

INVESTORS REAL ESTATE TRUST

Form S-3/A

February 02, 2005

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As filed with the Securities and Exchange Commission on February 2, 2005

Registration No. 333-122289

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Pre-Effective Amendment No. 1  
to  
Form S-3**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Investors Real Estate Trust**  
*(Exact name of registrant as specified in its charter)*

**North Dakota**  
*(State or other jurisdiction of  
incorporation or organization)*

**45-0311232**  
*(I.R.S. Employer Identification No.)*

**12 South Main Street  
Minot, ND 58701  
(701) 837-4738**  
*(Address, Including Zip Code, and Telephone Number, Including Area Code,  
of Registrant's Principal Executive Offices)*

**Karin Wentz, Esq.  
Associate General Counsel  
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P.O. Box 560  
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(952) 401-6600**  
*(Name, Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent for Service)*

*Copies to:*

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(612) 632-3000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the registration statement becomes effective.

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

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

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

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

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

#### CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum Aggregate offering price	Amount of registration fee
Common Shares of Beneficial Interest, no par value	440,758 shares	\$9.98 <sup>(1)</sup>	\$ 4,398,764.84 <sup>(1)</sup>	\$ 517.73 <sup>(2)</sup>

<sup>(1)</sup> Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) of Regulation C under the Securities Act of 1933 as of the close of the market on February 1, 2005.

<sup>(2)</sup> \$398.56 of this fee was previously paid by the Registrant in connection with the filing of the Registration Statement on Form S-3 on January 25, 2005.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant files a further amendment which specifically states that this Registration Statement will thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the Registration Statement becomes effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**Information contained in this Prospectus is not complete and may be changed. The Selling Shareholders may not sell the securities covered by this Prospectus until the Securities and Exchange Commission declares effective the registration statement of which this Prospectus is a part. This Prospectus is not an offer to sell these securities and it is not an offer to buy these securities in any state where such an offer or sale is not permitted.**

**Subject to Completion, Dated February 2, 2005**

PROSPECTUS

Investors Real Estate Trust

440,758 Common Shares of Beneficial Interest

This prospectus relates to the possible issuance, from time to time, of up to 440,758 common shares of beneficial interest, no par value, to the holders of limited partnership units, or LP Units, of our operating partnership, IRET PROPERTIES, a North Dakota Limited Partnership, or IRET Properties. Our common shares are the functional equivalent of common stock, having the rights and preferences normally associated with common stock. We may issue the common shares covered by this prospectus to the holders of LP Units to the extent that they redeem their LP Units of IRET Properties and we elect to issue common shares in connection with such redemption. We may also elect to pay cash for redeemed LP Units in lieu of issuing common shares. We will not receive any proceeds from any common shares issued in exchange for the redemption of LP Units. The persons receiving common shares covered by this prospectus upon redemption of LP Units are referred to herein individually as a selling shareholder, and collectively as the selling shareholders.

This prospectus also relates to the offer and resale, from time to time, by the selling shareholders of the common shares covered by this prospectus. We will not receive any proceeds from the possible resale of common shares by any selling shareholder.

We are registering the common shares covered by this prospectus as required under the Agreement of Limited Partnership of IRET Properties, dated January 31, 1997, and as amended to date. The registration of the common shares does not necessarily mean that any of the LP Units will be submitted for redemption or that any of the common shares to be issued upon such redemption will be offered or sold by the selling shareholders.

The selling shareholders may resell the common shares covered by this prospectus from time to time on the NASDAQ National Market or such other national securities exchange or automated interdealer quotation system on which our common shares are then listed or quoted, through negotiated transactions or otherwise at market prices prevailing at the time of the sale or at negotiated prices. The selling shareholders may engage brokers or dealers who may receive commissions or discounts from such selling shareholders.

Our common shares are traded on the NASDAQ National Market under the symbol IRETS. Our principal executive office is located at 12 South Main, Minot, North Dakota 58701 and our telephone number is (701) 837-4738.

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

Investing in our common shares involves risks. See **Risk Factors** beginning on page 1 of this prospectus.

The date of this Prospectus is February \_\_, 2005.

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**ABOUT THIS PROSPECTUS**

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front of this prospectus. Our business, financial condition, results of operations and prospects may have changed since then. Updated information may have been subsequently provided as explained in this prospectus under [Where You Can Find More Information](#).

It is important for you to read and consider all of the information contained in this prospectus in making your decision to invest in our common shares. You should also read and consider the information in the documents we have referred you to in [Where You Can Find More Information](#).

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it.

As used in this prospectus supplement, references to we, our, us, the Company, IRET and similar references mean Investors Real Estate Trust and its consolidated subsidiaries, unless otherwise expressly stated or the context otherwise requires. References to common shares are to our common shares of beneficial interest, no par value. References to Series A preferred shares are to our 8.25% Series A Cumulative Redeemable Preferred Shares of Beneficial Interest, no par value. References to shares of beneficial interest are to all of our shares of beneficial interest including, without limitation, our common shares, our Series A preferred shares and any other shares of beneficial interest that we may issue in the future.

**RISK FACTORS**

In addition to the other information contained or incorporated by reference in this prospectus, prospective investors should consider carefully the following factors when evaluating an investment in our common shares offered by this prospectus. You should also review our disclosures under the heading [Special Note Regarding Forward-Looking Statements](#) in this prospectus.

**Risks Related to Our Properties and Business**

*Our increasing ownership of commercial properties subjects us to different risks than our traditional base of multi-family residential properties.* Historically, the assets in our investment portfolio consisted predominantly of multi-family residential properties. More recently, our investment activities have caused this balance to shift so that the percentage of commercial properties held in our portfolio has increased significantly. Within the past 12 months, approximately 99.5% of our property acquisitions, on a total carrying amount basis, have been commercial properties, due to the greater availability of these properties on terms that meet our financial and strategic objectives. Total carrying amount is the amount we have invested in our properties (original investment plus improvements, if any) less accumulated depreciation. Based on total carrying amount, commercial properties now comprise a majority of our real estate assets, with the majority of our commercial properties being located in the Minneapolis/ St. Paul metropolitan area. Based on current market conditions, we anticipate that the percentage of commercial properties that we may acquire will continue to significantly exceed the number of multi-family residential properties that we may acquire during the next 12 months.

