Holder's tax basis in its notes by the amount of such payments.

The remainder of this discussion assumes that the issue price of the notes will not be less than the stated principal amount of the notes by an amount that is equal to or greater than the statutory *de minimis* amount. U.S. Holders should consult their tax advisors regarding the determination of the issue price of the notes and the possible application of the OID rules.

***Sale, Exchange, Redemption, or Other Taxable Disposition of the Notes.*** Unless a non-recognition provision applies, upon the sale, exchange, redemption or other taxable disposition of a note, a U.S. Holder will generally recognize capital gain or loss equal to the difference (if any) between the amount realized (other than amounts attributable to accrued but unpaid stated interest, which will be taxable as ordinary income to the extent not previously included in income) and such U.S. Holder's adjusted tax basis in the note. The U.S. Holder's adjusted tax basis in a note generally will be the purchase price for the note, reduced by the amount of any payments previously received by the U.S. Holder (other than qualified stated interest). Such gain or loss will be treated as long-term capital gain or loss if the note was held for more than one year at the time of disposition. Long-term capital gain recognized by certain non-corporate U.S. Holders generally will be subject to a preferential tax rate. Subject to limited exceptions, capital losses cannot be used to offset a U.S. Holder's ordinary income.

***Unearned Income Medicare Contribution.*** Certain U.S. Holders that are individuals, estates or trusts are subject to a 3.8% Medicare tax on all or a portion of their net investment income, which may include all or a portion of their interest and net gains from the sale or other disposition of the notes. If you are a U.S. Holder that is an individual, estate or trust, you should consult your tax advisors regarding the applicability of the Medicare tax to your income and gains in respect of your investment in the notes.

***U.S. Holders Holding Notes Through Foreign Accounts or Intermediaries.*** U.S. Holders holding their notes through foreign accounts or intermediaries should refer to Non-U.S. Holders' FATCA Regime below.

***Information Reporting and Backup Withholding.*** In general, information reporting will apply to a U.S. Holder (other than an exempt recipient, including a corporation and certain other persons who, when required, demonstrate their exempt status) with respect to:

any payments made of principal of, premium, if any, and interest on, the notes; and

payment of the proceeds of a sale or other disposition of the notes.

In addition, backup withholding at the applicable statutory rate may apply to such amounts if a U.S. Holder fails to provide a correct taxpayer identification number certified under penalties of perjury or otherwise comply with applicable requirements of the backup withholding rules. A U.S. Holder that does not provide its correct taxpayer

identification number also may be subject to penalties imposed by the IRS.

Any backup withholding is not an additional tax and may be refunded or credited against the U.S. Holder's U.S. federal income tax liability, provided that the required information is timely provided to the IRS.

S-22

**Table of Contents**

***Non-U.S. Holders***

The rules governing the U.S. federal income taxation of Non-U.S. Holders are complex and no attempt will be made herein to provide more than a summary of such rules. Prospective Non-U.S. Holders should consult their tax advisors to determine the impact of federal, state, local and other tax laws with regard to an investment in the notes.

***Interest on the Notes.*** Subject to the rules described below under Information Reporting and Backup Withholding and FATCA Regime, a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on payments of interest on a note, provided that:

the Non-U.S. Holder is not

a direct or indirect owner of 10% or more of our voting stock;

a controlled foreign corporation related to us through stock ownership; or

a bank whose receipt of interest on a note is pursuant to a loan agreement entered into in the ordinary course of business;

such interest payments are not effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States; and

we or our paying agent receives certain information from the Non-U.S. Holder (or a financial institution that holds the notes on behalf of the Non-U.S. Holder in the ordinary course of its trade or business) certifying that such holder is a Non-U.S. Holder.

A Non-U.S. Holder that is not exempt from tax under these rules generally will be subject to U.S. federal income tax withholding at a rate of 30% unless:

the income is effectively connected with the conduct of a U.S. trade or business (and, if required by an applicable tax treaty, the income is attributable to a permanent establishment maintained in the United States by such Non-U.S. Holder); or

the Non-U.S. Holder is entitled to the benefits of an applicable income tax treaty, which provides for a lower rate of, or exemption from, withholding tax.

Except to the extent provided by an applicable tax treaty, interest on a note that is effectively connected with the conduct by a Non-U.S. Holder of a trade or business in the United States (and, if required by an applicable tax treaty, the interest is attributable to a permanent establishment maintained in the United States by such Non-U.S. Holder) generally will be subject to U.S. federal income tax on a net basis at the rates applicable to U.S. persons. A Non-U.S.



Holder that is treated as a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax, which is generally imposed on a foreign corporation on the actual or deemed repatriation from the United States of effectively connected earnings and profits, at a 30% rate (subject to reduction or elimination under an applicable tax treaty). If interest is subject to U.S. federal income tax on a net basis in accordance with the rules described in the second preceding sentence, payments of such interest will not be subject to U.S. withholding tax so long as the Non-U.S. Holder provides us or the paying agent with an appropriate IRS Form (generally, IRS Form W-8ECI). To claim the benefit of a reduced rate of, or exemption from, the 30% withholding tax under an income tax treaty, the Non-U.S. Holder must timely provide the appropriate, properly executed IRS form (generally, IRS Form W-8BEN in the case of an individual and IRS Form W-8BEN-E in the case of an entity). These forms may be required to be periodically updated.

***Sale, Exchange, Redemption, or Other Taxable Disposition of the Notes.*** Subject to the rules described below under Information Reporting and Backup Withholding and FATCA Regime, a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on gain from the sale, exchange, redemption or other taxable disposition of a note unless:

such gain is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (and, if required by an applicable tax treaty, is attributable to a permanent establishment maintained in the United States by the Non-U.S. Holder); or

---

**Table of Contents**

such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition and meets certain other requirements.

Except to the extent provided by an applicable tax treaty, gain from the sale or disposition of a note that is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States (and, if required by an applicable tax treaty, the gain is attributable to a permanent establishment maintained in the United States by such Non-U.S. Holder) generally will be subject to U.S. federal income tax on a net basis at the rates applicable to U.S. persons. A Non-U.S. Holder that is treated as a corporation for U.S. federal income tax purposes may also be subject to the branch profits tax described above. If such gains are realized by a Non-U.S. Holder who is an individual present in the United States for 183 days or more in the taxable year, then, except to the extent otherwise provided by an applicable income tax treaty, such individual generally will be subject to U.S. federal income tax at a rate of 30% on the amount by which capital gains from U.S. sources (including gains from the sale or other disposition of the notes) exceed capital losses allocable to U.S. sources. Any amount attributable to accrued but unpaid interest on the notes will generally be treated in the same manner as payments of interest made to such Non-U.S. Holder, as described above under Interest on the Notes. Non-U.S. Holders should consult their tax advisors on the treatment of any accrued but unpaid interest on the notes.

***Information Reporting and Backup Withholding.*** Payments to a Non-U.S. Holder of interest on a note generally will be reported to the IRS and to the Non-U.S. Holder. Copies of applicable IRS information returns may be made available, under the provisions of a specific tax treaty or agreement, to the tax authorities of the country in which the Non-U.S. Holder resides. Additional information reporting and backup withholding generally will not apply to payments of interest with respect to which either the requisite certification that the Non-U.S. Holder is not a U.S. person for U.S. federal income tax purposes, as described under the heading Interest on the Notes above, has been received or an exemption has otherwise been established provided that neither we nor our paying agent have actual knowledge or reason to know that the Non-U.S. Holder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied.

As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of a note 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 a note 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 (a foreign corporation controlled by certain U.S. shareholders) for U.S. tax purposes;

is a foreign partnership, if at any time during its tax year more than 50% of its income or capital interest are held by U.S. persons or if it is engaged in the conduct of a trade or business in the U.S.; or

is a U.S. branch of a foreign bank or insurance company that is treated as a U.S. person,

unless the broker has documentary evidence in its records that the holder or beneficial owner is a Non-U.S. Holder and certain other conditions are met, or the holder otherwise establishes an exemption. Payment of the proceeds of a sale of a note effected at a U.S. office of a broker is subject to both backup withholding and information reporting unless the holder certifies under penalty of perjury that the holder is a Non-U.S. Holder, or otherwise establishes an exemption; provided that, in either case, neither we nor any withholding agent knows or has reason to know that the holder is a United States person or that the conditions of any other exemptions are in fact not satisfied.

Any backup withholding is not an additional tax and may be refunded or credited against the Non-U.S. Holder's U.S. federal income tax liability, provided that the required information is timely provided to the IRS.

S-24

---

**Table of Contents**

**FATCA Regime.** Under sections 1471 through 1474 of the Code, Treasury regulations and related guidance (commonly referred to as FATCA ), a 30% U.S. withholding tax will be imposed in certain circumstances on payments of (i) interest on the notes and (ii) gross proceeds from a sale or other disposition of the notes (which includes redemption and retirement of the notes occurring after December 31, 2018). In the case of payments made to a foreign financial institution (such as a bank, a broker, an investment fund or, in certain cases, a holding company), as a beneficial owner or as an intermediary, this tax generally will be imposed, subject to certain exceptions, unless such institution (i) has agreed to (and does) comply with the requirements of an agreement with the United States (an FFI Agreement ) or (ii) is required by (and does comply with) applicable foreign law enacted in connection with an intergovernmental agreement between the United States and a foreign jurisdiction (an IGA ) to, among other things, collect and provide to the U.S. tax authorities or other relevant tax authorities certain information regarding U.S. account holders of such institution and, in either case, such institution provides the withholding agent with a certification as to its FATCA status. In the case of payments made to a foreign entity that is not a financial institution (as a beneficial owner), the tax generally will be imposed, subject to certain exceptions, unless such entity provides the withholding agent with a certification as to its FATCA status and, in certain cases, identifies any substantial U.S. owner (generally, any specified U.S. person that directly or indirectly owns more than a specified percentage of such entity). If a note is held through a foreign financial institution that has agreed to comply with the requirements of an FFI Agreement or is subject to similar requirements under applicable foreign law enacted in connection with an IGA, such foreign financial institution (or, in certain cases, a person paying amounts to such foreign financial institution) generally will be required, subject to certain exceptions, to withhold tax on payments made to (i) a person (including an individual) that fails to provide any required information or documentation or (ii) a foreign financial institution that has not agreed to comply with the requirements of an FFI Agreement and is not subject to similar requirements under applicable foreign law enacted in connection with an IGA. If we determine withholding is appropriate with respect to the payments of interest on the notes or payments in retirement or redemption of the notes, we will withhold tax at the applicable statutory rate, and we will not pay any additional amounts in respect of such withholding. Under certain circumstances, a holder may be eligible for refunds or credits of such withheld taxes. Prospective investors are urged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in the notes.

**Table of Contents****UNDERWRITING**

Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, Jefferies LLC and RBC Capital Markets, LLC are acting as joint book-running managers of this offering and as representatives of the underwriters named below.

Subject to the terms and conditions stated in the underwriting agreement, dated the date of this prospectus supplement, we have agreed to sell to each of the underwriters named below and each underwriter has severally, and not jointly, agreed to purchase from us, the principal amount of the notes set forth opposite the underwriter's name.

<b>Underwriter</b>	<b>Principal Amount of Notes</b>
Citigroup Global Markets Inc.	\$
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Wells Fargo Securities, LLC	
Jefferies LLC	
RBC Capital Markets, LLC	
SunTrust Robinson Humphrey, Inc.	
U.S. Bancorp Investments, Inc.	
<b>Total</b>	\$

The underwriting agreement provides that the obligations of the underwriters to purchase the notes included in this offering are subject to approval of legal matters by counsel and other conditions. The underwriters are obligated to purchase all of the notes if they purchase any of the notes.

The underwriters have advised us that they initially propose to offer the notes to the public at the public offering price appearing on the cover page of this prospectus supplement and to certain dealers at the public offering price less a concession not to exceed % of the principal amount of the notes. The underwriters may allow, and dealers may reallow, a discount not to exceed % of the principal amount of the notes on sales to other dealers. After the initial public offering, the public offering price and other selling terms may be changed.

The following table shows the underwriting discount that we are to pay to the underwriters in connection with this offering (expressed as a percentage of the principal amount of the notes).

	<b>Paid by National Retail Properties, Inc.</b>
Per note	%
Total	\$

In connection with the offering, the representatives may purchase and sell notes in the open market. These transactions may include over-allotment, syndicate covering transactions and stabilizing transactions. Over-allotment involves syndicate sales of notes in excess of the principal amount of notes to be purchased by the underwriters in the offering,

which creates a syndicate short position. Syndicate covering transactions involve purchases of the notes in the open market after the distribution has been completed in order to cover syndicate short positions. Stabilizing transactions consist of certain bids or purchases of notes made for the purpose of preventing or retarding a decline in the market price of the notes while the offering is in progress.

The underwriters also may impose penalty bids. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the representatives, in covering syndicate short positions or making stabilizing purchases, repurchase notes originally sold by that syndicate member.

Any of these activities may have the effect of preventing or retarding a decline in the market price of the notes. They may also cause the price of the notes to be higher than the price that otherwise would exist in the

S-26

**Table of Contents**

open market in the absence of these transactions. We and the underwriters 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 any of the notes. If the underwriters commence any of these transactions, they may discontinue them at any time without notice.

We estimate that the total expenses (excluding the underwriting discount) for this offering payable by us will be approximately \$ .

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

The notes are a new issue of securities with no established trading market. The notes will not be listed on any securities exchange or on any automated dealer quotation system. The underwriters may make a market in the notes after completion of the offering, but will not be obligated to do so and may discontinue any market-making activities at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes or that an active public market for the notes will develop. If an active public market for the notes does not develop, the market price and liquidity of the notes may be adversely affected.

The underwriters are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The underwriters and their respective affiliates have in the past performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses and may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers. Such investment and securities activities may involve our securities and instruments. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments. Certain of the underwriters or their affiliates that have a lending relationship with us routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the notes offered hereby.