Our historical experience in acquiring and operating multi-family residential properties may not be directly applicable to the acquisition and operation of commercial properties. Commercial properties involve different risks than multi-family residential properties, including:

direct exposure to business and economic downturns;

exposure to tenant lease terminations or bankruptcies; and

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competition from real estate investors with greater experience in developing and owning commercial properties. Our earnings may be negatively affected if we are not successful in our acquisition and operation of commercial properties.

***Our geographic concentration in Minnesota and North Dakota may result in losses due to our significant exposure to the effects of economic and real estate conditions in those markets.*** For the fiscal year ended April 30, 2004, and the six month period ended October 31, 2004, we received approximately 79.7% and 80.2%, respectively, of our combined commercial segments gross revenue from commercial properties in Minnesota and approximately 8.9% and 6.4%, respectively, of our combined commercial segments gross revenue from commercial properties in North Dakota. For those same periods, we received approximately 21.4% and 21.7%, respectively, of our multi-family residential segment gross revenue from multi-family residential properties in Minnesota and 29.1% and 30.0%, respectively, of our multi-family residential segment gross revenue from multi-family residential properties in North Dakota. As of October 31, 2004, Minnesota accounted for approximately 79.5% of our combined commercial segments real estate portfolio and 22.4% of our multi-family residential segment real estate portfolio, each as determined by total asset value, while North Dakota accounted for approximately 6.0% of our combined commercial segments real estate portfolio and 27.2% of our multi-family residential segment real estate portfolio.

As a result of this concentration, we are subject to substantially greater risk than if our investments were more geographically dispersed. Specifically, we are more significantly exposed to the effects of economic and real estate conditions in those particular markets, such as building by competitors, local vacancy and rental rates and general levels of employment and economic activity.

The economic climate in Minnesota is highly dependent on the service, manufacturing and high technology industries. The North Dakota economy is dependent on the agricultural, government, business and personal services and wholesale and retail industries. Economic weakening, or lack of recovery from the recent weakness, in any of these industries may adversely affect the performance of our real estate portfolio by decreasing demand for rental space.

***Increasing physical and economic vacancy rates and declining rental rates will negatively impact earnings.*** As of October 31, 2004, approximately 1.0 million square feet, or 12.7% of our total commercial property square footage, was vacant. In addition, leases covering approximately 8.1% of our total combined commercial segments annualized base rents will expire during the remainder of fiscal 2005. Leases covering approximately 7.3% of our total combined commercial segments annualized base rents will expire during fiscal 2006. At October 31, 2004, the economic occupancy of our total commercial properties, on a stabilized property basis, was approximately 89.8%. We define economic occupancy as total possible revenue less vacancy loss as a percentage of total possible revenue. Total possible revenue is determined by valuing occupied units or square footage at contract rates and vacant units or square footage at market rates. Stabilized properties are those properties that we owned for the entirety of both periods being compared, and include properties that were redeveloped or expanded during the period being compared. Properties purchased or sold during the periods being compared are excluded from our stabilized property analysis. If we are unable to rent or sell those properties that are vacant or affected by expiring leases, properties producing approximately 20% of our total combined commercial segments annualized base rents will be vacant by April 30, 2005. Even greater vacancies will be created to the extent that a number of tenants, or any one significant tenant, file for bankruptcy protection and reject our leases. At October 31, 2004, the economic occupancy of our multi-family residential properties, on a stabilized property basis, was approximately 91.1%. Multi-family residential vacancies could increase from current levels due to general economic conditions, local economic or competitive conditions, the trend toward home ownership facilitated by low interest rates, unsatisfactory property management, the physical condition of our properties or other factors. Increased vacancies in both our commercial and multi-family residential properties will negatively impact our earnings, will cause a decline in the value of our real estate portfolio and may adversely affect our ability to make distributions to the holders of our shares of beneficial interest.



Multi-family residential property economic occupancy rates, on a stabilized property basis, were 91.1% for each of the six months ended October 31, 2004 and 2003. Commercial property economic occupancy rates, on a

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stabilized property basis, decreased to 89.8% from 94.1% for the six months ended October 31, 2004 and 2003, respectively. To maintain our physical occupancy levels, we may offer tenants incentives, generally in the form of lower rents, which results in decreased revenues and income from operations at our stabilized properties. We estimate that rent concessions offered during the six months ended October 31, 2004, lowered our operating revenues by approximately \$1.9 million, as compared to an estimated \$1.2 million reduction in operating revenues attributable to rent concessions offered in the six months ended October 31, 2003.

***Inability to manage our rapid growth effectively may adversely affect our operating results.*** Our total assets have increased from \$685 million at April 30, 2002, to \$1,153.5 million at October 31, 2004, principally through the acquisition of additional real estate properties. Subject to our continued ability to raise equity capital and issue LP Units of IRET Properties, and identify suitable investment properties, our goal is to acquire approximately \$100 million to \$200 million of real estate assets on an annual basis. Effective management of this level of growth will present challenges, including:

the need to expand our management team and staff;

the need to enhance internal operating systems and controls;

increased reliance on outside advisors and property managers; and

the ability to consistently achieve targeted returns.

If we are unable to effectively manage our growth, our operating results will be adversely affected.

***Competition may negatively impact our earnings.*** We compete with many kinds of institutions, including other REITs, private partnerships, individuals, pension funds and banks, for tenants and investment opportunities. Many of these institutions are active in the markets in which we invest and have greater financial and other resources that may be used to compete against us. With respect to tenants, this competition may affect our ability to lease our properties, the price at which we are able to lease our properties and the cost of required renovations or build-outs. With respect to acquisition and development investment opportunities, this competition may cause us to pay higher prices for new properties than we otherwise would have paid, or may prevent us from purchasing a desired property at all.

***An inability to continue to make accretive property acquisitions may adversely affect our ability to increase our operating income.*** From our fiscal year ended April 30, 2002, to our fiscal year ended April 30, 2004, our operating income decreased from \$11.9 million to \$10.9 million. Our basic and diluted net income per common share was \$0.24 as of April 30, 2004, compared to \$0.38 and \$0.42, respectively, as of April 30, 2003 and 2002. If we are unable to continue to make real estate acquisitions on terms that meet our financial and strategic objectives, whether due to market conditions, a changed competitive environment or unavailability of capital, our ability to increase our operating income may be materially and adversely affected.