As described in Use of Proceeds in this prospectus supplement, we intend to use a portion of the net proceeds of this offering to repay all of the outstanding indebtedness under our \$650.0 million unsecured revolving credit facility. Affiliates of Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, RBC Capital Markets, LLC, SunTrust Robinson Humphrey, Inc., U.S. Bancorp Investments, Inc. and certain of the other underwriters in this offering are lenders and/or agents under our credit facility and will receive their proportionate share of the amount repaid under the credit facility with the net proceeds of this offering. Upon such application, more than 5% of the net proceeds of this offering (not including underwriting discounts) may be received by an underwriter or its affiliates. Nonetheless, in accordance with FINRA Rule 5121, the appointment of a qualified independent underwriter is not necessary in connection with this offering because we, as the issuer of the securities in this offering, are a REIT.

We expect that delivery of the notes will be made to investors on or about the \_\_\_\_\_ business day following the date of this prospectus supplement (such settlement being referred to as T+ \_\_\_\_\_). Under Rule 15c6-1 under

S-27



## **Table of Contents**

the Exchange Act, trades in the secondary market are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes on the date of pricing or the next succeeding business days will be required, by virtue of the fact that the notes initially settle in T+ , to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the notes who wish to trade the notes on the date of pricing or the next succeeding business days should consult their advisors.

## **Selling Restrictions**

### ***Notice To Prospective Investors In The United Kingdom***

The notes may only be offered (a) in compliance with all applicable provisions of the Financial Services and Markets Act 2000 ( FSMA ) with respect to anything done in relation to the notes in, from or otherwise involving the United Kingdom and (b) where each underwriter has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of notes in circumstances in which Section 21(1) of the FSMA does not apply to us.

### ***Notice to Prospective Investors in Canada***

The notes may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the notes must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus supplement (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

**Table of Contents**

**LEGAL MATTERS**

Certain legal matters will be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C., as our securities and tax counsel. Certain legal matters will be passed upon for the underwriters by Vinson & Elkins L.L.P.

**EXPERTS**

The consolidated financial statements of National Retail Properties, Inc. and Subsidiaries appearing in National Retail Properties, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2016 (including schedules appearing therein), and the effectiveness of National Retail Properties, Inc.'s internal control over financial reporting as of December 31, 2016, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filing number is 001-11290. You may read and copy any document that we have filed with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain further information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. Our filings are available to the public at the SEC's Internet site at <http://www.sec.gov> and at our Internet site at <http://www.nnnreit.com>. The contents of our website are not and shall not be deemed a part of, or incorporated by reference into, this prospectus supplement or the accompanying prospectus. Our common stock is listed on the New York Stock Exchange under the ticker symbol NNN. You may inspect our reports, proxy statements and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement (of which this prospectus supplement and the accompanying prospectus is a part) on Form S-3 under the Securities Act with respect to our securities. This prospectus supplement and the accompanying prospectus do not contain all of the information set forth in the registration statement, including the exhibits and schedules thereto, certain parts of which are omitted as permitted by the rules and regulations of the SEC.

We are incorporating by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is considered to be part of this prospectus supplement and the accompanying prospectus, except for any information superseded by information in this prospectus supplement. We incorporate by reference the documents listed below, which we have filed with the SEC under Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act.

Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the SEC on February 13, 2017.

Definitive Proxy Statement on Schedule 14A relating to the 2017 annual meeting of stockholders, filed with the SEC on March 29, 2017.

S-29

**Table of Contents**

Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, filed with the SEC on May 2, 2017.

Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, filed with the SEC on August 1, 2017.

Current Report on Form 8-K filed with the SEC on February 16, 2017.

Current Report on Form 8-K filed with the SEC on May 31, 2017.

Current Report on Form 8-K filed with the SEC on September 6, 2017.

All documents that we file with the SEC under Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus supplement but before we terminate the offering of the notes shall be deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus and will be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any information in that document that is meant to supersede or modify any existing statement in this prospectus supplement will so supersede or modify the statement as appropriate.

You may request a copy of any or all of the documents incorporated by reference in this prospectus supplement, except the exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents), at no cost, by writing or telephoning our offices at the following address:

National Retail Properties, Inc.  
450 South Orange Avenue, Suite 900  
Orlando, Florida 32801  
Attention: Kevin B. Habicht  
(telephone number (407) 265-7348)

S-30

**Table of Contents**

**Prospectus**

**National Retail Properties, Inc.**

**Debt Securities, Preferred Stock, Depositary Shares,**

**Common Stock and Warrants**

We, National Retail Properties, Inc., may from time to time offer, in one or more series, separately or together, the following:

our debt securities, which may be either senior debt securities or subordinated debt securities;

shares of our preferred stock;

shares of our preferred stock represented by depositary shares;

shares of our common stock; and/or

warrants to purchase shares of our common or preferred stock.

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

We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities.

When we sell a particular series of securities, we will prepare a prospectus supplement describing the offering and the terms of that series of securities. Such terms may include limitations on direct or beneficial ownership and restrictions on transfer of our securities being offered that we believe are appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes.

The applicable prospectus supplement will also contain information, where applicable, about certain U.S. federal income tax considerations relating to the securities covered by such prospectus supplement.

We may offer our securities directly, through agents we may designate from time to time, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of our securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth, or

will be calculable from the information set forth, in the applicable prospectus supplement. None of our securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of such class or series of the securities.

**Investing in our securities involves risks. See Risk Factors on page 4 of this prospectus.**

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

**The date of this prospectus is February 23, 2015.**

Table of Contents

TABLE OF CONTENTS

	<b>Page</b>
<u>ABOUT THIS PROSPECTUS</u>	1
<u>FORWARD-LOOKING STATEMENTS</u>	2
<u>PROSPECTUS SUMMARY</u>	3
<u>RISK FACTORS</u>	4
<u>USE OF PROCEEDS</u>	4
<u>DESCRIPTION OF DEBT SECURITIES</u>	5
<u>DESCRIPTION OF PREFERRED STOCK</u>	16
<u>DESCRIPTION OF DEPOSITARY SHARES</u>	23
<u>DESCRIPTION OF COMMON STOCK</u>	26
<u>DESCRIPTION OF WARRANTS</u>	30
<u>MATERIAL FEDERAL INCOME TAX CONSIDERATIONS</u>	31
<u>PLAN OF DISTRIBUTION</u>	51
<u>LEGAL MATTERS</u>	52
<u>EXPERTS</u>	52
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	52

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

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC) using a shelf registration process. Under this shelf process, we may sell:

debt securities,

preferred stock,

preferred stock represented by depositary shares,

common stock, and

warrants to purchase shares of common or preferred stock either separately or in units, in one or more offerings. This prospectus provides you with a general description of those securities. We will offer our securities in amounts, at prices and on terms to be determined at the time we offer such securities. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read this prospectus and the applicable prospectus supplement and any applicable free writing prospectus together with the additional information described under the heading **Where You Can Find More Information**.

The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about National Retail Properties, Inc. and the securities offered under this prospectus. That registration statement can be read at the SEC's Internet site or at the SEC offices mentioned under the heading **Where You Can Find More Information**.

In this prospectus, the words **we**, **NNN**, **our**, **ours** and **us** refer to National Retail Properties, Inc. and all of its consolidated subsidiaries, unless the context indicates otherwise. The term **you** refers to a prospective investor.



Table of Contents

**FORWARD-LOOKING STATEMENTS**

Statements contained in this prospectus and any accompanying prospectus supplement, including the documents that are incorporated by reference, that are not historical facts are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). Also, when we use any of the words anticipate, assume, believe, estimate, expect, intend, or similar expressions, we are making forward-looking statements. These forward-looking statements are not guaranteed and are based on our present intentions and on our present expectations and assumptions. These statements, intentions, expectations and assumptions involve risks and uncertainties, some of which are beyond our control, that could cause actual results or events to differ materially from those we anticipate or project, such as:

changes in real estate market conditions and general economic conditions that could adversely impact our occupancy or rental rates;

the inherent risks associated with owning real estate (including local real estate market conditions, governing laws and regulations and illiquidity of real estate investments);

our ability to successfully implement our selective acquisition, disposition and development strategy;

our ability to purchase and sell properties at attractive prices;

our ability to integrate acquired properties and operations into existing operations;

our ability to locate suitable tenants for our properties;

the ability of our tenants to make payments under their respective leases, including our reliance on certain major tenants and our ability to re-lease properties that are currently vacant or that become vacant;

the ability of borrowers to make payments of principal and interest under structured finance investments we make to such borrowers;

our ability to gain access to the underlying collateral for any structured finance investments;

volatility and general market conditions affecting our sources and costs of capital;

continued availability of debt or equity capital, as needed, to meet our liquidity needs;

the availability of other debt and equity financing alternatives;

changes in interest rates under our credit facility and under any additional variable rate debt arrangements that we may enter into in the future;

our ability to repay debt financing obligations;

our ability to refinance amounts outstanding under our credit facilities at maturity on terms favorable to us;

our ability to be in compliance with certain debt covenants;

the loss of any member of our management team;

our ability to maintain internal controls and processes to ensure all transactions are accounted for properly, all relevant disclosures and filings are timely made in accordance with all rules and regulations, and any potential fraud or embezzlement is thwarted or detected;

changes in accounting pronouncements or federal or state tax rules or regulations could have adverse tax consequences for us or our tenants;

changes in laws, the impact of future laws and regulations, and litigation risks; and

our ability to qualify as a real estate investment trust for federal income tax purposes.

You should not place undue reliance on these forward-looking statements, as events described or implied in such statements may not occur. We undertake no obligation to update or revise any forward-looking statements as a result of new information, future events or otherwise.

**Table of Contents****PROSPECTUS SUMMARY**

*The following summary is qualified in its entirety by the more detailed information and consolidated financial statements and notes thereto appearing elsewhere in or incorporated by reference into, this prospectus.*

**National Retail Properties, Inc.**

We acquire, own, invest in and develop properties that are leased primarily to retail tenants under long-term net leases and held primarily for investment. As of December 31, 2014, National Retail Properties, Inc. ( NNN ) owned 2,054 properties with an aggregate gross leasable area of 22,479,000 square feet, located in 47 states, with a weighted average remaining lease term of 12 years. Approximately 99 percent of the properties were leased as of December 31, 2014.

We are a fully integrated real estate investment trust ( REIT ) for U.S. federal income tax purposes, formed in 1984.

Our executive offices are located at 450 S. Orange Avenue, Suite 900, Orlando, Florida 32801, and our telephone number is (407) 265-7348.

**Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends**

The table below sets forth our ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated. See **Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends** in this prospectus.

	<b>Year Ended December 31,</b>				
	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
Ratio of Earnings to Combined Fixed Charges	3.18	2.77	2.45	2.11	1.97
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	2.26	2.10	2.04	1.95	1.81

For the purpose of computing these ratios, earnings have been calculated by taking pre-tax income from continuing operations before adjustment for income from equity investees and adding fixed charges, distributed income of equity investees and subtracting capitalized interest. Fixed charges consist of the sum of interest costs, whether expensed or capitalized, and amortized premiums, discounts and capitalized expenses related to indebtedness. Preferred stock dividends are the amount of pre-tax earnings that are required to pay the dividends on outstanding preferred securities.

**Table of Contents**

**RISK FACTORS**

Investing in our securities involves a high degree of risk. Please see the risk factors described under the heading "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, on file with the SEC, which is incorporated herein by reference, and in any subsequent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K incorporated by reference in this prospectus and any accompanying prospectus supplement. Before making an investment decision, you should carefully consider these risks as well as information we include or incorporate by reference in this prospectus and in any accompanying prospectus supplement. The risks and uncertainties we have described are those we believe to be the principal risks that could affect us, our business or our industry, and which could result in a material adverse impact on our financial condition or results of operation or could cause the market price of our securities to fluctuate or decline. However, additional risks and uncertainties not currently known to us or that we currently deem immaterial may affect our business operations and the market price of our securities.

**USE OF PROCEEDS**

Unless otherwise specified in the applicable prospectus supplement, we will use the net proceeds from the sale of securities for one or more of the following:

repayment of debt;

acquisition of additional properties;

facility improvements and expansion fundings;

redemption or repurchase of any preferred stock or debt outstanding; and

working capital and general corporate purposes.

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

The following is a general description of the debt securities that we may offer from time to time. The particular terms of the debt securities being offered and the extent to which such general provisions may apply are set forth in the Indenture (as defined in the following paragraph) or will be set forth in one or more indenture supplements and described in the applicable prospectus supplement. Therefore, you should read both the applicable prospectus supplement and the description of the debt securities set forth in this prospectus for a description of the terms of any series of our debt securities. We may also issue debt securities under a separate, new indenture other than the Indenture. If that occurs, we will describe any differences in the terms of any series or issue of debt securities in the prospectus supplement relating to that series or issue.

**General**

Our debt securities will be secured or unsecured direct obligations and may be senior or subordinated to our other indebtedness. Our debt securities will be issued under the Indenture, dated March 25, 1998, between us and U.S. Bank National Association (successor to Wachovia Bank, National Association (formerly First Union National Bank)), as trustee (the Indenture). The Indenture is filed as an exhibit to the registration statement of which this prospectus is a part. The Indenture is, and any supplement thereto will be, subject to, and governed by, the Trust Indenture Act of 1939, as amended. Any statements made in this prospectus that relate to the Indenture and our debt securities are only summaries of those provisions and are not meant to replace or modify those provisions. Capitalized terms used but not defined in this prospectus shall have the respective meanings set forth in the Indenture.

The Indenture permits:

the debt securities to be issued without limits as to aggregate principal amount;

the debt securities to be issued in one or more series, in each case as established from time to time by our Board of Directors or as set forth in the Indenture or one or more indentures supplemental to the Indenture;

debt securities of one series to be issued at varying times; and

a series to be reopened, without the consent of the holders of the debt securities of such series, for issuance of additional debt securities of such series.

We may, but need not, designate more than one trustee in connection with the Indenture, each with respect to one or more series of debt securities. Any trustee under the Indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to such series. If two or more persons are acting as trustee with respect to different series of debt securities, each of those trustees will be considered a trustee of a trust under the Indenture separate and apart from the trust administered by any other trustee. Unless this prospectus states otherwise, a trustee will only be permitted to take action with respect to the one or more series of debt securities for which it is trustee under the Indenture.

The following summaries set forth certain general terms and provisions of the Indenture and our debt securities. The prospectus supplement relating to the series of debt securities being offered will contain further terms of the debt

securities of that series, including the following specific terms:

- (1) the title of the debt securities;
- (2) the aggregate principal amount of the debt securities and any limit on the aggregate principal amount;

**Table of Contents**

(3) the percentage of the principal amount at which the debt securities will be issued and, if applicable, the portion of the principal amount that is payable upon declaration of acceleration of the maturity of the debt securities, the portion of the principal amount of the debt securities that is convertible into shares of our common stock or other equity securities, or the method by which any such portion shall be determined;

(4) if such debt securities are convertible into equity, any limitation on the ownership or transferability of shares of our common stock or other equity securities into which such debt securities are convertible in connection with the preservation of our status as a REIT;

(5) the date or dates, or the method for determining the date or dates, on which the principal of such debt securities will be payable;

(6) the rate or rates (which may be fixed or variable), or the method by which such rate or rates shall be determined, at which such debt securities will bear interest, if any;

(7) the date or dates, or the method for determining the date or dates, from which any interest will accrue, the interest payment dates, the record dates for interest payment, the persons to whom interest shall be payable, and how interest will be calculated if other than that of a 360-day year of twelve 30-day months;

(8) the place or places where the principal of (and premium, if any) or interest on, if any, the debt securities will be payable, where the debt securities may be surrendered for conversion or registration of transfer or exchange, and where notices or demands to or upon us in respect to the debt securities and the applicable indenture may be served;

(9) the period or periods within which, the price or prices at which, and the terms and conditions upon which the debt securities may be redeemed, in whole or in part, at our option, if we have such an option;

(10) our obligation, if any, to redeem, repay or purchase the debt securities, in whole or in part, pursuant to any sinking fund or analogous provision or at the option of a holder of the debt securities, and the periods, the prices, and other terms and conditions of such redemption, repayment or purchase;

(11) if other than U.S. dollars, the currency or currencies, including the terms and conditions on which the debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies;

(12) whether the amount of payments of principal (and premium, if any) or interest, if any, on the debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on a currency, currencies, currency unit or units, or composite currency or currencies) and the manner in which any amounts shall be determined;

(13) any additions to, modifications of or deletions from the terms of the debt securities with respect to the events of default or covenants set forth in the applicable indenture;

(14) whether the debt securities will be issued in certificated or book-entry form;

(15) whether the debt securities will be in registered or bearer form, or both, and, if and to the extent in registered form, the denominations of the debt securities if other than \$1,000 or any integral multiple of \$1,000 and, if and to the extent in bearer form, the denominations and their terms and conditions;

(16) the applicability (or modification), if any, of the defeasance and covenant defeasance provisions described in this prospectus or in the applicable indenture;



## **Table of Contents**

(17) the terms (and the class), if any, upon which such debt securities may be convertible into shares of our common stock or other equity securities, and the terms and conditions upon which such conversion will be effected, including, without limitation, the initial conversion price or rate and the conversion period;

(18) whether and under what circumstances we will pay additional amounts on the debt securities in respect of any tax, assessment or governmental charge, and, if so, whether we will have the option to redeem the debt securities in lieu of making a payment;

(19) the provisions, if any, relating to the security provided for the debt securities; and

(20) any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

Certain of our debt securities may provide that if the maturity date is accelerated, we will be required to pay less than the entire principal amount. These securities are referred to as original issue discount securities. The prospectus supplement relating to these securities will describe any material U.S. federal income tax, accounting and other considerations that apply.

Except as may be set forth in the applicable prospectus supplement, our debt securities will not contain any provisions that would limit our ability to incur indebtedness or that would afford holders of our debt securities protection in the event of:

(1) a highly leveraged or similar action involving us; or

(2) a change of control of us.

However, the requirements for an entity to qualify as a REIT include certain restrictions on ownership and transfers of our shares of common stock and other equity securities. These restrictions may act to prevent or hinder a change of control. See **Description of Common Stock** **Restrictions on Ownership**. Provided below is a general description of the events of default and covenants contained in the Indenture. You should refer to the applicable prospectus supplement for information on any variances from this general description.

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

Unless otherwise described in the applicable prospectus supplement, our debt securities of any series will be issuable in denominations of \$1,000 and integral multiples of \$1,000.

Unless otherwise specified in the applicable prospectus supplement, the principal of (and premium, if any) and interest on, if any, any series of debt securities will be payable at the applicable trustee's corporate trust office, the address of which will be set forth in the applicable prospectus supplement. We will retain the option to make interest payments by check, mailed to the address of the person entitled to the interest as it appears in the applicable register for such debt securities. We can also pay by wire transfer of funds to that person at an account maintained within the United States.

Any interest not paid or otherwise provided for when due with respect to a debt security will not be payable to the holder in whose name the debt security is registered on the date we have specified as the date a registered holder of the debt security as of that date would be entitled to receive the interest payment due (the record date). Instead, the interest may be paid to the person in whose name such debt security is registered at the close of business on the date the trustee has set as the date on which a registered holder as of that date would be entitled to receive the defaulted interest

payment (the special record date). Notice of the payment will be given to the holder of that debt security not less than 10 days before the special record date. Interest may also be paid at any time in any other lawful manner, all as more completely described in the Indenture. If interest is not paid within 30 days of the due date, the trustee or holders of not less than 25% of the principal amount of the outstanding debt securities of that series may accelerate the securities. See Events of Default, Notice and Waiver.

**Table of Contents**

Subject to certain limitations applicable to debt securities issued in book-entry form, our debt securities of any series:

will be exchangeable for other debt securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations upon surrender of such debt securities at the corporate trust office of the applicable trustee; and

may be surrendered for conversion or registration of transfer at the corporate trust office of the applicable trustee.

Every debt security surrendered for conversion, registration of transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer. No service charge will be made for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the registration or exchange. We may at any time change transfer agents or approve a change in the location through which any transfer agent acts. However, we will be required to maintain a transfer agent in each place of payment for such series. We may at any time designate additional transfer agents with respect to any series of debt securities.

Neither we nor any trustee will be required:

to issue, exchange or register the transfer of any debt securities of any series during a period beginning at the opening of business 15 days before any selection of debt securities of that series to be redeemed and ending at the close of business on the day of mailing of the relevant notice of redemption;

to exchange or register the transfer of any debt security, or portion of the security, called for redemption, except the unredeemed portion of any debt security being redeemed in part; or

to issue, exchange or register the transfer of any debt security which has been surrendered for repayment at the option of the holder, except the portion, if any, of such debt security not to be so repaid.

**Merger, Consolidation or Sale**

The Indenture provides that we may consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge with or into, any other corporation. Those transactions are permitted if:

we are the continuing corporation, or, if not, the resulting or acquiring entity assumes all of our responsibilities and liabilities under the Indenture, including the payment of all amounts due on the debt securities and performance of the covenants and conditions contained in the Indenture;

immediately after giving effect to such transaction and treating any indebtedness which becomes our obligation or an obligation of any of our subsidiaries as a result thereof as having been incurred by us or such

subsidiary at the time of such transaction, no event of default under the Indenture, and no event which, after notice or the lapse of time, or both, would become such an event of default, shall have occurred and be continuing; and

an officer's certificate and legal opinion covering these conditions are delivered to the trustee.

**Certain Covenants**

*Existence.* Except as permitted under Merger, Consolidation or Sale, the Indenture requires that we do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, rights (by articles of incorporation, bylaws or statute) and franchises. We may, however, dispose of any right or franchise if we determine that the right or franchise is no longer desirable in the conduct of our business.

**Table of Contents**

*Maintenance of Properties.* As required in the Indenture, we will maintain, keep in good condition and make all necessary repairs, renewals, replacements, betterments and improvements of our, or our subsidiaries' properties that we deem necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times. We, or our subsidiaries may, however, sell or otherwise dispose for value our properties in the ordinary course of business.

*Insurance.* We, and our subsidiaries, will maintain the customary policies of insurance with responsible companies, taking into consideration prevailing market conditions and availability, for all of our properties and operations.

*Payment of Taxes and Other Claims.* We will pay or discharge or cause to be paid or discharged (or, if applicable, cause to be transferred to bond or other security), before the same shall become delinquent:

all taxes, assessments and governmental charges levied or imposed upon us or any of our subsidiaries or upon our income, profits or property or any of our subsidiaries; and

all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property or the property of any of our subsidiaries.

We will not however, pay or discharge (or transfer to bond or other security) or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

*Provision of Financial Information.* Whether or not we are subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, the Indenture requires that we, within 15 days after each of the respective dates by which we would have been required to file annual reports, quarterly reports and other documents with the SEC, if we were so subject:

transmit by mail to all holders of debt securities, as their names and addresses appear in the applicable register for such debt securities, without cost to such holders, copies of the annual reports, quarterly reports and other documents that we would have been required to file with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, if we were subject to such Sections;

file with the trustee copies of the annual reports, quarterly and other documents that we would have been required to file with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 if we were subject to such Sections; and

supply promptly upon written request and payment of the reasonable cost of duplication and delivery, copies of such documents to any prospective holder of debt securities.

*Additional Covenants.* If we make any additional covenants with respect to any series of debt securities we will describe those covenants in the applicable prospectus supplement.

**Events of Default, Notice and Waiver**

The Indenture provides that the following events are Events of Default with respect to any series of debt securities issued:

failure to pay interest on any debt security of that series for 30 days after the payment is due;

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

failure to deposit any sinking fund payment when due on debt securities of that series;

failure to perform any of our other covenants in the Indenture (unless the covenant applies to a different series of debt securities issued under the Indenture), for 60 days after we receive written notice as provided in the Indenture;

---

**Table of Contents**

default under any evidence of our indebtedness or any mortgage, indenture or other instrument under which such indebtedness is issued or by which such indebtedness is secured which results in the acceleration of indebtedness in an aggregate principal amount exceeding \$10,000,000, but only if such indebtedness is not discharged or such acceleration is not rescinded or annulled as provided in the Indenture;

any case, proceeding or other action under bankruptcy, insolvency, reorganization or relief of debtors laws is initiated by or against us (or any of our Significant Subsidiaries) in which the entity initiating the case, proceeding or other action seeks to have an order for relief entered with respect to it, or seeks to adjudicate us (or any of our Significant Subsidiaries) bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to our (or any of our Significant Subsidiaries ) debts;

a court grants relief in connection with any of the cases, proceedings or other actions described above;

we (or any of our Significant Subsidiaries) seek appointment of a receiver, trustee, custodian, conservator or other similar official for us (or any of our Significant Subsidiaries) or for all or any substantial part of our (or any of our Significant Subsidiaries ) assets, or we (or any of our Significant Subsidiaries) make a general assignment for the benefit of our (or any of our Significant Subsidiaries ) creditors; and

any other event of default provided with respect to that series of debt securities.

The term **Significant Subsidiary** means each of our significant subsidiaries (as defined in Regulation S-X promulgated under the Securities Act of 1933, as amended) that, in general, meets any of the following tests:

- (i) our investments in the subsidiary or advances to it exceed 10% of our total assets; or
- (ii) our proportionate share of the subsidiary's total assets exceeds 10% of our total assets; or
- (iii) our equity in the income from the subsidiary's continuing operations exceeds 10% of our income.

If an Event of Default for any series of our outstanding debt securities occurs and is continuing, then the applicable trustee or the holders of at least 25% of the principal amount of the outstanding debt securities of that series may declare the principal amount (or, where applicable such portion of the principal amount as may be specified in the terms) of all of the debt securities of that series to be due and payable immediately by written notice to us (and to the applicable trustee if given by the holders). However, at any time after a declaration of acceleration has been made, the holders of a majority of the principal amount of debt securities of that series (or of each series of debt securities then outstanding under the Indenture, as the case may be) can rescind and annul the declaration and its consequences if:

we have deposited with the applicable trustee all required payments of the principal (and premium, if any) and interest on the debt securities of such series (or of all debt securities then outstanding under the

Indenture, as the case may be), plus certain fees, expenses, disbursements and advances of the applicable trustee; and

all events of default, other than the nonpayment of accelerated principal (or specified portion thereof), with respect to debt securities of such series (or of all debt securities then outstanding under the Indenture, as the case may be) have been cured or waived as provided in the Indenture.

The Indenture also provides that the holders of not less than a majority in principal amount of the debt securities of any series (or of each series of debt securities then outstanding under the Indenture, as the case may be) may waive any past default with respect to such series and its consequences, except a default:

in the payment of the principal, any premium or interest on any debt security of the series; or

in respect of a covenant or provision contained in the Indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected by that default.



## **Table of Contents**

The Indenture provides that the trustee is required to give notice to the holders of the debt securities within 90 days of a default under the indenture unless such default shall have been cured or waived. However, the trustee may withhold notice to the holders of any such series of debt securities of any default with respect to that series (except a default in the payment of the principal, any premium or interest on any debt security of that series or in the payment of any sinking fund installment in respect of any debt security of that series) if specified responsible officers of the trustee consider such withholding to be in the interest of the holders.

The Indenture provides that no holder of our debt securities of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or for any remedy, except in the case of the failure of the applicable trustee, for 60 days, to act 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 principal amount of the outstanding debt securities of the series, as well as an offer of reasonable indemnity. 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 the debt securities held by that holder at the respective due dates.

Subject to provisions in the Indenture relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any holders of any series of debt securities then outstanding under the Indenture, unless those holders have offered to the trustee reasonable security or indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series (or of each series of debt securities then outstanding under the Indenture, as the case may be) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee. However, the trustee may refuse to follow any direction which is in conflict with any law or the Indenture, which may involve such trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of such series not involved.

Within 120 days after the close of each fiscal year, we are required to deliver to each trustee under the Indenture a certificate, signed by one of several specified officers, stating whether such officer has knowledge of any default under the Indenture and, if so, specifying the nature and status of each such default.

## **Modification of the Indenture**

Modifications and amendments of the Indenture may be made only with the consent of the holders of a majority in principal amount of all of our outstanding debt securities issued which are affected by such modification or amendment. The following modifications or amendments will not be effective against a holder without its consent:

a change in the stated maturity of the principal of, installment of interest or premium (if any) on the debt security;

a reduction in the principal amount of, or the rate of amount of interest on, or any premium payable upon redemption of, the debt security;

a reduction in the principal amount of an original issue discount security that would be due and payable upon declaration of acceleration of the maturity thereof or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of any such debt security;

a change in the place of payment, or the currency or currencies, for payment of principal of, or premium (if any) or interest on any such debt security;

an impairment of the right to institute suit for the enforcement of any payment on or with respect to any such debt security;

a reduction in the percentage of outstanding debt securities of any series necessary to modify or amend the Indenture, to waive compliance with certain provisions of or certain defaults and consequences under, or to reduce the quorum or voting requirements set forth in the Indenture; or

**Table of Contents**

a modification of any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect such action or to provide that certain other provisions may not be modified or waived without the consent of the holder of such debt security.