***High leverage on our overall portfolio may result in losses.*** As of October 31, 2004, our ratio of total indebtedness to total net assets was approximately 176.0%. As of April 30, 2004, 2003 and 2002, our percentage of total indebtedness to total net assets was approximately 178.0%, 186.0% and 211.0%, respectively. Under our Second Restated Trustees Regulations (Bylaws), we may increase our total indebtedness up to 300.0% of net assets before depreciation in the aggregate, or by an additional approximately \$497.0 million. There is no limitation on the increase that may be permitted if approved by a majority of the independent members of our board of trustees and disclosed to the holders of our shares of beneficial interest in the next quarterly report, along with justification for any excess.

This amount of leverage may expose us to cash flow problems if rental income decreases. Under those circumstances, in order to pay our debt obligations we might be required to sell properties at a loss or be unable to

make distributions to the holders of our shares of beneficial interest. A failure to pay amounts due may result in a default on our obligations and the loss of the property through foreclosure.

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***Our inability to renew, repay or refinance our debt may result in losses.*** We are subject to the normal risks associated with debt financing, including the risk that:

our cash flow will be insufficient to meet required payments of principal and interest;

we will not be able to renew, refinance or repay our indebtedness when due; and

the terms of any renewal or refinancing will be less favorable than the terms of our current indebtedness.

If we are unable to refinance our indebtedness on acceptable terms, or at all, we may be forced to dispose of one or more of the properties on disadvantageous terms, which may result in losses to us. These losses could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt. Furthermore, if a property is mortgaged to secure payment of indebtedness and we are unable to meet mortgage payments, the mortgagee could foreclose upon the property, appoint a receiver and receive an assignment of rents and leases or pursue other remedies, all with a consequent loss of our revenues and asset value. Foreclosures could also create taxable income without accompanying cash proceeds, thereby hindering our ability to meet the REIT distribution requirements of the Internal Revenue Code.

The principal balance of our indebtedness in mortgage loans secured by individual properties totaled \$682 million as of October 31, 2004. Of the outstanding mortgages, both fixed and variable, \$8.9 million in principal amount will come due during fiscal year 2005, \$18.7 million in principal amount will come due during fiscal year 2006 and the remaining balance will come due in later fiscal years.

***The cost of our indebtedness may increase which could affect our ability to make distributions and pay amounts due on our debt.*** We have incurred, and we expect to continue to incur, indebtedness that bears interest at a variable rate. As of October 31, 2004, \$37.8 million, or approximately 5.5%, of the principal amount of our total mortgage indebtedness was subject to variable interest rate agreements. The interest rates on our variable rate mortgages range from approximately 4.0% to approximately 8.0%. An increase of one percent in our variable interest rate would collectively increase our interest payments by \$378,000 annually. In addition, portions of our fixed-rate indebtedness incurred for past property acquisitions will come due on a periodic basis. For example, in each of our fiscal years ending April 30, 2005, 2006 and 2007, approximately \$8.0 million to \$19.0 million of our fixed-rate debt will come due. Accordingly, increases in interest rates will increase our interest costs, which could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt.

***Our current or future insurance may not protect us against possible losses.*** We carry comprehensive liability, fire, extended coverage and rental loss insurance with respect to our properties at levels that we believe to be adequate. However, the coverage limits of our current or future policies may be insufficient to cover the full cost of repair or replacement of all potential losses. Moreover, this level of coverage may not continue to be available in the future or, if available, may be available only at unacceptable cost or with unacceptable terms.

Additionally, there may be certain extraordinary losses, such as those resulting from civil unrest, terrorism or environmental contamination, which are not generally, or fully, insured against because they are either uninsurable or not economically insurable. For example, we do not currently carry insurance against losses as a result of environmental contamination. Should an uninsured or underinsured loss occur to a property, we could be required to use our own funds for restoration or lose all or part of our investment in, and anticipated revenues from, the property. In any event, we would continue to be obligated on any mortgage indebtedness on the property. Any loss could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt.

***We have significant investments in medical office properties and adverse trends in healthcare provider operations may negatively affect our lease revenues from these properties.*** We have acquired a significant number of specialty medical properties and may acquire more in the future. As of October 31, 2004, our real estate portfolio included 29 medical office properties, having a total carrying amount of \$200 million, or approximately 19% of the total asset value of our entire real estate portfolio. The healthcare industry is currently experiencing changes in the

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demand for, and methods of delivery of, healthcare services; changes in third-party reimbursement policies; significant unused capacity in certain areas, which has created substantial competition for patients among healthcare providers in those areas; continuing pressure by private and governmental payors to reduce payments to providers of services; and increased scrutiny of billing, referral and other practices by federal and state authorities. Sources of revenue for our medical property tenants may include the federal Medicare program, state Medicaid programs, private insurance carriers and health maintenance organizations, among others. Efforts by such payors to reduce healthcare costs will likely continue, which may result in reductions or slower growth in reimbursement for certain services provided by some of our tenants. These factors may adversely affect the economic performance of some or all of our medical services tenants and, in turn, our lease revenues. In addition, if we or our tenants terminate the leases for these properties, or our tenants lose their regulatory authority to operate such properties, we may not be able to locate suitable replacement tenants to lease the properties for their specialized uses. Alternatively, we may be required to spend substantial amounts to adapt the properties to other uses. Any loss of revenues and/or additional capital expenditures occurring as a result could hinder our ability to make distributions to the holders of our shares of beneficial interest.

***Adverse changes in applicable laws may affect our potential liabilities relating to our properties and operations.*** Increases in real estate taxes and income, service and transfer taxes cannot always be passed through to all tenants in the form of higher rents. As a result, any increase may adversely affect our cash available for distribution, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt. Similarly, changes in laws that increase the potential liability for environmental conditions existing on properties, that increase the restrictions on discharges or other conditions or that affect development, construction and safety requirements may result in significant unanticipated expenditures that could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt. In addition, future enactment of rent control or rent stabilization laws or other laws regulating multi-family residential properties may reduce rental revenues or increase operating costs.