The holders of a majority in aggregate principal amount of outstanding debt securities of each series may, on behalf of all holders of debt securities of that series, waive, insofar as that series is concerned, our compliance with certain of our covenants in the Indenture, including those described in Certain Covenants.

We and the trustee may modify or amend the Indenture without the consent of any holder of debt securities for any of the following purposes:

to evidence the succession of another person to us as obligor under the Indenture;

to add to our covenants for the benefit of the holders of all or any series of debt securities issued, or to surrender any right or power conferred upon us in the Indenture;

to add events of default for the benefit of the holders of all or any series of debt securities issued;

to add or change any provisions of the Indenture to facilitate the issuance of, or to liberalize certain terms of, debt securities issued in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form, provided that such action shall not adversely affect the interests of the holders of such debt securities of any series in any material respect;

to change or eliminate any provision of the Indenture, provided that any such change or elimination shall become effective only when there are no debt securities outstanding of any previously created series issued which are entitled to the benefit of such provision;

to secure the debt securities issued;

to establish the form or terms of debt securities of any series issued, including the provisions and procedures, if applicable, for the conversion of such debt securities into shares of our common stock;

to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the Indenture by more than one trustee;

to cure any ambiguity, defect or inconsistency in the Indenture, provided that such action shall not adversely affect in any material respect the interests of holders of debt securities of any series issued; or

to supplement any of the provisions of the Indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of such debt securities issued, provided that such action shall not adversely affect in any material respect the interests of the holders of the debt securities of any series issued.

The Indenture provides that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver, or whether a quorum is present at a meeting of holders of the debt securities:

the principal amount of an original issue discount security that shall be deemed to be outstanding shall be the amount of the principal that would be due and payable as of the date of such determination if the maturity were to be accelerated;

the principal amount of a debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. dollar equivalent, determined on the issue date for such debt security, of the principal amount (or, in the case of an original issue discount security, the U.S. dollar equivalent on the issue date of such debt security of the amount determined as provided above);

## **Table of Contents**

the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of such indexed security at original issuance, unless the Indenture otherwise provides; and

debt securities we own or any other obligor upon the debt securities or any of our affiliates or of such other obligor shall be disregarded.

## **Meetings of the Holders of Debt Securities**

The Indenture contains provisions for convening meetings of the holders of an issued series of debt securities. A meeting may be called at any time by the trustee, at our request or at the request of holders of at least 25% in principal amount of the outstanding debt securities of such series, in any such case, upon notice given as provided in the Indenture. Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the Indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series. *However*, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage which is less than a majority in principal amount of the outstanding debt securities of a series may be adopted at a meeting or adjourned meeting duly reconvened. Such resolution must be adopted at a meeting or adjourned meeting at which a quorum is present by the affirmative vote of the holders of that specified percentage in principal amount of the outstanding debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the Indenture will be binding on all holders of debt securities of that series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series. *However*, if any action is to be taken at such meeting with respect to a consent or waiver which may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing such specified percentage in principal amount of the outstanding debt securities of such series will constitute a quorum.

Notwithstanding the provisions described above, if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the Indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities affected thereby, or of the holders of such series and one or more additional series:

there shall be no minimum quorum requirement for such meeting; and

the principal amount of the outstanding debt securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the Indenture.

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

Unless otherwise indicated in the applicable prospectus supplement, we may discharge certain obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that either have become due and payable or will become due and payable within one year (or scheduled for redemption within one

year) by irrevocably depositing with the trustee, in trust, funds in such currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable in an amount sufficient to pay the entire indebtedness on such debt securities in respect of principal (and premium, if any) and interest to the date of such deposit (if such debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be.

**Table of Contents**

Unless otherwise indicated in the applicable prospectus supplement, we may elect either:

to defease and be discharged from any and all obligations (except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax, assessment or governmental charge with respect to payments on such debt securities and the obligations to register the transfer or exchange of such debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of such debt securities and to hold moneys for payment in trust) with respect to such debt securities ( defeasance ); or

to be released from our obligations with respect to those debt securities under the Indenture (being the restrictions described under the heading Certain Covenants ) or if provided in the applicable prospectus supplement, our obligations with respect to any other covenant, and any omission to comply with such obligations shall not constitute a default or an event of default with respect to such debt securities ( covenant defeasance ), in either case, upon our irrevocable deposit with the applicable trustee, in trust, of an amount, in such currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable at stated maturity, or Government Obligations (as defined below), or both, applicable to such debt securities which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and interest on such debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates.

Such a trust may only be established if, among other things, we have delivered to the applicable trustee an opinion of counsel (as specified in the Indenture) confirming that:

the holders of such debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance or covenant defeasance; and

the holders will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred.

The opinion of counsel, in the case of defeasance, must refer to and be based upon a ruling of the Internal Revenue Service or a change in applicable U.S. federal income tax law occurring after the date of the Indenture. In the event of such defeasance, the holders of such debt securities would thereafter be able to look only to such trust fund for payment of principal (and premium, if any) and interest.

Government Obligations means securities that are:

of the same government that issued the currency in which the series of debt securities are denominated and in which interest is payable; or

of government agencies backed by the full faith and credit of such government.

Unless otherwise provided in the applicable prospectus supplement, if after we have deposited funds and/or Government Obligations to effect defeasance or covenant defeasance with respect to debt securities of any series:

the holder of a debt security of such series is entitled to and does elect, pursuant to the Indenture or the terms of such debt security, to receive payment in a currency, currency unit or composite currency other than that in which such deposit has been made in respect of such debt security; or

a conversion event (as described below) occurs in respect of the currency, currency unit or composite currency in which such deposit has been made, the indebtedness represented by such debt security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any) and interest on such debt security, as they become due, out of the proceeds yielded by converting the amount so deposited in respect of such debt security into the currency, currency unit or composite currency in which such debt security becomes payable as a result of such election or such cessation of usage based on the applicable market exchange rate.



**Table of Contents**

A conversion event is the cessation of use of:

a currency, currency unit or composite currency both by the government of the country which issued such currency and for the settlement of actions by a central bank or other public institution of or within the international banking community;

the European currency unit (the ECU ) both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities; or

any currency unit or composite currency other than the ECU for the purposes for which it was established. Unless otherwise described in the applicable prospectus supplement, all payments of principal of (and premium, if any) and interest on any debt security that is payable in a foreign currency that ceases to be used by its government of issuance shall be made in U.S. dollars.

In the event we effect covenant defeasance with respect to any debt securities and such debt securities are declared due and payable because of the occurrence of any event of default, other than the event of default described in the fourth clause under Events of Default, Notice and Waiver with respect to the specified sections in the Indenture (which sections would no longer be applicable to such debt securities) or the ninth clause with respect to any other covenants as to which there has been covenant defeasance, the amount in such currency, currency unit or composite currency in which such debt securities are payable and Government Obligations on deposit with the applicable trustee, will be sufficient to pay amounts due on such debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on such debt securities at the time of the acceleration resulting from such event of default. In any such event, we would remain liable to make payments of such amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting such defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

**Convertible Debt Securities**

The terms and conditions, if any, upon which the debt securities are convertible into shares of our common stock will be set forth in the applicable prospectus supplement. Such terms will include:

whether such debt securities are convertible into shares of common stock;

the conversion price (or manner of calculation thereof);

the conversion period;

provisions as to whether conversion will be at our option or at the option of the holders; and

the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such debt securities and any restrictions on conversion, including restrictions directed at maintaining our REIT status.

Reference is made to the section captioned **Description of Common Stock** for a general description of shares of our common stock to be acquired upon the conversion of debt securities, including a description of certain restrictions on the ownership of shares of our common stock.

### **Book-Entry Debt Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to such series. Global securities may be issued in either registered or bearer form. The specific terms of the depository arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to such series.

---

**Table of Contents****DESCRIPTION OF PREFERRED STOCK**

The following is a general description of the preferred stock that we may offer from time to time. The particular terms of the preferred stock being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement. The statements below describing our preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Articles of Incorporation and our Bylaws.

Our authorized capital stock consists of 375,000,000 shares of common stock, par value \$0.01 per share, 15,000,000 shares of preferred stock, par value \$0.01 per share, and 390,000,000 shares of excess stock, par value \$0.01 per share, issuable in exchange for capital stock as described below under *Description of Common Stock* *Restrictions on Ownership*. As of February 23, 2015, we had 115,000 shares of 6.625% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value ( *Series D Preferred Stock* ) and had 115,000 shares of 5.70% Series E Cumulative Redeemable Preferred Stock, \$0.01 par value ( *Series E Preferred Stock* ).

*Series D Preferred Stock.* In February 2012, we issued 115,000 shares of Series D Preferred Stock, which are represented by depositary shares, each depositary share representing a 1/100th interest in a share of Series D Preferred Stock. We filed articles supplementary to our Articles of Incorporation (the *Series D Articles Supplementary* ) that established and fixed the rights and preferences of the Series D Preferred Stock and is incorporated herein by reference. Holders of Series D Preferred Stock are entitled to receive, when and as authorized by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 6.625% of the \$2,500.00 liquidation preference per year. The Series D Preferred Stock is not redeemable prior to February 23, 2017, except upon the occurrence of a change of control or under certain other circumstances as described in the *Series D Articles Supplementary*, and the Series D Preferred Stock has no stated maturity date and is not subject to any sinking fund or mandatory redemption provisions. Holders of Series D Preferred Stock generally have no voting rights (except on matters expressly provided in our Articles of Incorporation or the *Series D Articles Supplementary* or as may be required by law, in which case each holder shall be entitled to one vote per share of Series D Preferred Stock). Upon the occurrence of a change of control, the Series D Preferred Stock is convertible into shares of our common stock (or equivalent value of alternative consideration) as described in the *Series D Articles Supplementary*. The Series D Preferred Stock is not otherwise convertible or exchangeable for any other property or securities, except that the Series D Preferred Stock may be exchanged for *excess stock* in order to ensure that we remain qualified as a REIT for federal income tax purposes. Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of Series D Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$2,500.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series D Preferred Stock. The depositary shares representing the Series D Preferred Stock are currently listed on the New York Stock Exchange under the symbol *NNNPRD*. Please refer to the *Series D Articles Supplementary* for more detail on the terms of our Series D Preferred Stock.

*Series E Preferred Stock.* In May 2013, we issued 115,000 shares of Series E Preferred Stock, which are represented by depositary shares, each depositary share representing a 1/100th interest in a share of Series E Preferred Stock. We filed articles supplementary to our Articles of Incorporation (the *Series E Articles Supplementary* ) that established and fixed the rights and preferences of the Series E Preferred Stock and is incorporated herein by reference. Holders of Series E Preferred Stock are entitled to receive, when and as authorized by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 5.70% of the \$2,500.00 liquidation preference per year. The Series E Preferred Stock is not redeemable prior to May 30, 2018, except upon the occurrence of a change of control or under certain other circumstances as described in the *Series E Articles*

Supplementary, and the Series E Preferred Stock has no stated maturity date and is not subject to any sinking fund or mandatory redemption provisions. Holders of Series E Preferred Stock generally have no voting rights (except on matters expressly provided in our Articles of

## **Table of Contents**

Incorporation or the Series E Articles Supplementary or as may be required by law, in which case each holder shall be entitled to one vote per share of Series E Preferred Stock). Upon the occurrence of a change of control, the Series E Preferred Stock is convertible into shares of our common stock (or equivalent value of alternative consideration) as described in the Series E Articles Supplementary. The Series E Preferred Stock is not otherwise convertible or exchangeable for any other property or securities, except that the Series E Preferred Stock may be exchanged for excess stock in order to ensure that we remain qualified as a REIT for federal income tax purposes. Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of Series E Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$2,500.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series E Preferred Stock. The depositary shares representing the Series E Preferred Stock are currently listed on the New York Stock Exchange under the symbol NNNPRE. Please refer to the Series E Articles Supplementary for more detail on the terms of our Series E Preferred Stock.

## **General**

Under our Articles of Incorporation, our Board of Directors may from time to time establish and issue one or more series of preferred stock without stockholder approval. Our Board of Directors may, subject to the express provisions of any other series of preferred stock then outstanding, alter the designation, classify or reclassify any unissued preferred stock by setting or changing the number, designation, preference, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms or conditions of redemption of such series. The issuance of preferred stock could adversely affect the voting power, dividend rights and other rights of holders of common stock. Preferred stock will, when issued, be fully paid and nonassessable.

The prospectus supplement relating to any preferred stock offered under it will contain the specific terms, including:

the number of shares, designation or title of the shares and offering price of the shares;

the dividend rate on the shares of the series, if any, whether any dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series;

the date from which dividends on the preferred stock will accumulate, if applicable;

the redemption rights, including conditions and the price(s), if any, for shares of the series;

the terms and amounts of any sinking fund for the purchase or redemption of shares of the series;

the rights of the shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, and the relative rights of priority, if any, of payment of shares of the series;

whether the shares of the series will be convertible into shares of any other class or series, or any of our other securities, or securities of any other corporation or other entity, and, if so, the specification of the other class or series of the other security, the conversion price(s) or dates on which the shares will be convertible and all other terms and conditions upon which the conversion may be made;

restrictions on the issuance of shares of the same series or of any other class or series;

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

any other relative rights, preferences and limitations on that series.

## **Table of Contents**

### **Rank**

Unless otherwise specified in the prospectus supplement, our preferred stock, of a particular series, being issued 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 stock, and to all equity securities ranking junior to preferred stock we have issued;

on a parity with our existing Series D Preferred Stock and Series E Preferred Stock and all equity securities we have issued, the terms of which specifically provide that such equity securities rank on a parity with the preferred stock; and

junior to all preferred stock of a different series that we have issued, the terms of which specifically provide that such equity securities rank senior to preferred stock of another series.

The term "equity securities" does not include convertible debt securities.

### **Dividends**

Holders of preferred stock of each series will be entitled to receive, when, as and if declared by our Board of Directors, out of our assets legally available for payment, cash dividends (or dividends in kind or in other property if expressly permitted and described in the applicable prospectus supplement) at such rates and on such dates as will be set forth in the applicable prospectus supplement. Each such dividend shall be payable to holders of record as they appear on our share transfer books on such record dates as shall be fixed by our Board of Directors.

Dividends on any series of preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If our Board of Directors fails to declare a dividend payable on a dividend payment date on any series of preferred stock for which dividends are noncumulative, then the holders of such series of preferred stock will have no right to receive a dividend in respect of the dividend period ending on such dividend payment date. We will have no obligation to pay the dividend accrued for such period, whether or not dividends on such series are declared payable on any future dividend payment date.

If preferred stock of any series is outstanding, we will not pay or declare a full dividend on a series of parity or junior preferred stock or common stock unless:

for preferred stock with cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay, full cumulative dividends on the preferred stock through the then-current dividend period;  
or

for preferred stock lacking cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay, full dividends for the then-current dividend period.

If dividends are not paid in full (or if a sum sufficient has not been set aside for full payment), then dividends for both that series and any parity series will be declared *pro rata*. Therefore, the amount of dividends declared per share of both series will maintain the same ratio that accrued dividends per share of each series bear to each other. Accrued dividends will not include any accumulation in respect of unpaid dividends for prior dividend periods if such shares of preferred stock do not have a cumulative dividend. No interest, or sum of money in lieu of interest, shall be payable for any dividend payment or payments on preferred stock of such series which may be in arrears.

Except as provided in the immediately preceding paragraph, unless we have paid, or declared and set apart a sum sufficient to pay, the then-current dividend (including dividend payments in arrears if dividends are cumulative) for a series of preferred stock, we will not declare dividends (other than in common stock or



## **Table of Contents**

preferred stock ranking junior to the preferred stock of such series as to dividends and upon liquidation), or pay or set aside for payment or declare or make any other distribution, upon shares of the common stock, junior stock or parity stock as to dividends or upon liquidation. Additionally, we shall not redeem, purchase or otherwise acquire for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) any shares of common stock, junior stock or parity stock as to dividends or upon liquidation. However, we may convert or exchange those shares into junior stock as to dividends and upon liquidation.

## **Redemption**

If so provided in the applicable prospectus supplement, any series of our preferred stock 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 such prospectus supplement.

The prospectus supplement relating to a series of our preferred stock that is subject to mandatory redemption will specify:

the number of shares of such preferred stock that we will redeem in each year;

the year the redemption will commence;

the redemption price per share, together with an amount equal to all accrued and unpaid dividends to the date of redemption; and

whether the redemption price may be payable in cash or other property.

If the redemption price for our preferred stock of any series is payable only from the net proceeds of the issuance of our capital stock, the terms of such preferred stock may provide that, if we have not issued capital stock or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, such preferred stock shall automatically and mandatorily be converted into the applicable class or series of our capital stock pursuant to conversion provisions specified in the applicable prospectus supplement.

We cannot redeem, purchase or otherwise acquire shares of a series of preferred stock unless:

for preferred stock with cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay, full cumulative dividends on the preferred stock through the then-current dividend period;  
or

for preferred stock lacking cumulative dividends, we have declared and paid, or declared and set apart a sum sufficient to pay, full dividends for the then-current dividend period.

The foregoing shall not prevent the purchase or acquisition of preferred stock of such series to preserve our REIT status, or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred

stock of such series.

If fewer than all of our outstanding preferred stock of any series are to be redeemed, we will determine the number of shares to be redeemed. We may redeem the shares on a *pro rata* basis from the holders of record of those shares in proportion to the number of those shares held or for which redemption is requested by the holder (with adjustments to avoid redemption of fractional shares), or by lot in a manner we determine.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock of any series to be redeemed at the address shown on our share transfer books. Each notice shall state:

the redemption date;

the number of shares and the series of preferred stock to be redeemed;

## **Table of Contents**

the redemption price;

the place or places where certificates for such shares are to be surrendered for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accrue on such redemption date; and

the date upon which the holder's conversion rights, if any, as to such shares shall terminate.

If fewer than all of the preferred stock of any series are to be redeemed, the notice mailed to each holder shall also specify the number of shares of preferred stock to be redeemed from each holder. If notice of redemption of any preferred stock has been given and if we have set aside the funds necessary for such redemption in trust for the benefit of the holders of any of our preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on the preferred stock, and all rights of the holders of the redeemable shares will terminate, except the right to receive the redemption price.

## **Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, before any distribution or payment will be made to the holders of any shares of common stock or any other class or series of preferred stock ranking junior to the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of us, the holders of each series of preferred stock will be entitled to receive out of our assets legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all our outstanding preferred stock and the corresponding amounts payable on all shares of other classes or series of our capital stock ranking on a parity with the preferred stock in the distribution of assets, then the holders of the preferred stock and all other such classes or series of capital stock 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 liquidating distributions shall have been made in full to all holders of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of capital stock ranking junior to the preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For such purposes, our consolidation or merger with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of our property or business, shall not be deemed to constitute a liquidation, dissolution or winding up of us.

## **Voting Rights**

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

Unless provided otherwise for any series of preferred stock, so long as any shares of preferred stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least a majority of each series of preferred stock outstanding at the time, except with respect to the Series D Preferred Stock and Series E Preferred Stock for which an affirmative vote or consent of at least two-thirds of the holders is required, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class):

authorize or create, or increase the authorized or issued amount of, any class or series of our capital stock ranking senior to such series of preferred stock with respect to the payment of dividends or the

**Table of Contents**

distribution of assets upon liquidation, dissolution or winding up or reclassify any of our authorized capital shares into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or

amend, alter or repeal the provisions of our Articles of Incorporation or the designating amendment for such series of preferred stock, whether by merger, consolidation or otherwise (an Event), so as to materially and adversely affect any right, preference, privilege or voting power of such series of preferred stock or the holders thereof.

However, with respect to the occurrence of any of the Events set forth above, so long as the preferred stock remains outstanding with the terms materially unchanged, taking into account that upon the occurrence of an Event, we may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of preferred stock. Further, any increase in the amount of:

the authorized preferred stock or the creation or issuance of any other series of preferred stock; or

the authorized shares of such series or any other series of preferred stock, in each case ranking on a parity with or junior to the preferred stock of such series with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up;

shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of preferred stock of such series shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

**Conversion Rights**

The terms and conditions, if any, upon which any series of preferred stock is convertible into shares of our common stock will be set forth in the applicable prospectus supplement. Such terms will include:

the number of shares of common stock into which the shares of preferred stock are convertible;

the conversion price (or manner of calculation);

the conversion period;

provisions as to whether conversion will be at the option of the holders of preferred stock or us;

the events requiring an adjustment of the conversion price; and

provisions affecting conversion in the event of the redemption of such series of preferred stock.

**Restrictions on Ownership**

As discussed below under **Description of Common Stock** **Restrictions on Ownership**, for us to qualify as a REIT under the U.S. Internal Revenue Code of 1986 (the **Code** ), not more than 50% in value of our outstanding equity securities of all classes may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by a single person of our outstanding equity securities, including any of our preferred stock. Therefore, the designating amendment for each series of preferred stock may contain provisions restricting the ownership and transfer of preferred stock.

**Table of Contents**

**Book-Entry Preferred Stock**

The preferred stock of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary identified in the applicable prospectus supplement relating to such series. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depositary arrangement with respect to a series of preferred stock will be described in the applicable prospectus supplement relating to such series.

**Registrar and Transfer Agent**

The registrar and transfer agent for the preferred stock will be set forth in the applicable prospectus supplement. American Stock Transfer & Trust Company is the transfer agent of our existing Series D Preferred Stock and Series E Preferred Stock.

**Table of Contents**

**DESCRIPTION OF DEPOSITARY SHARES**

The following is a general description of the depositary shares that we may offer from time to time. The particular terms of the depositary shares being offered and the extent to which such general provisions may apply will be set forth in the applicable prospectus supplement.

**General**

We may issue receipts for depositary shares, each of which will represent a fractional interest of a share of a particular series of a class of our preferred stock, as specified in the applicable prospectus supplement. We will deposit shares of preferred stock of each series represented by depositary shares under a separate deposit agreement among us, the applicable depositary and the holders from time to time of the depositary receipts. Generally, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of the particular series of shares of preferred stock represented by the appropriate depositary shares, to all the rights and preferences of those shares of preferred stock (including dividend, voting, conversion, redemption and liquidation rights). As of February 23, 2015, we had 11,500,000 depositary shares issued and outstanding, each representing a 1/100<sup>th</sup> interest in a share of Series D Preferred Stock, and had 11,500,000 depositary shares issued and outstanding, each representing a 1/100<sup>th</sup> interest in a share of Series E Cumulative Redeemable Preferred Stock.

The depositary shares will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following our issuance and delivery of our preferred stock to the depositary, we will cause the preferred stock 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 Distributions**

The depositary will distribute all cash dividends or other cash distributions received in respect of the preferred stock to the record holders of the applicable depositary receipts in proportion to the number of depositary receipts owned by such holder.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the appropriate record holders of depositary receipts. If the depositary determines that it is not feasible to make such distribution, then it may, with our approval, sell such property and distribute the net proceeds to the record holders.

**Withdrawal of Shares**

Generally, if a holder surrenders depositary receipts at the corporate trust office of the preferred stock depositary (unless the related depositary shares have previously been called for redemption), the holder will be entitled to receive at that office the number of whole or fractional shares of preferred stock and any money or other property represented by the depositary shares. Holders of depositary receipts will be entitled to receive whole or fractional shares of the related preferred stock on the basis of the proportion of shares of preferred stock represented by each depositary share as specified in the applicable prospectus supplement. Thereafter, holders of such preferred stock will not be entitled to receive depositary shares for the preferred stock. If a holder seeks to withdraw more depositary shares than are available, then the preferred stock depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares.

**Redemption of Depositary Shares**



Whenever we redeem preferred stock held by the preferred stock depositary, the depositary will redeem, as of the same redemption date, the appropriate number of depositary shares, provided we shall have paid in full to the depositary the redemption price of the preferred stock to be redeemed, plus an amount equal to any accrued and unpaid dividends (except, with respect to noncumulative shares of preferred stock, dividends for the current dividend period only) to the date fixed for redemption. The redemption price per depositary share will be equal to

## **Table of Contents**

the redemption price and any other amounts per share payable with respect to the preferred stock specified in the applicable prospectus supplement. If less than all the depositary shares are to be redeemed, the amount redeemed will be selected by the depositary by lot.

After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. All rights of the holders will cease, except the right to receive money or other property that the holders of the depositary shares were entitled to receive upon such redemption. Payments will be made when holders surrender their depositary receipts to the depositary.

## **Voting of the Underlying Preferred Stock**

Upon receipt of notice of any meeting at which the holders of shares of preferred stock are entitled to vote, the depositary will mail the information contained in such notice of meeting to the record holders of the applicable depositary receipts. Each record holder of depositary receipts on the record date (which will be the same date as the record date for the preferred stock) will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of shares of preferred stock represented by such holder's depositary shares. The depositary will vote in accordance with such instructions, and we will agree to take all reasonable action that may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will abstain from voting to the extent it does not receive specific instructions from the depositary receipts holders.

## **Liquidation Preference**

In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, each holder of a depositary receipt will be entitled to the fraction of the liquidation preference accorded each share of applicable preferred stock, as set forth in the appropriate prospectus supplement.

## **Conversion of Preferred Stock**

Our depositary shares, as such, are not convertible into shares of our common stock or any of our other securities or property. Nevertheless, if so specified in the applicable prospectus supplement, the depositary receipts may be surrendered by their holders to the depositary with written instructions to the depositary to instruct us to cause conversion of the shares of represented preferred stock into whole shares of common stock or preferred stock, as the case may be, and we will agree that upon receipt of such instructions and any amounts payable, to convert the depositary shares utilizing the same procedures as those provided for delivery of shares of preferred stock to affect 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 shares of common stock will be issued upon conversion, and if such conversion will result in a fractional share being issued, we will pay an amount in cash equal to the value of the fractional interest based upon the closing price of the common stock on the last business day prior to the conversion.

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

We and the depositary may, at any time, agree to amend the form of depositary receipt and any provision of the deposit agreement. However, any amendment that materially and adversely alters the rights of the holders of depositary receipts will not be effective unless that amendment has been approved by the existing holders of at least a majority of the depositary shares.

We may terminate the deposit agreement upon not less than 30 days prior written notice to the preferred stock depositary if:

the termination is to preserve our status as a REIT; or

a majority of each class of preferred stock affected by the termination consents to the termination;

## **Table of Contents**

whereupon the depositary will deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by such holder, such number of whole or fractional shares of preferred stock as are represented by the depositary shares evidenced by such depositary receipts.

In addition, the deposit agreement will automatically terminate if:

all outstanding depositary shares shall have been redeemed;

there shall have been a final distribution in respect of the related preferred stock in connection with our liquidation, dissolution or winding up, and such distribution shall have been distributed to the holders of the applicable depositary receipts; or

each share of related preferred stock shall have been converted into capital stock not so represented by depositary shares.

## **Charges of Preferred Stock Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the deposit agreement. In addition, we will pay the fees and expenses of the depositary in connection with the performance of its duties under the deposit agreement. However, unless otherwise specified in the applicable prospectus supplement, holders of depositary receipts will pay the fees and expenses of the depositary for any duties requested by such holders to be performed which are outside of those expressly provided for in the deposit agreement.

## **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so. We may at any time remove the depositary. Any such resignation or removal will take effect upon the appointment of a successor depositary, which must be appointed within 60 days after delivery of the notice of resignation or removal, and as in the case of the original preferred stock depositary, must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

## **Miscellaneous**

The depositary will forward to holders of depositary receipts any reports and communications from us, including our annual reports and filings under the Securities Exchange Act of 1934, which are received by the depositary with respect to the related preferred stock. The holders of depositary receipts shall have the rights 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 if either of us is prevented from or delayed in, by law or any circumstances beyond our control, performing our obligations under the deposit agreement. Our obligations and those of the depositary under the deposit agreement will be limited to performing our respective duties in good faith and without negligence, gross negligence or willful misconduct, and neither of us will be obligated to prosecute or defend any legal proceeding relating to any depositary receipts, depositary shares or shares of preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely on written advice of counsel or accountants, or

information provided by persons presenting shares of preferred stock represented by depositary receipts, holders of depositary receipts or other persons believed to be competent to give such information, and on documents believed to be genuine and signed by a proper party.