***Complying with laws benefiting disabled persons may affect our costs and investment strategies.*** Federal, state and local laws and regulations designed to improve disabled persons' access to and use of buildings, including the Americans with Disabilities Act, may require modifications to, or restrict renovations of, existing buildings. Additionally, these laws and regulations may require that structural features be added to buildings under construction. Any legislation or regulations that may be adopted in the future may impose further burdens or restrictions on us with respect to improved access to, and use of these buildings by, disabled persons. The costs of complying with these laws and regulations may be substantial and limits or restrictions on construction, or the completion of required renovations, may limit the implementation of our investment strategy or reduce overall returns on our investments. This could have an adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt.

***We may be responsible for potential liabilities under environmental laws.*** Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be liable for the costs of removal of, or remediation of, hazardous or toxic substances in, on, around or under that property. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence of the hazardous or toxic substances. The presence of these substances, or the failure to properly remediate any property containing these substances, may adversely affect the owner's or operator's ability to sell or rent the affected property or to borrow using the property as collateral. Persons who arrange for the disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal of, or remediation of, these substances at that disposal or treatment facility, whether or not the facility is owned or operated by that person. In connection with our current or former ownership (direct or indirect), operation, management, development and/or control of real properties, we may be potentially liable for removal or remediation costs with respect to hazardous or toxic substances as those properties, as well as certain other costs, including governmental fines and claims for injuries to persons and property. A finding

of liability for an environmental condition as to any one or more properties could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt.

It is generally our policy to obtain a Phase I environmental study on each property that we seek to acquire. If the Phase I indicates any possible environmental problems, it is our policy is to order a Phase II study, which

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involves testing the soil and ground water for actual hazardous substances. However, Phase I and Phase II environmental studies, or any other environmental studies undertaken with respect to any of our current or future properties, may not reveal the full extent of potential environmental liabilities. We currently do not carry insurance for environmental liabilities.

***We may be unable to retain or attract qualified management.*** We are dependent upon our senior officers for essentially all aspects of our business operations. Our senior officers have experience in the specialized business segments in which we operate and the loss of them would likely have a material adverse effect on our operations. We do not have employment contracts with any of our senior officers. As a result, any senior officer may terminate his or her relationship with us at any time, without providing advance notice. The location of our corporate headquarters in Minot, North Dakota, may make it more difficult and expensive to attract, relocate and retain current and future officers and employees.

***Failure to achieve and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business, operating results and stock price, and compliance will result in additional expenses.*** We are in the process of documenting and testing our internal control procedures in order to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act, which requires annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent auditors addressing these assessments. During the course of our testing we may identify deficiencies which we may not be able to remediate in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404. In addition, if we fail to maintain the adequacy of our internal controls, as such standards may be modified, supplemented or amended from time to time, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. Failure to achieve and maintain an effective internal control environment could have a material adverse effect on our business, operating results, and stock price. Additionally, our efforts to comply with Section 404 of the Sarbanes-Oxley Act and the related regulations have required, and we believe will continue to require, the commitment of significant financial and managerial resources.

## **Risks Related to the Purchase of our Shares of Beneficial Interest**

***Our future growth depends, in part, on our ability to raise additional equity capital, which will have the effect of diluting the interests of the holders of our common shares.*** Our future growth depends upon, among other things, our ability to raise equity capital and issue LP Units of IRET Properties. The issuance of additional common shares and of LP Units, for which we subsequently issue common shares upon the redemption of LP Units, will dilute the interests of the current holders of our common shares.

***We may issue additional classes or series of our shares of beneficial interest with rights and preferences that are superior to the rights and preferences of our common shares.*** Without the approval of the holders of our common shares, our board of trustees may establish additional classes or series of our shares of beneficial interest, and, like our Series A preferred shares, such classes or series may have rights and preferences that are superior to the rights and preferences of our common shares. Any such class or series of preferred shares of beneficial interest may contain dividend rights, conversion rights, voting rights, terms of redemption, redemption prices, liquidation preferences or other rights and preferences that are superior to the rights of the holders of our common shares. We have issued in the past, and may issue in the future, preferred shares of beneficial interest having rights and preferences that are superior to those of our common shares. Such offering will only occur if and when, among other things, the market conditions for an offering of preferred shares of beneficial interest are such that the dividend rate established in respect of the preferred shares of beneficial interest will be acceptable to us and our board of trustees.



***Payment of distributions on our shares of beneficial interest is not guaranteed.*** Our board of trustees must approve our payment of distributions and may elect at any time, or from time to time, and for an indefinite duration, to reduce the distributions payable on our shares of beneficial interest or to not pay distributions on our shares of beneficial interest. Our board of trustees may reduce distributions for a variety of reasons, including, but not limited to, the following:

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operating results below expectations that cannot support the current distribution payment;

unanticipated cash requirements; or

concluding that the payment of distributions would cause us to breach the terms of certain agreements or contracts, such as financial ratio covenants.

***Changes in market conditions could adversely affect the price of our shares of beneficial interest.*** As is the case with any publicly-traded securities, certain factors outside of our control could influence the value of our common shares, Series A preferred shares and any other classes or series of preferred shares of beneficial interest to be issued in the future. These conditions include, but are not limited to:

market perception of REITs in general;

market perception of REITs relative to other investment opportunities;

market perception of our financial condition, performance, dividends and growth potential;

prevailing interest rates; and

general economic and business conditions.

***Low trading volume on the NASDAQ National Market may prevent the timely resale of our common shares.*** No assurance can be given that a holder of our common shares will be able to resell such shares when desired. Our common shares are currently traded on the NASDAQ National Market. The average daily trading volume for the period of May 1, 2003, through April 30, 2004, was 50,297 shares and the average monthly trading volume for the period of May 2003 through April 2004 was 1,293,517 shares. The average daily trading volume for the period of May 1, 2004 through October 31, 2004 was 59,522 shares and the average monthly trading volume for the period of May 2004 through October 2004 was 1,249,963 shares. As a result of this trading volume, an owner of our common shares may encounter difficulty in selling such shares in a timely manner and may incur a substantial loss.