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

**Table of Contents**

**DESCRIPTION OF COMMON STOCK**

The following description of our common stock sets forth certain general terms and provisions of the common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion of our debt securities or our preferred stock or upon the exercise of our warrants to purchase common stock. The statements below describing the common stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Articles of Incorporation and Bylaws.

**General**

Our authorized capital stock consists of 375,000,000 shares of common stock, par value \$0.01 per share, 15,000,000 shares of preferred stock, par value \$0.01 per share, and 390,000,000 shares of excess stock, par value \$0.01 per share, issuable in exchange for capital stock as described below under **Restrictions on Ownership**. As of February 20, 2015, we had outstanding 132,513,892 shares of common stock. All issued and outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

The holders of common stock elect all directors and are entitled to one vote per share on all matters submitted to a vote of the stockholders. Stockholders are entitled to receive dividends when, as and if declared by our Board of Directors out of funds legally available for that purpose. Upon our liquidation, dissolution or winding up, holders of common stock are entitled to share *pro rata* in any distribution to stockholders. Holders of common stock have no redemption, sinking fund, preemptive, subscription or conversion rights. The common stock will, when issued, be fully paid and nonassessable, and will not be subject to preemptive or other similar rights.

**Restrictions on Ownership**

For us to qualify as a REIT, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. The shares must be beneficially owned (without reference to any rules of attribution) 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; and certain other requirements must be satisfied. See **Material Federal Income Tax Considerations** **Taxation of National Retail Properties, Inc.**

To ensure that five or fewer individuals do not own more than 50% in value of the outstanding common stock, our Articles of Incorporation provide that, subject to certain exceptions, no holder may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% in value of the outstanding capital stock. Our Board of Directors may waive this ownership limit if evidence satisfactory to us and our tax counsel is presented that such ownership will not then or in the future jeopardize our status as a REIT. As a condition of such waiver, our Board of Directors may require opinions of counsel satisfactory to it and/or an undertaking from the applicant with respect to preserving our status as a REIT.

This ownership limit will not be automatically removed even if the REIT provisions of the Code are changed so as to no longer contain any ownership concentration limitation or if the ownership concentration limitation is increased. In addition to preserving our status as a REIT, this ownership limit may prevent any person or small group of persons from acquiring unilateral control of us.

If the ownership, transfer or acquisition of shares of common stock, or change in our capital structure or other event or transaction would result in:

any person owning (applying certain attribution rules) capital stock in excess of the ownership limit;

fewer than 100 persons owning our capital stock;

**Table of Contents**

our being closely held within the meaning of Section 856(h) of the Code; or

our otherwise failing to qualify as a REIT;

then the ownership, transfer or acquisition, or change in capital structure or other event or transaction that would have such effect will be void as to the purported transferee or owner, and the purported transferee or owner will not have or acquire any rights to the capital stock to the extent required to avoid such a result. Capital stock owned, transferred, or proposed to be transferred, in excess of the ownership limit or which would otherwise jeopardize our status as a REIT will automatically be converted to excess stock. A holder of excess stock is not entitled to distributions, voting rights, and other benefits with respect to such shares, except for the right to payment of the purchase price for the shares (or, in the case of a devise or gift or similar event which results in the issuance of excess stock, the fair market value at the time of such devise or gift or event) and the right to certain distributions upon liquidation. Any dividend or distribution paid to a proposed transferee or holder of excess stock shall be repaid to us upon demand. Excess stock shall be subject to our repurchase at our election. The purchase price of any excess stock shall be equal to the lesser of:

the price paid in such purported transaction (or, in the case of a devise or gift or similar event resulting in the issuance of excess stock, the fair market value at the time of such devise or gift or event); or

the fair market value of such common stock on the date on which we or our designee determines to exercise its repurchase right.

If the foregoing transfer restrictions are determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the purported transferee of any excess stock may be deemed, at our option, to have acted as an agent on our behalf in acquiring such excess stock and to hold such excess stock on our behalf.

For purposes of our Articles of Incorporation, the term person shall mean:

an individual;

a corporation;

a partnership;

an estate;

a trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code);



a portion of a trust permanently set aside to be used exclusively for the purposes described in Section 642(c) of the Code;

an association;

a private foundation within the meaning of Section 509(a) of the Code;

a joint stock company or other entity; or

a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934. The term "person" shall not include an underwriter which participated in a public offering of our capital stock for a period of sixty (60) days following the purchase by such underwriter of capital stock therein, provided that the foregoing exclusions shall apply only if the ownership of such capital stock by such underwriter would not cause us to fail to qualify as a REIT by reason of being "closely held" within the meaning of Section 856(a) of the Code or otherwise cause us to fail to qualify as a REIT.

All certificates representing capital stock will bear a legend referring to the restrictions described above.

## **Table of Contents**

Our Articles of Incorporation provide that all persons who own, directly or by virtue of the attribution provisions of the Code, more than 5.0% of the outstanding capital stock, or such lower percentage as may be required pursuant to regulations under the Code or as may be requested by our Board of Directors, must file a written notice with us no later than January 31 of each year with respect to the prior year containing:

the name and address of such owner,

the number of shares of capital stock owned by such holder; and

a description of how such shares are held.

In addition, each stockholder shall be required to disclose, upon demand, to us in writing, such information that we may request in good faith in order to determine our status as a REIT or to comply with the requirements of any taxing authority or governmental agency.

The ownership limitations described above may have the effect of precluding acquisitions of control of us by a third party.

## **Certain Provisions of Maryland Law and Our Articles of Incorporation and Bylaws**

The following summary of certain provisions of the Maryland General Corporation Law and our Articles of Incorporation and Bylaws is not complete. You should read the Maryland General Corporation Law and our Articles of Incorporation and Bylaws for more complete information.

***Limitation of Liability of Directors and Officers.*** Our Articles of Incorporation provide that, to the fullest extent that limitations on the liability of directors and officers are permitted by the Maryland General Corporation Law, no director or officer shall be liable to us or our stockholders for money damages. The Maryland General Corporation Law provides that we may restrict or limit the liability of directors or officers for money damages except:

to the extent anyone 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 was material to the cause of action adjudicated and the action or failure to act was the result of bad faith or active and deliberate dishonesty.

***Indemnification of Directors and Officers.*** Our Articles of Incorporation and Bylaws permit us to indemnify any of our employees or agents and require us to indemnify our directors and officers to the fullest extent permitted by Maryland law. The Bylaws require us to indemnify each director or officer and to pay or reimburse, in advance of the final disposition of a proceeding, reasonable expenses incurred by a present or former director or officer or any person who, while a director, is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, who is made a party to a proceeding by reason of his or her status as a director, officer, employee or agent, to the fullest extent provided by Maryland law. Our Articles of Incorporation and Bylaws permit us to cover directors and officers under our directors' and officers' liability insurance.

The Maryland General Corporation Law provides that we may indemnify directors and officers unless:

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

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

in a criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful.

**Table of Contents**

***Meetings of Stockholders.*** Our Bylaws provide for an annual meeting of stockholders to elect individuals to the Board of Directors and transact such other business as may properly be brought before the meeting. Special meetings of stockholders may be called by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the members of the Board of Directors, and shall be called by the Secretary at the request in writing of the holders of not less than a majority of the outstanding shares of common stock entitled to vote.

Our Bylaws provide that any action required or permitted to be taken at a meeting of stockholders may be taken by unanimous written consent without a meeting. The written consent must, among other items, specify the action to be taken and be signed by each stockholder entitled to vote on the matter.

**Transfer Agent**

American Stock Transfer & Trust Company is the transfer agent of the common stock.

**Table of Contents**

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of common or preferred stock. 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 stockholders and may be attached to or separate from other securities. We will issue the warrants under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all as shall be set forth in the applicable 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;

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 material federal income tax considerations; and

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

---

**Table of Contents**

**MATERIAL FEDERAL INCOME TAX CONSIDERATIONS**

**Introduction**

The following section summarizes the material federal income tax issues that you may consider relevant relating to our taxation as a REIT under the Code, and the acquisition, ownership, and disposition of our stock. Because this section is a summary, it does not address all of the tax issues that may be important to you. For example, the discussion of the tax treatment of our stockholders addresses only common or preferred stock held as a capital asset (generally property held for investment) within the meaning of Section 1221 of the Code. This discussion is based on current law and does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to a prospective stockholder in light of its particular circumstances. In addition, this section does not address the tax issues that may be important to certain types of stockholders 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. Stockholders below), controlled foreign corporations, passive foreign investment companies, persons that acquire stock in connection with employment or other performance of personal services, persons subject to the alternative minimum tax, persons that are, or that hold stock through, partnerships or other pass-through entities, persons whose functional currency is not the U.S. dollar, persons that hold stock as part of a straddle, hedge, conversion, synthetic security or constructive sale transaction for U.S. federal income tax purposes, persons that purchase or sell stock as part of a wash sale for tax purposes, or non-U.S. individuals and foreign corporations (except to the extent discussed in Taxation of Non-U.S. Stockholders below). In addition, this discussion is general in nature and is not exhaustive of all possible tax considerations, nor does it 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 on 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.

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 stock, the treatment of the partnership, and partners in the partnership, will generally depend on the status of the partner and the activities of the partnership. Partnerships holding our stock, and partners in such partnerships, should consult their tax advisors with regard to the U.S. federal income tax treatment of an investment in our stock.

**PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE SPECIFIC FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES TO THEM OF THE ACQUISITION, OWNERSHIP, AND DISPOSITION OF OUR COMMON OR PREFERRED STOCK, OUR ELECTION TO BE TAXED AS A REIT AND THE EFFECT OF POTENTIAL CHANGES IN APPLICABLE TAX LAWS.**

**Taxation of National Retail Properties, Inc.**

The statements in this section are based on the current federal income tax laws governing our qualification as a REIT. We cannot assure you that new laws, interpretations of laws or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

We elected to be taxed as a REIT under the federal income tax laws when we filed our 1984 federal income tax return. We have been organized and 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 stockholders. These laws are highly technical and complex.



---

**Table of Contents**

In the opinion of our tax counsel, Pillsbury Winthrop Shaw Pittman LLP, (i) we qualified as a REIT under Sections 856 through 860 of the Code with respect to each of our taxable years ended through December 31, 2014; 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 diversity of stock ownership, 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 stock, 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 qualification tests. Pillsbury Winthrop Shaw Pittman LLP's opinion does not foreclose the possibility that we may have to use one or more of the REIT savings provisions described below, which would require us to pay an excise or penalty tax (which could be material) in order for us to maintain our REIT qualification. For a discussion of the tax treatment of us and our stockholders 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 stockholders. The benefit of that tax treatment is that it avoids the double taxation (i.e., at both the corporate and stockholder levels) that generally results from owning stock 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 stockholders 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 stockholders;

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 or after a default on a loan secured by the property or a lease of the property ( foreclosure property ) 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 );

our subsidiaries that are C corporations, including our taxable REIT subsidiaries, generally will be required to pay federal corporate income tax on their earnings;

we will pay a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis;

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;

**Table of Contents**

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 nondeductible 4% excise tax on the excess of such required distribution over (A) the amount we actually distributed, plus (B) retained amounts on which corporate-level tax was paid by us;

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 stockholders;

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 no election is made for the transaction to be taxable on a current basis, then if we recognize 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 stock or ownership certificates;

6. not more than 50% in value of our outstanding stock 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 and the amount of our distributions to stockholders.

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 stock 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

---

**Table of Contents**

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 stock in proportion to their actuarial interests in the trust for purposes of the 5/50 Rule.

We believe we have issued sufficient stock with sufficient diversity of ownership to satisfy requirements 5 and 6 set forth above. In addition, our Articles of Incorporation restricts the ownership and transfer of our equity securities so that we should continue to satisfy requirements 5 and 6. The provisions of our Articles of Incorporation restricting the ownership and transfer of our equity securities are described in Description of Common Stock Restrictions on Ownership.

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 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 all of our direct corporate subsidiaries are qualified REIT subsidiaries, except for those that would qualify as taxable REIT subsidiaries or subsidiary REITs. Accordingly, our qualified REIT subsidiaries are not subject to federal corporate income taxation, though they may be subject to state and local taxation.

An unincorporated domestic entity, such as a partnership or limited liability company, that has a single beneficial owner generally is not treated as an entity separate from its owner for federal income tax purposes. Similar to a qualified REIT subsidiary, all assets, liabilities, and items of income, deduction, and credit of such a disregarded entity are treated as assets, liabilities, and items of income, deduction, and credit of the owner. An unincorporated domestic entity, such as a partnership or a limited liability company, with two or more beneficial owners is generally treated as a partnership for federal income tax purposes.

A REIT is treated as owning its proportionate share of the assets of any partnership (which includes any limited liability company treated as a 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, subject to special rules relating to the 10% asset test described below.

***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, cancellation of indebtedness, certain real estate liability hedges, and 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

## Table of Contents

At least 95% of our gross income (excluding gross income from prohibited transactions, cancellation of indebtedness, certain real estate liability hedges, and 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) under the REIT tax rules.

If the rent is based, in whole or in part, on the income or profits of any person although, generally, rent may be based on a fixed percentage or percentages of receipts or sales, the rent will not qualify as rents from real property. Our leases provide for either fixed rent, sometimes with scheduled escalations, or a fixed minimum rent and a percentage of gross receipts in excess of some threshold. We have not entered into any lease based in whole or part on the net income of any person and on an ongoing basis will use our best efforts to avoid entering into such arrangements unless, in either instance, we have determined or we determine 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 stock 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, indirect and constructive ownership. The constructive ownership rules generally provide that if 10% or more in value of our stock is owned, directly or indirectly, by or for any person, we are considered as owning the stock 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 believe that we have not leased property to any related party tenant, except where we may rent to certain taxable REIT subsidiaries as described below, or where we have determined in our discretion that the rent received from such related party tenant is not material and will not jeopardize our status as a REIT. On an ongoing basis, 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.

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. On an ongoing basis we use and will use our best efforts to ensure that all space leased to our taxable REIT subsidiaries meets these conditions, unless we determine in our discretion that the related party 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, we



---

**Table of Contents**

believe that rent under each lease from the personal property has been no more than 15% of total rent from that lease, and on an ongoing basis we will use our best efforts to avoid leasing personal property in connection with a future lease except where rent from the personal property is no more than 15% of total rent from that lease, unless, in either instance, we have determined or we determine in our discretion that the amount of disqualified rent attributable to the personal property will not jeopardize our status as a REIT.

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 believe that we have not provided services to leased properties that have caused rents to be disqualified as rents from real property, and on an ongoing basis in the future, we will use our best efforts to determine in our discretion that any services provided will not cause rents to be disqualified as rents from real property, unless, in either instance, we have determined or we determine in our discretion that the amount of disqualified rent resulting from such services will not jeopardize our status as a REIT.

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.

*Interest.* For purposes of the gross income tests, the term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely by reason of being based on a fixed percentage or percentages of receipts or sales. If a loan contains a provision that entitles us to a percentage of the borrower's gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property's value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests.

We may from time to time hold mortgage debt. Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, discount points, prepayment penalties, loan assumption fees, and late payment charges that are not compensation for services, generally is qualifying income for purposes of the 75% gross income test. However, in the case of acquisition of an existing loan, if the loan is secured by real property and other property and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date we agreed to acquire the loan, then a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the portion of the principal amount of the loan that is not secured by real property—that is, the amount by which the loan principal exceeds the value of the real estate that is security for the loan as of the date we agreed to acquire the loan.

*Dividends.* Our share of any dividends received from any corporation (including any taxable REIT subsidiary, but excluding any REIT) in which we own an equity interest will qualify for purposes of the 95% gross income test but

not for purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest, if any, will be qualifying income for purposes of both gross income tests.

---

**Table of Contents**

*Treatment of Structured Finance Loans.* Structured finance loans that we originate generally will not be secured by a direct interest in real property, but by ownership interests in an entity owning real property. In Revenue Procedure 2003-65, the IRS established a safe harbor under which interest from loans secured by a first priority security interest in ownership interests in a partnership or limited liability company owning real property will be treated as qualifying income for both the 75% and 95% gross income tests, and such loans will be treated as qualifying real estate assets for purposes of the 75% asset test, provided several requirements are satisfied. If a structured finance loan does not qualify for the Revenue Procedure 2003-65 safe harbor, the interest income from the loan will be qualifying income for purposes of the 95% gross income test, but may not be qualifying income for purposes of the 75% gross income test. In addition, if the structured finance loan is not a real estate asset and does not qualify as straight debt or as one of certain other disregarded instruments, we will be subject to the 10% asset test relating to value with respect to such loan. We believe that any structured finance loans that we originate will generally either qualify for the Revenue Procedure 2003-65 safe harbor, will otherwise be treated as real estate assets that generate qualifying income under both the 75% and 95% gross income tests and will be qualifying assets for purposes of the asset tests, or will qualify as straight debt that generate qualifying income under the 95% gross income test but generate nonqualifying income for purposes of the 75% gross income test.

*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. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. 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 (taking into account foreign currency gains and losses) 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

---

**Table of Contents**

customers in the ordinary course of a trade or business. 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 by us, 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. 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, except where we determine in our discretion that a particular transaction will avoid prohibited transaction treatment regardless of the safe harbor. We may fail to comply with the safe-harbor provision and may sell or dispose of 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 and Treasury regulations, 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. Income from any hedging transaction not described above will likely be treated as nonqualifying for both the 75% and 95% gross income tests.

*Like-Kind Exchanges.* We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

*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

---

**Table of Contents**

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 National Retail Properties, Inc., even if 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 and money market funds), 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 our 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 any 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 taxable REIT subsidiary or any qualified 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, 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. In addition, solely for purposes of the 10% asset test that relates to value, the determination of our interest in the assets of a partnership in which we own an interest will be based on our proportionate interest in any securities issued by the partnership, excluding for this purpose certain securities described in the Code.

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

As described above, we may from time to time hold mortgage debt. Mortgage loans will generally qualify as real estate assets for purposes of the 75% asset test to the extent that they are secured by real property. However, if a loan is secured by real property and other property and the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date we agreed to acquire the loan, then a portion of such loan likely will not be a qualifying real estate asset. Under current law, it is not clear how to determine what portion of such a loan will be treated as a real estate asset. Under recently issued guidance, the IRS has stated that it will not challenge a REIT's treatment of a loan as being, in part, a real estate asset for purposes of the 75% asset test if the REIT treats the loan as being a qualifying real estate asset in



---

**Table of Contents**

an amount equal to the lesser of (i) the greater of (a) the current fair market value of the real property securing the loan or (b) the fair market value of such property on the date the REIT acquires the loan, or (ii) the fair market value of the loan.

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 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 stockholders 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 stockholders 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 stockholders. 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. Stockholders*. 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

---

**Table of Contents**

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 taxable income sufficient to avoid corporate income tax and the excise tax imposed on certain undistributed income or even to meet the 90% distribution requirement. In such a situation, we may need to borrow funds, issue preferred stock or additional common stock to raise the cash necessary to make required distributions or, if possible, pay taxable dividends of our stock or debt securities.

We may satisfy the 90% distribution requirement with taxable distributions of our stock or debt securities. The IRS has issued private letter rulings to other REITs treating certain distributions that are paid partly in cash and partly in stock as dividends that would satisfy the REIT annual distribution requirement and qualify for the dividends paid deduction for federal income tax purposes. Those rulings may be relied upon only by taxpayers to whom they were issued, but we could request a similar ruling from the IRS. In addition, the IRS previously issued a revenue procedure authorizing publicly traded REITs to make elective cash/stock dividends, but that revenue procedure's effectiveness has expired and does not apply to our current and future taxable years. Accordingly, it is unclear whether and to what extent we will be able to make taxable dividends payable in cash and stock. We have no current intention to make a taxable dividend payable in our stock or debt securities.

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 stockholders 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 in order to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis certain information from our stockholders designed to disclose the actual ownership of our outstanding stock. We have complied, and intend to continue to comply, with such requirements.

***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 stockholders and we would not be required to distribute any amounts to stockholders in such year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to stockholders 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 stockholders who satisfy certain holding period requirements. See [Taxation of Taxable U.S. Stockholders](#) [Current Tax Rates](#). Furthermore, subject to certain limitations of the Code, corporate stockholders might be eligible for the dividends received deduction. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.



## Table of Contents

### **Taxation of Taxable U.S. Stockholders**

As used herein, the term **taxable U.S. stockholder** means a taxable beneficial owner of our common or preferred stock 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.

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 stock. Accordingly, the discussion below with respect to the consequences of holding our preferred stock applies equally to holders of depositary receipts.

***Dividends and Other Taxable U.S. Stockholder Distributions.*** As long as we qualify as a REIT, a taxable U.S. stockholder must take into account distributions on our common or preferred stock out of our current and 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. stockholders generally will not qualify for the maximum 20% tax rate for qualified dividend income.

In determining the extent to which a distribution constitutes a dividend for U.S. federal income tax purposes, our earnings and profits will be allocated first to distributions with respect to our preferred stock and then to distributions with respect to our common stock. If, for any taxable year, we elect to designate as capital gain dividends any portion of the distributions paid for the year to our stockholders, 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 stock 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 stock for the year and the denominator of which will be the total dividends paid to the holders of all classes of our stock for the year. The remainder of the designated capital gain dividends will be allocable to holders of our common stock.

A taxable U.S. stockholder 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. stockholder has held its common or preferred stock. 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. stockholder, 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. stockholder would be taxed on its proportionate share of our undistributed long-term capital gain. The taxable U.S. stockholder would receive a credit or refund for its proportionate share of the tax we paid. The taxable U.S. stockholder would increase the basis in its stock 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. stockholder 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.

---

**Table of Contents**

stockholder's stock. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such stock. To the extent a distribution exceeds both our current and accumulated earnings and profits and the taxable U.S. stockholder's adjusted basis in its stock, the taxable U.S. stockholder will recognize long-term capital gain (or short-term capital gain if the stock has been held for one year or less), assuming the stock is a capital asset in the hands of the taxable U.S. stockholder. In addition, if we declare a distribution in October, November, or December of any year that is payable to a taxable U.S. stockholder 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. stockholder 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. stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute return of capital, ordinary income or capital gain dividends.

***Taxation of Taxable U.S. Stockholders on the Disposition of our Stock.*** In general, a taxable U.S. stockholder must treat any gain or loss realized upon a taxable disposition of our common or preferred stock as long-term capital gain or loss if the taxable U.S. stockholder has held the stock for more than one year and otherwise as short-term capital gain or loss. A taxable U.S. stockholder will generally realize gain or loss in an amount equal to the difference between the sum of the fair market value of any property and the amount of cash received in such disposition and the taxable U.S. stockholder's adjusted tax basis. A taxable U.S. stockholder's adjusted tax basis generally will equal the taxable U.S. stockholder's acquisition cost, increased by the excess of net capital gains deemed distributed to the taxable U.S. stockholder (discussed above) less tax deemed paid on such gains and reduced by any returns of capital. However, a taxable U.S. stockholder must treat any loss upon a sale or exchange of stock held by such stockholder 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. stockholder treats as long-term capital gain.

***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 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 stockholders at the lower or higher rate. A taxable U.S. stockholder required to include retained long-term capital gains in income will be deemed to have paid, in the taxable year of the inclusion, its proportionate share of the tax paid by us in respect of such undistributed net capital gains. Taxable U.S. stockholders subject to these rules will be allowed a credit or a refund, as the case may be, for the tax deemed to have been paid by such stockholders. Taxable U.S. stockholders will increase their basis in their stock by the difference between the amount of such includible gains and the tax deemed paid by the taxable U.S. stockholder in respect of such gains. In addition, the characterization of income as capital gain or ordinary income may 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 Stock for Cash.*** The treatment accorded to any redemption by us for cash (as distinguished from a sale, exchange or other disposition) of preferred stock 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. stockholder of preferred stock 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 stock redeemed (provided the preferred stock is held as a capital asset) if such redemption (i) results in a complete termination of the



---

**Table of Contents**

holder's interest in all classes of our stock under Section 302(b)(3) of the Code, (ii) is substantially disproportionate with respect to the holder's interest in our stock under Section 302(b)(2) of the Code (which will not be the case if only preferred stock is 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 stock under Section 302(b)(1) of the Code. In applying these tests, there must be taken into account not only the preferred stock owned by the taxable U.S. stockholder, but also such holder's ownership of our common stock and any other options (including stock purchase rights) to acquire any of the foregoing. The holder of preferred stock 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. stockholder of preferred stock owns (actually or constructively) none of our common stock or an insubstantial percentage of our outstanding common stock, then based upon current law, it is probable that the redemption of preferred stock 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. stockholder of preferred stock intending to rely on any of these tests at the time of redemption should consult the holder's tax advisors 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 stock will be treated as a distribution on the preferred stock. If the redemption is taxed as a dividend, the taxable U.S. stockholder's adjusted tax basis in the preferred stock will be transferred to any other stock held by the holder. If the holder of preferred stock owns none of our other stock, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

Under proposed Treasury regulations, if any portion of the amount received by a taxable U.S. stockholder on a redemption of our preferred stock is treated as a distribution with respect to our stock but not as a taxable dividend, then such portion will be allocated to all shares held by the taxable U.S. stockholder just before the redemption on a pro rata, share-by-share, basis. The amount applied to each share will first reduce the taxable U.S. stockholder's basis in that share and any excess after the basis is reduced to zero will result in taxable gain. If the holder has different basis in its shares, then the amount allocated could reduce some of the basis in certain shares while reducing all the basis and giving rise to taxable gain in others. Thus the taxable U.S. stockholder could have gain even if the holder's basis in all its shares exceeded such portion. The proposed Treasury regulations permit the transfer of basis in the redeemed shares of the preferred stock to the taxable U.S. stockholder's remaining, unredeemed preferred stock (if any), but not to any other class of shares held (directly or indirectly) by the taxable U.S. stockholder. Instead, any unrecovered basis in the preferred stock would be treated as a deferred loss to be recognized when certain conditions are satisfied. The proposed Treasury regulations would be effective for transactions that occur after the date the regulations are published as final Treasury regulations. There can, however, be no assurance as to whether, when and in what particular form such proposed Treasury regulations will ultimately be finalized. We urge you to consult your tax advisor concerning the treatment of a cash redemption of our preferred stock.

***Redemption or Conversion of Preferred Stock to Common Stock.*** Assuming that preferred stock 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 U.S. federal income tax purposes upon the redemption or conversion of our preferred stock at the option of the holder solely into common stock. The basis that a taxable U.S. stockholder will have for U.S. federal income tax purposes in the common stock received will be equal to the adjusted basis the holder had in the preferred stock so redeemed or converted and, provided that the preferred stock was held as a capital asset, the holding period for the common stock received will include the holding period for the preferred stock 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 stock and the fair market value of the common stock exceeds the issue price of the preferred stock, a portion of the common stock received might be treated as a dividend distribution taxable as ordinary income.

---

**Table of Contents**

If, pursuant to the terms of a class of preferred stock, a taxable U.S. stockholder receives alternative consideration such as cash, securities or other property or assets (including any combination thereof) in lieu of shares of our common stock in connection with the conversion of the taxable U.S. stockholder's preferred stock, the tax treatment of the receipt of any such other consideration will depend on the nature of the consideration and the structure of the transaction that gives rise to the right to receive such alternative consideration, and it may be a taxable exchange. Taxable U.S. stockholders converting their preferred stock should consult their tax advisors regarding the U.S. federal income tax consequences of any such conversion and of the ownership and disposition of the consideration received upon any such conversion.

***Adjustments to Conversion Price.*** Under Section 305 of the Code, holders of preferred stock may be deemed to have received a constructive distribution of stock that is taxable as a dividend where the conversion ratio is adjusted to reflect a cash or property distribution with respect to the common stock 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 stock. Certain of the possible adjustments that may be provided in issuances of our preferred stock 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 stock 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 stock will not be treated as passive activity income and, therefore, taxable U.S. stockholders 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 stock generally will be treated as investment income for purposes of the investment income limitation.