## **Risks Related to Our Structure and Organization**

***We may incur tax liabilities as a consequence of failing to qualify as a REIT.*** Although our management believes that we are organized and have operated and are operating in such a manner to qualify as a real estate investment trust, as that term is defined under the Internal Revenue Code, no assurance can be given that we have in fact operated, or will be able to continue to operate, in a manner to qualify or remain so qualified. Qualification as a real estate investment trust, or REIT, involves the application of highly technical and complex Internal Revenue Code provisions for which there are only limited judicial or administrative interpretations, and further involves the determination of factual matters and circumstances not entirely within our control. See **Certain Tax Considerations** below. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying sources, and we must make distributions to the holders of our shares of beneficial interest aggregating annually at least 90% of our REIT taxable income (excluding net capital gains). Thus, to the extent revenues from non-qualifying sources, such as income from third-party management, represents more than five percent of our gross income in any taxable year, we will not satisfy the 95% income test and may fail to qualify as a REIT, unless certain relief provisions contained in the Internal Revenue Code apply. Even if relief provisions apply, however, a tax would be imposed with respect to excess net income. Additionally, if IRET Properties or one or more of our subsidiaries is determined to be taxable as a corporation, we may fail to qualify as a REIT. Either our failure to qualify as a REIT, for any reason, or the imposition of taxes on excess net income from non-qualifying sources, could have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt. Furthermore, new legislation, regulations, administrative interpretations or court decisions could change the tax laws

with respect to our qualification as a REIT or the federal income tax consequences of our qualification.

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If we failed to qualify as a REIT, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at corporate rates, which would likely have a material adverse effect on us, our ability to make distributions to the holders of our shares of beneficial interest and our ability to pay amounts due on our debt. In addition, unless entitled to relief under applicable statutory provisions, we would also be disqualified from treatment as a REIT for the four taxable years following the year during which we lost our qualification. This treatment would reduce funds available for investment or distributions to the holders of our shares of beneficial interest because of the additional tax liability to us for the year or years involved. In addition, we would no longer be required to make distributions to holders of our common shares. To the extent that distributions to the holders of our shares of beneficial interest would have been made in anticipation of qualifying as a REIT, we might be required to borrow funds or to liquidate certain investments to pay the applicable tax.

***Certain provisions of our Third Restated Declaration of Trust may limit a change in control and deter a takeover.*** In order to maintain our qualification as a REIT, our Articles of Amendment and Third Restated Declaration of Trust, as amended to date, or our Third Restated Declaration of Trust, provides that any transaction, other than a transaction entered into through the NASDAQ National Market or other similar exchange, that would result in our disqualification as a REIT under Section 856 of the Internal Revenue Code, including any transaction that would result in (i) a person owning in excess of the ownership limit, which as of the date of this prospectus supplement is 9.8%, in number or value, of our outstanding shares of beneficial interest, (ii) fewer than 100 people owning our shares of beneficial interest, (iii) us being closely held within the meaning of Section 856(h) of the Internal Revenue Code, or (iv) 50% or more of the fair market value of our shares of beneficial interest being held by persons other than United States persons, as defined in Section 7701(a)(30) of the Internal Revenue Code, will be void ab initio. If the transaction is not void ab initio, then the shares of beneficial interest in excess of the ownership limit, that would cause us to be closely held, that would result in 50% or more of the fair market value of our shares of beneficial interest to be held by persons other than United States persons or that otherwise would result in our disqualification as a REIT, will automatically be exchanged for an equal number of excess shares, and these excess shares will be transferred to an excess share trustee for the exclusive benefit of the charitable beneficiaries named by our board of trustees. These limitations may have the effect of preventing a change in control or takeover of us by a third-party, even if the change in control or takeover would be in the best interests of the holders of our shares of beneficial interest.

***Our board of trustees may make changes to our major policies without approval of the holders of our shares of beneficial interest.*** Our major policies, including policies relating to development, acquisitions, financing, growth, debt capitalization and distributions, are determined by our board of trustees. Our board of trustees may amend or revoke those policies, and other policies, without advance notice to, or the approval of, the holders of our shares of beneficial interest.

## IRET

We are a self-advised equity REIT organized under the laws of North Dakota. Our business consists of owning and operating income-producing real properties. Our investments include multi-family residential properties, consisting of apartment buildings, complexes and communities, and commercial properties, consisting of office, industrial, medical and retail properties. These properties are located primarily in the upper Midwest states of Minnesota and North Dakota.

Our primary source of income and cash is rents associated with multi-family residential and commercial property leases. Our commercial properties are typically leased to tenants under long term lease arrangements, with no single tenant currently accounting for more than approximately 5.6% of our total annual commercial rental revenues. At October 31, 2004, the economic occupancy rate for our stabilized multi-family residential properties was

approximately 91.1%, and the economic occupancy of our total commercial properties, on a stabilized property basis, was approximately 89.8%. We define economic occupancy as total possible revenue less vacancy loss as a percentage of total possible revenue. Total possible revenue is determined by valuing occupied units or square footage at contract rates and vacant units or square footage at market rates. Stabilized properties are those properties that we owned for the entirety of both periods being compared, and include properties that were redeveloped or expanded during the period being compared. Properties purchased or sold during the periods being

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compared are excluded from our stabilized property analysis. Results reported on a stabilized property basis are not computed in accordance with accounting principles generally accepted in the United States of America ( GAAP ).

We operate in a manner intended to enable us to qualify as a REIT under the Internal Revenue Code. We own our assets and conduct our day-to-day business operations through an operating partnership, IRET Properties, a North Dakota Limited Partnership, of which IRET, Inc., a North Dakota corporation and our wholly-owned subsidiary, is the sole general partner.

**RECENT DEVELOPMENTS**

In November 2004 we completed a best efforts offering to sell up to 1.5 million of our common shares of beneficial interest at \$10.15 per share. We sold 1.4 million shares in this offering, and received proceeds of approximately \$13.4 million, after broker commissions totaling \$0.9 million, but before other expenses of the offering.

On January 3, 2005, our board of trustees declared a regular quarterly distribution of 16.15 cents per common share and LP Unit payable on or about January 27, 2005, to common shareholders and unitholders of record at the close of business on January 13, 2005. This 16.15 cent per common share/LP Unit distribution is the 135<sup>th</sup> consecutive quarterly distribution paid by IRET since its inception in 1970, and represents an increase of .05 cents or 0.3% over the previous regular quarterly distribution of 16.10 cents per common share/LP Unit paid October 1, 2004.

**NO PROCEEDS TO IRET**

We will not receive any proceeds from the issuance of the common shares, if any, covered by this prospectus or from the resale of the common shares, if any, covered by this prospectus by the selling shareholders. All of the proceeds from the resale of the common shares covered by this prospectus will go to the selling shareholders who offer and sell their shares.

**SELLING SHAREHOLDERS**

We may issue the common shares covered by this prospectus to the selling shareholders in exchange for LP Units if and to the extent that the selling shareholders redeem LP Units and we elect to issue common shares in exchange for such LP Units. The selling shareholders will have received all common shares that they may offer for sale under the prospectus by redeeming the LP Units to which this prospectus relates. The following table sets forth certain information with respect to the selling shareholders and their ownership of common shares as of January 20, 2005. No selling shareholder has held any position, office or had any other material relationship with us, or any of our predecessors or affiliates, during the past three years. Except as indicated below, the common shares owned by each selling shareholder, including all common shares to be issued in exchange for currently redeemable LP Units for common shares covered by this prospectus, represents less than 1.0% of the sum of the common shares outstanding as of January 20, 2005, plus all common shares to be issued in exchange for LP Units by the selling shareholders pursuant to this prospectus, assuming redemption of all LP Units in exchange for common shares.

Since the selling shareholders may sell all, some or none of the common shares issued upon redemption of LP Units, and since there are currently no agreements, arrangements or understandings with respect to the sale of any of such common shares, no estimate can be given as to the number or percentage of common shares that will be held by the selling shareholders upon termination of any offering made hereby. The common shares covered by this

prospectus represent approximately 1.0% of the sum of our total common shares outstanding as of January 20, 2005, plus all common shares to be issued in exchange for LP Units by the selling shareholders pursuant to this prospectus, assuming redemption of all LP Units in exchange for common shares.

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Name of Selling Shareholder	Shares Owned	Shares Being Offered (2)	Shares Owned After the Offering (3)	Percentage of Shares Owned After the Offering
	Prior to the Offering (1)			
Ronald A. and Mary K. Morton	41,123	40,363	760	*
Timothy J. Wensman	40,363	40,363	0	*
Benton Business Park Partnership, a Minnesota limited liability partnership	31,117	31,117	0	*
West River Business Park Partnership, LLP, a Minnesota limited liability partnership	54,355	54,355	0	*
David R. Frauenshuh	500,202(4)	166,925	333,277	*
Richard V. Wicka	97,044	40,144	56,900	*
Randy T. McKay	94,950	36,168	58,782	*
Gary L. Lindstrom	57,460	27,821	29,639	*
Mark D. Jorgens	8,542	1,751	6,791	*
Dean M. Williamson	5,500	1,751	3,749	*

(1) Represents common shares currently owned by and registered in the name of the selling shareholder or issuable in exchange for an equal number of currently redeemable LP Units owned by the selling shareholder, including the LP Units to be redeemed for common shares covered by this prospectus.

(2) Assumes that all LP Units held by the selling shareholder are exchanged for common shares and that all such common shares are being resold pursuant to this prospectus.

(3) Assumes the sale of all of the common shares issued upon redemption of LP Units. The selling shareholders may, however, sell all, some or none of the common shares issued upon redemption of LP Units and, to our knowledge, as of the date of this prospectus, there are no agreements, arrangements or understandings with respect to the sale of such common shares.

(4) Represents approximately 1.1% of the sum of the common shares outstanding as of January 20, 2005, plus all common shares to be issued in exchange for LP Units by the selling shareholders pursuant to this prospectus, assuming redemption of all LP Units in exchange for common shares.

\* Represents less than one percent of the sum of the common shares outstanding as of January 20, 2005, plus all common shares to be issued in exchange for LP Units by the selling shareholders pursuant to this prospectus, assuming redemption of all LP Units in exchange for common shares.

**PLAN OF DISTRIBUTION**



This prospectus relates to the possible issuance of up to 440,758 common shares if, and to the extent that, the holders of an equal number of LP Units submit such LP Units for redemption and we issue common shares in exchange for such redeemed LP Units. We will not receive any proceeds from any issuance of common shares in exchange for LP Units. This prospectus also relates to the possible offer and sale by the selling shareholders, from time to time, of any common shares we issue in exchange for LP Units. We will not receive any proceeds from the sale of the common shares by the selling shareholders.

We are registering the common shares covered by this prospectus for resale pursuant to our obligations under the Agreement of Limited Partnership of IRET Properties in order to provide the transferees of the selling shareholders with freely tradable securities. Registration does not, however, necessarily mean that any LP Units will be submitted for redemption or that any of the common shares to be issued upon such redemption will be offered or sold by the selling shareholders.

The selling shareholders, or their pledgees, donees, transferees or other successors in interest, may offer and sell the common shares covered by this prospectus in the following manner:

on the NASDAQ National Market or other quotation system or national exchange on which our common shares are listed or traded at the time of sale;

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in the over-the-counter market;

in privately negotiated transactions;

in underwritten transactions; or

otherwise, at prices then prevailing or related to the then current market price or at negotiated prices.

The offering price of the common shares covered by this prospectus and offered from time to time will be determined by the selling shareholders and, at the time of determination, may be higher or lower than the market price of the common shares on the NASDAQ National Market.

In connection with an underwritten offering, underwriters or agents may receive compensation in the form of discounts, concessions or commissions from a selling shareholder or from purchasers of offered common shares for whom they may act as agents, and underwriters may sell offered common shares to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers from whom they may act as agents.

Offered common shares may be sold directly or through broker-dealers acting as principal or agent, or pursuant to a distribution by one or more underwriters on a firm commitment or best-efforts basis. The methods by which offered common shares may be sold include:

a block trade in which the broker-dealer so engaged will attempt to sell offered common shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by such broker-dealer for its own account pursuant to this prospectus;

ordinary brokerage transactions and transactions in which the broker solicits purchases;

an exchange distribution in accordance with the rules of the exchange or quotation system;

privately negotiated transactions; and

underwritten transactions.

The selling shareholders and any underwriters, dealer or agents participating in the distribution of offered common shares may be deemed to be underwriters within the meaning of the Securities Act of 1933. Any profit on the sale of offered common shares by the selling shareholders and any commissions received by any such broker-dealers may be deemed to be underwriting commissions under the Securities Act of 1933.

When a selling shareholder elects to make a particular offer of common shares, a prospectus supplement, if required, will be distributed that identifies any underwriters, dealers or agents and any discounts, commissions and other terms constituting compensation from such selling shareholder and any other required information.