***Medicare Tax on Unearned Income.*** Certain taxable U.S. stockholders who are individuals, estates or trusts are subject to a 3.8% Medicare tax on all or a portion of their net investment income, which may include all or a portion of their dividends on our common or preferred stock and net gains from the taxable disposition of their shares of our common or preferred stock. Taxable U.S. stockholders that are individuals, estates or trusts should consult their tax advisors regarding the applicability of the Medicare tax to any of their income or gains in respect of our common or preferred stock.

***Current Tax Rates.*** The maximum tax rate on the long-term capital gains of domestic non-corporate taxpayers is 20%. The maximum tax rate on qualified dividend income is the same as the 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 stockholders, 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 lower qualified dividend income/capital gains tax rate (at a maximum of 20%) does generally apply to:

a stockholder's long-term capital gain, if any, recognized on the disposition of our common or preferred stock;

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 any 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).

**Table of Contents**

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

**Information Reporting and Backup Withholding.** Taxable U.S. stockholders 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 stock unless, when required, they fail to demonstrate their status as exempt recipients. In general, we will report to our other stockholders 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 stockholder may be subject to backup withholding (currently at the rate of 28%) with respect to dividends unless such holder (1) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (2) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules. A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to us. Backup withholding is not an additional tax and may be credited against a stockholder's regular U.S. federal income tax liability or refunded by the IRS provided that the shareholder provides the required information to the IRS in a timely manner.

**Taxation of Tax-Exempt U.S. Stockholders**

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 stock 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 stock 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 stock. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our stock 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 stock 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 stock 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 stock or (2) a group of pension trusts individually holding more than 10% of the value of our stock collectively owns more than 50% of the value of our stock).

---

**Table of Contents**

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

The rules governing U.S. federal income taxation of non-U.S. stockholders (defined below) are complex. This section is only a summary of such rules. We urge non-U.S. stockholders to consult their tax advisors to determine the impact of U.S. federal, state, and local income tax laws on ownership of our common or preferred stock, including any reporting requirements. As used herein, the term non-U.S. stockholder means any taxable beneficial owner of our common or preferred stock (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. stockholder or exempt organization.

**Ordinary Dividends.** A non-U.S. stockholder 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 and 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. However, if a distribution is treated as effectively connected with the non-U.S. stockholder's conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment maintained by the non-U.S. stockholder), the non-U.S. stockholder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as taxable U.S. stockholders 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. stockholder that is a non-U.S. corporation unless the tax 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. stockholder unless (i) a lower treaty rate applies and the non-U.S. stockholder timely provides an IRS Form W-8BEN or W-8BEN-E to us evidencing eligibility for that reduced rate, or (ii) the non-U.S. stockholder timely provides an IRS Form W-8ECI to us claiming that the distribution is effectively connected income.

**Return of Capital.** A non-U.S. stockholder 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 stock. Instead, such distribution in excess of earnings and profits will reduce the adjusted basis of such stock. A non-U.S. stockholder 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 stock, if the non-U.S. stockholder otherwise would be subject to tax on gain from the sale or disposition of its stock, 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 a dividend. However, a non-U.S. stockholder 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.

If we are treated as a United States real property holding corporation, we will be required to withhold 10% of any distribution that exceeds our current and accumulated earnings and profits. Consequently, although we intend to withhold at a rate of 30% on the entire amount of any distribution, to the extent we do not do so, we may withhold at a rate of 10% on any portion of a distribution not subject to withholding at a rate of 30%.





---

**Table of Contents**

**Capital Gain Dividends.** Provided that a particular class of our stock is regularly traded on an established securities market in the United States, and the non-U.S. stockholder does not own more than 5% of the stock of such class at any time during the one-year period preceding the distribution, then amounts distributed with respect to that stock 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 exception does not apply, for example because the non-U.S. stockholder owns more than 5% of the relevant class of our stock, or because our stock is not regularly traded on an established securities market, the non-U.S. stockholder 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 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. stockholder 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. stockholder. A non-U.S. stockholder thus would be taxed on such a distribution at the normal capital gain rates applicable to taxable U.S. stockholders (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. stockholder may also be subject to the 30% branch profits tax unless the tax is reduced or eliminated by an applicable income tax treaty. 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. stockholder) 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. stockholder may receive a credit against its FIRPTA tax liability for the amount we withhold.

Distributions to a non-U.S. stockholder 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 Stock.

**Retention of Net Capital Gains.** Although the law is not clear on the matter, it appears that amounts we designate as retained capital gains in respect of our shares held by stockholders generally should be treated with respect to non-U.S. stockholders in the same manner as actual distributions by us of capital gain dividends. Under this approach, a non-U.S. stockholder would be able to offset as a credit against its U.S. federal income tax liability resulting from its proportionate share of the tax paid by us on such retained capital gains, and to receive from the IRS a refund to the extent of the non-U.S. stockholder's proportionate share of such tax paid by us exceeds its actual U.S. federal income tax liability, provided that the non-U.S. stockholder furnishes required information to the IRS on a timely basis. If we were to designate any portion of our net capital gain as retained net capital gain, a non-U.S. stockholder should consult its tax advisor regarding the taxation of such retained net capital gain.

**Sale of Stock.** A non-U.S. stockholder generally will not incur tax under FIRPTA on gain from the sale of its stock 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 the stock. We anticipate that we will continue to be a domestically controlled REIT, but there is no assurance that we will continue to be so. However, even if we are not, or cease to be, a domestically controlled REIT, a non-U.S. stockholder that owns, actually or constructively, 5% or less of a class of our outstanding stock at all times during a specified testing period will not incur tax under FIRPTA on a sale of such stock if such class of stock is regularly traded on an established securities market. If neither of these exceptions were to apply, the gain on the sale of the stock would be taxed under FIRPTA, in which case a non-U.S. stockholder would be required to file a U.S. federal income tax return

and would be taxed in generally the same manner as taxable U.S. stockholders 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, if the stock sold was not regularly traded on an established securities market or we were not a domestically-controlled REIT, the purchaser of the stock may be required to withhold and remit to the IRS 10% of the purchase price.

---

**Table of Contents**

A non-U.S. stockholder will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. stockholder's U.S. trade or business (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment maintained by the non-U.S. stockholder), in which case the non-U.S. stockholder will be subject to the same treatment as taxable U.S. stockholders with respect to such gain, or (2) the non-U.S. stockholder 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. stockholder 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. stockholder 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 stockholder owning more than 5% of our common or preferred stock avoids a taxable distribution of gain recognized from the sale or exchange of U.S. real property interests by selling our stock 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 stock. If a wash sale occurs, then the seller/repurchaser will be treated as having gain recognized from the 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. stockholders should consult their own tax advisors on the special wash sale rules that apply to non-U.S. stockholders.

**Information Reporting and Backup Withholding.** We must report annually to the IRS and to each non-U.S. stockholder 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. stockholder 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. stockholder provided that the non-U.S. stockholder certifies under penalty of perjury that the stockholder is a non-U.S. stockholder, or otherwise establishes an exemption. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient. As a general matter, backup withholding and information reporting will not apply to a payment of the proceeds of a sale of stock 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 stock 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. stockholder and certain other conditions are met, or the stockholder otherwise establishes an exemption. Payment of the proceeds of a sale of stock effected at a U.S. office of a broker is subject to both backup withholding and information reporting unless the stockholder certifies under penalty of perjury that the stockholder is a non-U.S. stockholder, or otherwise establishes an exemption. Backup withholding is not an additional tax and may be credited against a non-U.S. stockholder's U.S. federal income tax liability or refunded to the extent excess amounts are withheld, provided that the required information is timely supplied to the IRS.

**Table of Contents**

***Reporting and Withholding on Foreign Financial Accounts.*** Certain foreign financial institutions and non-financial foreign entities are subject to a 30% U.S. federal withholding tax on dividends on our common or preferred stock unless (i) in the case of a foreign financial institution (which term generally includes investment funds), such institution enters into an agreement with the U.S. government (unless alternative procedures apply pursuant to an applicable intergovernmental agreement between the United States and the relevant foreign government) to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) and to withhold on certain payments, and (ii) in the case of a non-financial foreign entity, such entity provides the withholding agent with a certification identifying any direct and indirect U.S. owners of the entity. In addition, if such disclosure requirements are not satisfied, withholding at a 30% rate on gross proceeds from the sale or other disposition of our common or preferred stock by such foreign financial institutions and non-financial foreign entities will generally begin after December 31, 2016 (or such other date as may be specified in guidance issued by the U.S. Treasury Department). Under certain circumstances, a non-U.S. shareholder might be eligible for refunds or credits of such taxes. Prospective investors should consult their tax advisors regarding the possible implications of these withholding provisions on the acquisition, ownership and disposition of our common or preferred stock. We will not pay any additional amounts in respect of any amounts withheld.

**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 tax advisors 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 (5) through a combination of any of these methods of sale. Any such underwriter or agent involved in the offer and sale of the offered securities will be named in the applicable prospectus supplement.

Underwriters may offer and sell our securities at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to the prevailing market prices or at negotiated prices. We also may, from time to time, authorize underwriters acting as our agents to offer and sell our securities upon the terms and conditions set forth in an applicable prospectus supplement. In connection with the sale of our securities, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions, and may also receive commissions from purchasers of our securities for whom they may act as agent. Underwriters may sell our securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions from the underwriters or commissions from the purchasers for whom they may act as agent.

Any underwriting compensation we pay to underwriters or agents in connection with the offering of our securities and any discounts, concessions or commissions allowed by underwriters to participating dealers will be set forth in the applicable prospectus supplement. Underwriters, dealers and agents participating in the distribution of the offered securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the our securities may be deemed to be underwriting discounts and commissions under the Securities Act of 1933. Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification against and contribution toward certain civil liabilities, including liabilities under the Securities Act of 1933, as amended.

If so indicated in the applicable prospectus supplement, we will authorize dealers acting as our agents to solicit offers by certain institutions to purchase our securities from us at the public offering price set forth in such prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on the date or dates stated in such prospectus supplement. Each contract will be for an amount not less than, and the aggregate principal amount of securities sold pursuant to contracts shall be not less or more than, the respective amounts stated in the applicable prospectus supplement. Institutions with whom contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions, and other institutions, but will in all cases be subject to our approval. Contracts will not be subject to any conditions except (i) the purchase by an institution of the offered securities covered by its contracts shall not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which such institution is subject and (ii) if the offered securities are being sold to underwriters, we shall have sold to such underwriters the total principal amount of our securities less the principal amount thereof covered by contracts.

Certain of the underwriters and their affiliates may be customers of, engage in transactions with and perform services for us and our subsidiaries in the ordinary course of business.

The securities may or may not be listed on a national securities exchange or traded in the over-the-counter market. 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, the 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

## **Table of Contents**

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 shares 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 or that such transactions, once commenced, may be discontinued without notice.

## **LEGAL MATTERS**

The validity of our securities and the accuracy of the discussion under Material Federal Income Tax Considerations contained in this prospectus are to be passed upon for us by Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C.

## **EXPERTS**

The consolidated financial statements of National Retail Properties, Inc. and Subsidiaries appearing in National Retail Properties, Inc. and Subsidiaries' Annual Report on Form 10-K for the year ended December 31, 2014 (including schedules appearing therein) and the effectiveness of National Retail Properties, Inc. and Subsidiaries' internal control over financial reporting as of December 31, 2014 have been audited by Ernst and Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements and schedules are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we have filed 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 operation of the Public Reference Room. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. Our filings are available to the public at the SEC's website at <http://www.sec.gov>. Our common stock is listed on the New York Stock Exchange under the ticker symbol NNN. You may inspect our reports, proxy statements and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005. In addition, we maintain a website that contains information about us at <http://www.nnnreit.com>. The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus or any accompanying prospectus supplement or any other report or document we file with or furnish to the SEC.

We have filed with the SEC a registration statement (of which this prospectus is a part) on Form S-3 under the Securities Act of 1933, as amended, with respect to our securities. This prospectus and any accompanying prospectus supplement do not contain all of the information set forth in the registration statement, including the





**Table of Contents**

exhibits and schedules thereto, certain parts of which are omitted as permitted by the rules and regulations of the SEC. Statements contained in this prospectus and any accompanying prospectus supplement as to the contents of any contract or other document referred to in, or incorporated by reference in, this prospectus and any accompanying prospectus supplement are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by the exhibit to which the reference relates. Copies of this registration statement may be examined at the SEC's Public Reference Room and copies may be obtained therefrom upon payment of prescribed fees. This registration statement is also available to you on the SEC's website.

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document which is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces this information. We incorporate by reference the following documents we filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, filed with the SEC on February 20, 2015;

The information contained in our 2014 Definitive Proxy Statement, filed with the SEC on March 26, 2014 and specifically incorporated by reference into Part III of our Annual Report on Form 10-K for the year ended December 31, 2013;

the description of our common stock contained in the Registration Statement on Form 8-A, filed with the SEC on July 22, 1992;

the description of our Series D Preferred Stock contained in the Articles Supplementary Establishing and Fixing the Rights and Preferences of 6.625% Series D Cumulative Preferred Stock, par value \$0.01 per share on Form 8-K, filed with the SEC on February 23, 2012; and

the description of our Series E Preferred Stock contained in the Articles Supplementary Establishing and Fixing the Rights and Preferences of 5.70% Series E Cumulative Preferred Stock, par value \$0.01 per share on Form 8-A, filed with the SEC on May 30, 2013.

We are also incorporating by reference additional documents that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, between the date of this prospectus and the termination of the offering of the securities described in this prospectus. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the SEC, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K.

You may request a copy of any or all of the documents incorporated by reference in this prospectus, except the exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents), at no cost, by writing or telephoning our offices at the following address:

National Retail Properties, Inc.

450 South Orange Avenue, Suite 900

Orlando, Florida 32801

Attention: Kevin B. Habicht

(telephone number: (407) 265-7348)

Table of Contents

\$

% Notes due

**PROSPECTUS SUPPLEMENT**

*Joint Book-Running Managers*

**BofA Merrill Lynch**

**Jefferies**

**SunTrust Robinson Humphrey**

**Citigroup**

**Wells Fargo Securities**  
**RBC Capital Markets**  
**US Bancorp**

, 2017