In order to comply with state securities laws, if applicable, offered common shares may be sold only through registered or licensed brokers or dealers. In addition, in certain states, offered common shares may not be sold unless they have been registered or qualified for sale in such state or an exemption from such registration or qualification requirement is available and complied with.

We have agreed to pay all costs and expenses incurred in connection with the registration under the Securities Act of 1933 of the common shares covered by this prospectus, including, but not limited to, all registration and filing fees, printing expenses and fees and disbursements of our legal counsel and accountants. The selling shareholders will pay any brokerage fees and commissions, fees and disbursements of legal counsel for the

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selling shareholders and stock transfer and other taxes attributable to the sale of common shares covered by this prospectus.

**DESCRIPTION OF SHARES OF BENEFICIAL INTEREST**

*The following is a summary of the material terms of our shares of beneficial interest. This summary is not a complete legal description of the common shares offered by this prospectus or our Series A preferred shares and is qualified in its entirety by reference to our Third Restated Declaration of Trust, the Articles Supplementary to our Third Restated Declaration of Trust classifying and designating our Series A preferred shares and our Bylaws. We have filed copies of our Third Restated Declaration of Trust, the Articles Supplementary to our Third Restated Declaration of Trust classifying and designating our Series A preferred shares and our Bylaws with the Securities and Exchange Commission and have incorporated by reference such documents as exhibits to the registration statement of which this prospectus is a part.*

**General**

We are authorized, under our Third Restated Declaration of Trust, to issue an unlimited number of our shares of beneficial interest. Our board of trustees is authorized, under our Third Restated Declaration of Trust, to provide for the issuance of shares of beneficial interest upon terms and conditions and pursuant to agreements as the board of trustees may determine and, further, to establish by resolution more than one class or series of shares of beneficial interest and to fix the relative rights and preferences of these different classes or series. The rights and preferences of any class or series of shares of beneficial interest will be stated in the articles supplementary to our Third Restated Declaration of Trust establishing the terms of that class or series adopted by our board of trustees and will become part of our Third Restated Declaration of Trust. As of January 20, 2005, our authorized shares of beneficial interest consisted of an unlimited number of common shares, of which 44,090,132 were issued and outstanding, and an unlimited number of Series A preferred shares, of which 1,150,000 were issued and outstanding.

The voting rights and rights to distributions of the holders of common shares are subject to the prior rights of the holders of our Series A preferred shares and any other subsequently-issued classes or series of preferred shares. Unless otherwise required by applicable law or regulation, other classes or series of preferred shares are issuable without further authorization by holders of the common shares and on such terms and for such consideration as may be determined by our board of trustees. Other classes or series of preferred shares may have varying voting rights, redemption and conversion features, distribution (including liquidating distribution) rights and preferences, and other rights, including rights of approval of specified transactions. Any subsequently-issued class or series of preferred shares could be given rights that are superior to rights of holders of common shares and a class or series having preferential distribution rights could limit common share distributions and reduce the amount holders of common shares would otherwise receive on dissolution.

**Ownership and Transfer Restrictions.**

Our Third Restated Declaration of Trust contains provisions that are intended to help preserve our status as a REIT for federal income tax purposes. Specifically, our Third Restated Declaration of Trust provides that any transaction, other than a transaction entered into through the NASDAQ National Market or other similar exchange, that would result in our disqualification as a REIT under Section 856 of the Internal Revenue Code, including any transaction that would result in (i) a person owning shares of beneficial interest in excess of the ownership limit, which as of the date of this prospective supplement is 9.8%, in number or value, of our outstanding shares of beneficial interest, (ii) less than 100 people owning our shares of beneficial interest, (iii) us being closely held, or (iv) 50% or more of the fair market value of our shares of beneficial interest being held by persons other than United States persons, will be void

ab initio. If such transaction is not void ab initio, then the shares of beneficial interest that are in excess of the ownership limit, that would cause us to be closely held, that would result in 50% or more of the fair market value of our shares of beneficial interest to be held by persons other than United States persons or that otherwise would result in our disqualification as a REIT, would automatically be exchanged for an equal number of excess shares, and these excess shares will be transferred to an excess share trustee for the exclusive benefit of the charitable beneficiaries named by our board of trustees.

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In such event, any distributions on excess shares will be paid to the excess share trust for the benefit of the charitable beneficiaries. The excess share trustee will be entitled to vote the excess shares, if applicable, on any matter. The excess share trustee may only transfer the excess shares held in the excess share trust as follows:

if shares of beneficial interest were transferred to the excess share trustee due to a transaction or event that would have caused a violation of the ownership limit or would have caused us to be closely held then, at the direction of our board of trustees, the excess share trustee will transfer the excess shares to the person who makes the highest offer for the excess shares, pays the purchase price and whose ownership will not violate the ownership limit or cause us to be closely held; or

if excess shares were transferred to the excess share trustee due to a transaction or event that would have caused persons other than United States persons to own more than 50% of the value of our shares of beneficial interest then, at the direction of our board of trustees, the excess share trustee will transfer the excess shares to the United States person who makes the highest offer for the excess shares and pays the purchase price.

We have certain rights to purchase excess shares from the excess share trustee and must have waived these rights prior to a transfer as described above.

## **Common Shares**

**General.** Our Third Restated Declaration of Trust authorizes the issuance of an unlimited number of our common shares. As of January 20, 2005, there were 44,090,132 of our common shares outstanding and 10,938,432 of our common shares to be issued upon conversion of previously issued LP Units, and there were no warrants, options or other contractual arrangements, other than the LP Units, requiring the issuance of our common shares or any other shares of beneficial interest.

All of our common shares offered by this prospectus will be duly authorized, fully paid and nonassessable when exchanged for LP Units in accordance with the terms of the Agreement of Limited Partnership of IRET Properties.

**Voting Rights.** Subject to the provisions of our Third Restated Declaration of Trust regarding the restriction on the transfer of our common shares, our common shares have non-cumulative voting rights at the rate of one vote per common share on all matters submitted to the shareholders, including the election of members of our board of trustees.

Our Third Restated Declaration of Trust generally provides that whenever any action is to be taken by the holders of our common shares, including the amendment of our Third Restated Declaration of Trust if such amendment is previously approved by our board of trustees, such action will be authorized by a majority of the voting power of the holders of our common shares present in person or by proxy at a meeting at which a quorum is present, except as otherwise required by law, our Third Restated Declaration of Trust or our Bylaws. Our Third Restated Declaration of Trust further provides the following:

- (i) that the following actions will be authorized by the affirmative vote of the holders of our common shares holding common shares possessing a majority of the voting power of our common shares then outstanding and entitled to vote on such action:

our termination;

our merger with or into another entity;

our consolidation with one or more other entities into a new entity;

the disposition of all or substantially all of our assets; and

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the amendment of the Third Restated Declaration of Trust, if such amendment has not been previously approved by our board of trustees.

- (ii) that a member of our board of trustees may be removed with or without cause by the holders of our common shares by the affirmative vote of not less than two-thirds of our common shares then outstanding and entitled to vote on such matter.

Our Third Restated Declaration of Trust also permits our board of trustees, by a two-thirds vote and without any action by the holders of our common shares, to amend our Third Restated Declaration of Trust from time to time as necessary to enable us to continue to qualify as a real estate investment trust under the Internal Revenue Code.

***Dividend, Distribution, Liquidation and Other Rights.*** Subject to the preferential rights of our Series A preferred shares, any other preferred shares of beneficial interest that we may issue in the future and the provisions of the Third Restated Declaration of Trust regarding the restriction on the transfer of our common shares, holders of our common shares are entitled to receive dividends on their common shares if, as and when authorized and declared by our board of trustees and to share ratably in our assets legally available for distribution to our shareholders in the event of our liquidation, dissolution or winding up after payment of, or adequate provision for, all known debts and liabilities. Our common shares have equal dividend, distribution, liquidation and other rights. Our common shares have no preference, conversion, exchange, sinking fund or redemption rights.

***Listing.*** Our common shares are listed on the NASDAQ National Market under the symbol IRETS.

***Transfer Agent and Registrar.*** We act as our own transfer agent and registrar with respect to our common shares.

## **Series A Preferred Shares**

***General.*** Our Third Restated Declaration of Trust, as amended by the Articles Supplementary, authorizes the issuance of an unlimited number of our Series A preferred shares. As of January 20, 2005, there were 1,150,000 of our Series A preferred shares outstanding and there were no warrants, options or other contractual arrangements requiring the issuance of additional Series A preferred shares or any other shares of beneficial interest. Unless redeemed, our Series A preferred shares have a perpetual term with no stated maturity date.

***Ranking.*** With respect to the payment of distributions and distribution of our assets and rights upon our liquidation, dissolution or winding up, whether voluntary or involuntary, our Series A preferred shares will rank:

senior to our common shares and to all other shares of beneficial interest that, by their terms, rank junior to our Series A preferred shares,

on a parity with all shares of beneficial interest that we issue, the terms of which specifically provide that those shares of beneficial interest rank on a parity with our Series A preferred shares, and

junior to all shares of beneficial interest issued by us whose senior ranking is consented to as described under Voting Rights below.

We do not currently have any other shares of beneficial interest outstanding that rank on a parity with, or senior to, our Series A preferred shares.

***Distributions.*** Holders of our Series A preferred shares will be entitled to receive, when, as and if declared by our board of trustees, out of funds legally available for that purpose, cumulative quarterly cash distributions at the rate of 8.25% of the \$25.00 liquidation preference per year (equivalent to an annual rate of \$2.0625 per Series A preferred share). Distributions on our Series A preferred shares will accrue and be cumulative from and including the date of



initial issuance or from and including the day immediately following the most recent date as to which distributions have been paid. Distributions will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, or, if not a business day, the succeeding business day (without interest for the

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intervening period). Distributions will accrue regardless of whether we have earnings, whether we have funds legally available for payment or whether the distributions are declared. The first distribution on our Series A preferred shares was paid on June 30, 2004. Distributions will be computed on the basis of a 360-day year consisting of twelve 30-day months. Each payment of distributions will include distributions accrued to and including the date on which paid. Distributions will be payable to record holders of our Series A preferred shares as they appear in our records at the close of the business on the applicable record date, which will be the 15th day of the calendar month in which the applicable distribution payment date falls or such other date designated by our board of trustees for the payment of distributions that is not more than 30 nor less than 10 days prior to the distribution payment date.

No full distributions will be authorized or paid or set apart for payment on any class or series of shares of beneficial interest ranking, as to distributions, on a parity with our Series A preferred shares unless all accrued distributions on our Series A preferred shares for all past distribution periods and the then current distribution period have been, or contemporaneously are, authorized and paid in full or a sum sufficient for the payment in full of such distributions is set apart for that payment. When distributions are not paid in full (or a sum sufficient for their full payment is not so set apart) on our Series A preferred shares and any other class or series of shares of beneficial interest ranking on a parity as to distributions with our Series A preferred shares, all distributions declared upon our Series A preferred shares and any other such shares of beneficial interest will be authorized pro rata so that the amount of distributions authorized per share on our Series A preferred shares and all other such shares of beneficial interest will in all cases bear to each other the same ratio that accrued and unpaid distributions per share on our Series A preferred shares and all other shares of beneficial interest bear to each other.

Except as provided in the immediately preceding paragraph, unless all accrued distributions on our Series A preferred shares for all past distribution periods and the then current distribution period have been, or contemporaneously are, authorized and paid in full or a sum sufficient for the payment in full of such distributions is set apart for payment, no distributions (other than in the form of our common shares or any other shares of beneficial interest ranking junior to our Series A preferred shares as to distributions and upon our liquidation, dissolution or winding up, whether voluntary or involuntary) or other distribution will be authorized, paid or set aside for payment or made upon our common shares or any other shares of beneficial interest ranking junior to, or on a parity with, our Series A preferred shares as to distributions or upon our liquidation, dissolution or winding up, whether voluntary or involuntary, nor will any common shares or any other shares of beneficial interest ranking junior to or on a parity with our Series A preferred shares as to distributions or upon our liquidation, dissolution or winding up, whether voluntary or involuntary, be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such shares of beneficial interest) by us (except by conversion into or exchange for other shares of beneficial interest ranking junior to our Series A preferred shares as to distributions and upon our liquidation, dissolution or winding up, whether voluntary or involuntary, and except for the acquisition of shares of beneficial interest that have been designated as excess shares in accordance with the terms of our Third Restated Declaration of Trust).

Distributions on our Series A preferred shares will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of the distributions and whether or not the distributions